

**MINISTRY OF HEALTH
UNDER SECRETARY OF PUBLIC HEALTH**

LAW No. 20.660

AMENDS LAW Nº 19.419, REGARDING SMOKE-FREE ENVIRONMENTS

Considering that the Hon. National Congress has given its approval to the following draft law,

Draft Law::

"Sole Article. – The following amendments are to be inserted in Law Nº19.419, which Regulates the Activities it Indicates Relating to Tobacco:

1) In Article 1, the expression "products made with tobacco" is to be replaced by "tobacco products."

2) In Article 2º:

a) In letter b), the phrase "products made with tobacco" is to be replaced by "tobacco products."

b) Letter c) is to be amended to read as follows:

"c) Tobacco products: products prepared totally or in part using as a raw material tobacco leaf and intended to be smoked, sucked, chewed or sniffed;"

c) The following letter d), which is new, is to be inserted, so that the current letter d) will become e):

"d) Interior or enclosed space: The space that is covered by a roof or enclosed between one or more partitions or walls, regardless of the material used, the presence of doors or windows, or whether the structure is permanent or temporary, and..."

3) Article 3º is to be amended to read as follows:

"Article 3º.- Advertising for tobacco and elements of the brands related to such product is prohibited."

The aforementioned prohibition extends on the same terms and with the same effects to indirect advertising carried out through product placement, whereby the consumption of products or brands of products made of tobacco are shown in the mass media.

In the same way, it is prohibited to show people smoking or speaking of the positive characteristics of consuming tobacco on programs broadcast live on radio or TV during children's viewing hours.

Furthermore, advertising on international broadcasts of Chilean media or Internet sites whose Internet domains have the ending ".cl" is prohibited.

Tobacco companies must annually report to the Ministry of Health an itemized breakdown of donations made, as well as expenditures made for arrangements with public institutions, athletic and community organizations, academic and cultural entities and non-governmental organizations."

4) In Article 4:

a) in its first sub-paragraph, the phrase "made with tobacco" is to be replaced by "of tobacco."

b) The second sub-paragraph is to be amended to read as follows:

"The sale of these products is prohibited in places located less than one hundred meters from institutions of primary and secondary education. The distance is to be measured from each access door of the respective establishments, by sidewalks, streets and public thoroughfares."

c) The following third sub-paragraph is to be inserted, so that the current third sub-paragraph becomes the fourth one:

"The sale of tobacco products is prohibited inside health institutions, whether they are public or private."

5) In Article 5, the expression "made with tobacco" is to be replaced by "of tobacco."

6) In Article 6:

a) In the first sub-paragraph, the phrase "made with tobacco" is to be replaced by "of tobacco"; the phrase "and all advertising activity thereof, regardless of the form or medium in which it is expressed, have to," is to be replaced by the phrase "has to," and the expression "of 12 months" by the phrase "a minimum of twelve months and a maximum of twenty-four months."

b) In the second sub-paragraph, the phrase "made with tobacco" is to be replaced by "of tobacco."

c) The third sub-paragraph is to be amended to read as follows:

"The decree in question shall establish from two to six warnings, which can be created with drawings, or photographs and captions. The aforesaid decree shall enter into force three months after its publication. During the period indicated in the first sub-paragraph, the warnings must appear on all national and imported production intended for distribution within the national territory, simultaneously."

d) The following fourth and fifth sub-paragraphs are to be inserted, so that the current fourth sub-paragraph becomes the sixth:

"Producers, sellers or distributors must include the warnings in similar percentages on all tobacco products that each one of them produces, sells or distributes. To such end, at the start of the period requiring the warnings, they will report in writing to the Ministry of Health the amounts of the respective tobacco products and the distribution of warnings on them. Any modification of the information indicated must be reported to the Ministry of Health at once.

If when the new warnings enter into force there are inventories left over with the previous warnings, in order for them to be distributed, it will be necessary to apply for authorization to the Health Authority corresponding to the main office of the manufacturer or importer. This allowance can only go as high as the amount equivalent to the production distributed in the previous month."

e) The fourth sub-paragraph, which has become the sixth, is to be amended to read as follows:

"The health warnings must always be visible, at all points of sale for tobacco products.."

7) In Article 7°:

a) the phrase "made with tobacco" is to be replaced by "of tobacco."

b) The following second sub-paragraph is to be added:

"There will be a national education plan concerning tobacco and its harmful effects, which is to be updated at least every five years.."

8) Article 9 is to be amended to read as follows:

"Article 9.- The main office of the manufacturer or importer of tobacco products must annually report to the Ministry of Health, in a manner that the latter shall determine, on the ingredients and additives that are included in them in terms of quality and quantity, as well as the substances used for the processing of the tobacco. Tobacco products containing additives that have not been previously reported to the Ministry of Health cannot be sold."

The Ministry of Health can prohibit the use of additives and substances that are added to tobacco in the process of manufacture of the products addressed by this law that are intended to be sold in the national territory, when such additives and substances increase levels of addiction, harm or risk in the consumers of said products. Furthermore, in the cases mentioned previously, it is possible to establish the maximum limits allowed for substances contained in tobacco products. Moreover, it shall establish the rules for the dissemination of information concerning additives and substances added to tobacco and their effects on the health of consumers.

Cigarette packages must state clearly and visibly on one of their lateral surