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Law Number 20105

AMENDING LAW No. 19,419 IN MATTERS RELATING TO TOBACCO ADVERTISING AND CONSUMPTION

Taking into account that the Honorable National Congress has approved the following Bill:

“First Article. The following modifications are introduced in Law No. 19,419;

1) The following new article is inserted after Article 1:

“Article 2. For all legal purposes, the following definitions will be applied:

- a) Tobacco Advertising: Any form of promotion, communication, recommendation, propaganda, information or action for the purpose of, or intended for promoting a product made with tobacco or consumption of tobacco;
- b) Tobacco Industry: This term covers manufacturers, wholesale distributors and importers of products made with tobacco;
- c) Products made with tobacco: Any product containing or prepared totally or partially using tobacco leaves as raw material;
- d) Additive: Any substance, with the exception of tobacco leaves or other natural or unprocessed part of the tobacco plant, used in the preparation of a tobacco product that is present in the final product, even if its shape has been altered, including paper, filters, printed material and adhesives.

2) The following text replaces Article 2, which now becomes the Article 3:

“Article 3. Advertising of tobacco or items of the trademark related to said product is banned, with the exception of advertising inside retail stores where these items are sold. On the outside of said premises, only the sale of products made with tobacco may be advertised to the public using notices designed by the Ministry of Health and established by supreme decree.

In addition, advertising on the international signs of Chilean communication media or Internet pages with domains ending in “dot cl (.cl) is banned.

3) The following text replaces Article 3, which now becomes Article 4:

“Article 4. Marketing, offering, distribution or delivery, free of charge, of products made with tobacco, to persons under the age of 18 are banned. Vending machines of this type of products may be installed only in establishments, premises or outlets where, as ordered by law, minors are not allowed to enter.

Any form of advertising of products made with tobacco is banned in places that are fewer than 300 meters away from elementary and secondary educational establishments, including retail stores, except for the subject matter relative to notices as indicated in the previous article. In addition, the sale of these products is banned in those places that are fewer than 100 meters away from said establishments. The distance will be measured from each entrance door of the respective establishments by the sidewalks, streets and public use spaces.

Cigarettes may not, under any circumstances, be sold individually or in a pack that contains fewer than ten cigarettes.”

- 4) The new following article is inserted after Article 3, which now becomes Article 4:

“Article 5. Offering or providing any direct or indirect compensation is banned for the purchase of products made with tobacco, such as the donation, bonus or reimbursement of cash or the right to participate in a game, sweepstakes drawing or contest, as well as the distribution of said product without cash compensation”.

- 5) The following text replaces the Article 4, which now becomes Article 6:

“Article 6. Any package of products made from tobacco, whether domestic or imported products, intended for distribution within the national territory and any advertising action of the same, regardless of the form or the way in which it is made, must contain a clear and accurate warning of the damage, illnesses or effects that, for human health, its consumption or exposure to tobacco smoke involves. This warning will have a duration of 12 months, must be designed by the Ministry of Health and established by supreme decree of this Ministry, which will be printed in the packs or on any package and may not, under any circumstances, be removable. In the case of imported products, this warning must be affixed so that it cannot be easily detached.

In the case of cigarette or cigar packs, bags or packages or products made with tobacco, this warning must appear on the two main faces and occupy 50% of each of said faces. The warning will be affixed on the lower portion of each face.

The indicated decree will establish one or more successive warnings, which may be designed with drawings, photos or legends. During the indicated period for each warning, it must appear on the entire domestic production or imported products intended for distribution within the national territory. If, when a new warning becomes effective, there are still inventories in stock with the previous warning for its distribution, authorization must be requested from the Health Authority department of the parent company of the manufacturer or importer. This exception may only reach an amount equivalent to the production distributed during the previous month.

The advertising notices at the points of sale may not exceed two square meters and the warning prepared in terms of this article must occupy 50% of the notice.

6) The following text replaces the Article 5, which now becomes Article 7:

“Article 7. Study plans and programs of the General Elementary Education and Secondary Education of both methodologies must consider objectives and contents intended to educate and instruct students on the damage caused in the human body by the consumption of products made with tobacco and exposure to tobacco smoke, as well as the addictive nature of these.”

7) The following new article is added after Article 5, which now becomes Article 7:

“Article 8. It is forbidden for terms such as light, smooth, mild, low in tar, nicotine, carbon monoxide or other similar designations to be included in the name or properties associated with a brand of cigars or cigarettes.”

8) The following text replaces the Article 6, which now becomes Article 9:

“Article 9. The parent company of the manufacturer or importer of products made from tobacco must report to the Ministry of Health, as the latter may determine, the components and additives that are incorporated in such products, in quality and quantity, as well as the substances used to process tobacco.

The Ministry of Health may ban the use of additives and substances that increase the harmful effects or risk to the consumer of said products, and establish the maximum allowed limits of the substances contained in the products made with tobacco. Furthermore, it will set the standards on disclosure of information regarding the additives and substances added to tobacco and their effects on the health of consumers.

Cigarette packs must clearly and visibly express on one of the side faces the main components of this product in the terms established by the Ministry of Health.”

9) The following text replaces Article 7, which now becomes the Article 10:

“Article 10. No smoking will be allowed in the following places, including patios and open-air spaces indoors:

- a) Pre-elementary, elementary and secondary educational establishments;
- b) Enclosed areas where fuels are sold;
- c) Those areas where flammable materials, medications or food items are manufactured, processed, stored or handled.
- d) Public or collective means of transportation;
- e) Elevators.

“Article 11. No smoking will be allowed in the following places, except on the patios or open-air spaces: a) Inside the enclosed areas or departments of governmental agencies of the State. However, in the individual offices, one may smoke only if there is ventilation toward the open-air area or if air is extracted to the outdoors.

- b) Public or private higher-education establishments;
- c) Public and private health establishments;
- d) Airports and ground transportation centers;
- e) Theaters, movie houses, places that hold cultural and musical shows, unless they are held outdoors;
- f) Gymnasiums and sports venues;
- g) Service or care centers open to the general public;
- h) Supermarkets, shopping centers and other similar establishments that allow access to the public.

In the aforementioned places, there may be one or more rooms especially designed for smoking, with the exception of the cases indicated by the paragraph c).

Without prejudice to the provisions in the next article, the same rules shall apply for companies, establishments, jobs or business units required to develop an internal regulation on order, hygiene and safety, in conformity with the standards of the Labor Code.

In workplaces owned by private individuals not included in Article 10 and in the preceding sections, the existing ban on smoking or determination of locations and conditions under which smoking will be authorized will be agreed upon by the owners or administrators, after hearing the employees' opinion.

Article 12. In restaurants, bars, pubs, discotheques, night clubs, gambling casinos and other legally approved gambling locations, with an area of more than 100 square meters intended for serving the public, to allow smoking indoors, areas must be separated for smokers and nonsmokers, and the space reserved for these areas may not constitute more than 60% of the total space intended for serving the public.

In those places indicated in the previous section, the area of which intended to serve the public is 100 square meters or less, one may choose to have either an area for smokers or an area for nonsmokers, and a notice to that effect will be posted at the entrance. If one chooses for the area to be for smokers, the provisions in the following article will be applied in whatever is pertinent.

For discotheques and night clubs, where alcoholic beverages are sold and admission is only for persons over the age of 18, the rules of the previous section will apply, without the indicated area limitation.

Article 13. Rooms, places or spaces designed for smokers in conformity with the previous two articles must be clearly isolated and contain mechanisms that prevent smoke pass on to the rest of the premises, ventilation to the outdoors or air extraction to the outside, and where admission of individuals under the age of 18 is not allowed.

In places reserved for nonsmokers, warnings must be posted that ban smoking, which must be clearly visible and comprehensible, and must contain images or legends in Spanish. In addition, at the entrance and inside the reserved places or areas for smokers, warnings must be displayed that indicate said fact."

10) The following text replaces Article 8, which now becomes Article 14:

"Article 14. The administrative agencies of Law No. 16,744 must collaborate with their member companies, providing them with assistance with respect to the contents of the information that these companies furnish to their employees and users on the harmful effects caused in the human body by the consumption of products made with tobacco or exposure to tobacco smoke and on the benefits of adopting healthy lifestyles and environments."

11) A new Article 15 is added as follows:

"Article 15. The Health Authority and Civil Guard of Chile shall monitor compliance with this law and, in the event that they encounter any violation, they will report the event to the Court Judge or the Local competent Law Enforcement Judge, as provided in the following section.

If the violation found is provided in the law with a maximum applicable fine of more than 50 monthly tax units, the charge will be formulated before the respective Court Judge pertaining to the jurisdictional territory where this violation was committed; and for violations that have a fine below the aforementioned amount, the charge must be filed before the Local Law Enforcement Judge covering the jurisdictional territory where the violation was committed.

The Court Judge or the Local Law Enforcement Judge, as the case may be, will be empowered to impose the appropriate penalty, and against said decision, the recourses allowed by law will apply. In the first case, the procedure will be subjected to the rules of summary proceedings, and, in the latter case, the procedure will adhere to the rules established in Law No. 18,287.

Under no circumstances may prior payment of the fine be required; such fine will always be for the tax purposes.”

12) The following text replaces Article 9, which now becomes Article 16:

“Article 16. The violation of provisions of this law will be penalized in accordance with the following rules:

1) A fine of 500 to 1,000 monthly tax units and confiscation of the merchandise which is the subject matter of the infraction, for violation of what is established in the second section of Article 9, using additives or substances banned by the Ministry of Health or exceeding the maximum allowed limits of the substances contained in the products made with tobacco.”

2) A fine of 1 to 50 monthly tax units, and a fine of 101 to 500 monthly tax units if the violation is committed by an individual or legal entity that is part of the tobacco industry, in addition to the confiscation of the goods that are the subject matter of the violation, in the following cases:

- a. Sale of products made with tobacco in establishments located less than 100 meters away from elementary and secondary educational institutions, with infraction of what has been established in Article 4.
- b. Advertising of tobacco or items of the brand related to said product retail sales establishments, or communication to the public of the sale of products made with tobacco outside the retail establishments, with violation of what has been established in Article 3.
- c. Display, in the retail sales establishments of products made with tobacco, advertising notices with an area greater than indicated in the fourth section of Article 6, without a warning referred to by said article or with a warning that occupies less than 50% of the notice.
- d. Any form of advertising of products made with tobacco in establishments located less than 300 meters away from elementary and secondary educational institutions, including retail sales establishment, with violation of the second section of Article 4. Excluded from this are notices authorized by Article 3 on the outside of the retail sales establishments.
- e. Offer or provide any compensation, directly or indirectly, for the purchase of products made with tobacco, in violation of what has been provided in Article 5.

3) A fine of 101 to 500 monthly tax units and confiscation of the goods which are the subject matter of the violation in the following cases:

- a) Omit, in packages of products made with tobacco of a domestic origin or imported and intended for distribution within the national territory, the warning established by Article 6, or to affix the advertisement with a

different design, in different places or in a proportion less than indicated in said article.

b) Carry out advertising campaigns of products made with tobacco, whether domestic or imported and intended for distribution within the national territory, regardless of the form or the medium used, omitting the warning established by Article 6.

c) Fail to clearly and visibly express the main components of the product on one of the side faces of the cigarette packs in the terms established by the Ministry of Health in conformity with the third section of Article 9.

d) Violate the standards on disclosure of information in reference to the additives and substances added to the tobacco and their effects on the health of consumers established in accordance with Article 9.

4) A fine of 101 to 500 monthly tax units for failure to report to the Ministry of Health the component products and additives that are added to the products made with tobacco, or the substances used for processing tobacco, in conformity with the first section of Article 9.

5) A fine of 1 to 50 monthly tax units and a fine of 30 to 300 monthly tax units if the violation is committed by an individual or legal entity that is part of the tobacco industry, in addition to the confiscation of the goods which are the subject matter of the violation, for the marketing, offering, distribution or delivery, free of charge, of products made with tobacco to individuals under the age of 18, in breach of the provisions in the first section of Article 4.

6) A fine of 50 to 250 monthly tax units and confiscation of the goods which are the subject matter of the violation, for including in the name or properties associated with the brand of cigars or cigarettes such terms as light, smooth, mild, low in tar, nicotine, carbon monoxide or other similar substances banned in Article 8.

7) A fine of 50 to 250 monthly tax units for violation of the rules on conditioning, surface area and ventilation of spaces intended for smokers and reserved for nonsmokers, as established in Articles 12 and 13.

8) A fine of 10 to 100 monthly tax units for the installation of self-service vending machines that dispense products made with tobacco in establishments, places or areas that do not ban the entry of minors, in violation of the provisions in the first section of Article 4.

9) A fine of 1 to 20 monthly tax units and a fine of 10 to 50 monthly tax units if the violation is committed by an individual or legal entity who is a part of the tobacco industry, in addition to the confiscation of the goods which are the subject matter of the violation, for selling cigarettes one by one or in packages that contain less than ten cigarettes.

10) A fine of 2 to 20 monthly tax units applied to the owner, director or manager of the establishment, in the following instances:

a. Allow the entry of minors under the age of 18 to places designed for smokers, thus breaching the ban established in Article 13.

b. Breach of the rules on warnings that must be displayed relative to the ban on smoking and in those places where smoking is allowed, in conformity with the provisions in the final section of Article 13.

11) A fine of 1 monthly tax unit applied, for each offender, to the owner, director or manager of the respective establishment for violating the ban on smoking in unauthorized places. Nevertheless, the owner, director or manager may be exempted from the payment of the fine by providing that the smoker was warned to comply with the law or to leave the premises and subsequently the respective charge was filed with the public inspection authority. In these cases, assistance may be requested from the police force to restore law enforcement.

12) A fine of half of a monthly tax unit applied to the smoker who violates the ban on smoking as established in Articles 10, 11, 12 and 13.

To determine the amount of the fine to be applied in conformity with this article, the circumstances of the violation will be taken into consideration and especially the offender's financial standing.

In case of recurrence, double the fine may be applied. Recurrence shall be understood to have occurred when the offender commits the same violation on two occasions within the same calendar year. When there is a third violation committed within the same period, triple the fine may be applied and for cases where there is a ban on the sale or supply of products made with tobacco, to minors or in places at a distance from educational institutions less than allowed by law, or violations of the rules on conditioning, requirements and warnings relative to spaces for smokers and nonsmokers, committed in supermarkets gambling casinos theaters, cinemas, places where cultural and musical shows are presented., gymnasiums and sports arenas, public service centers or consumers service centers, shopping malls and other similar establishments open to the public, including those indicated in Article 12, the closing of the establishment or place may additionally be decreed for up to thirty days.

The products named in conformity with this article will be delivered to the Health Authority so that it may proceed with their destruction or natural disposal.

For purposes of verifying the age of the individual in case there is a question to avoid committing a violation, the owners, directors and managers of the establishments and places regulated under this law, or their representatives, may require the presentation of the respective identification document. “

13) The following text replaces Article 10, which now becomes Article 17:

“Article 17. In the event that the violation were to be committed by an agency of the Government, the Health Authority must also report the subject matter to the respective Government Agency to adopt the appropriate administrative measures, sending a copy of said communication to the Under Secretary of Public Health, who will keep a public record of them.”

14) Article 11 is hereby repealed.

15) Article 12 is hereby repealed.

Second Article. The rules of this law shall become effective 90 days after its publication in the *Diario Oficial* (Official Newspaper), except for what is established in the Second Article of Law No. 19,419, replaced by this law. And which now becomes the Third Article, which will become effective after eighteen months have elapsed from that date; and what is established in Article 12, first section, which shall become effective one year after the publication of this law in the *Diario Oficial*.

During the legal grace periods established in the previous section for the second article, which now becomes the third article, and article 12, first section, the second article and the seventh article, final section, of Law No. 19,419, respectively and, in case of a violation of them, the provisions in Article 16, Nos. 2 and 10), as required, shall remain in force and effect.”

Third Article. Article 20 of Decree Law No. 828 of 1974 is repealed.

Transitional Article. The study plans and programs referred to by the fifth article, which now becomes the seventh article, contained in number 6) of the first article of this law, must be in progress in the month of March 2007.”

Having complied with the provisions established in No. 1 of Article 93 of the Political Constitution of the Republic and since I have consented to approve and sanction it, now therefore, let it be enacted and let it take effect as a Law of the Republic.

Santiago, Chile, May 2, 2006. – MICHELLE BACHELET JERIA, President of the Republic. - Maria Soledad Barria Iroume, Minister of Health.- Martin Zilic Hrepic, Minister of Education.- Osvaldo Andrade Lara, Minister of Labor and Social Security.

I transcribe this to you for your information. - Sincerely, Lidia Amarales Osorio, Under Secretary of Public Health.

Constitutional Court.

Bill that modifies Law No. 19, 419 in subject matters relative to tobacco advertising and consumption.

The undersigned Secretary of the Constitutional Court certifies that the Honorable Senate has sent the bill listed in the heading, and approved by the National Congress, so that this Court will exercise control over constitutionality with respect to Numbers 6 and 11 of the first article of the said Bill, and through a

decision of April 13, 2006, issued in the writs contained in Roll No. 474, declared that:

1. Numbers 6 and 11 of the first article of the remitted bill are constitutional;
2. The transitional article of the remitted bill is also constitutional.

Santiago, April 19, 2006. - Rafael Larrain Cruz, Secretary.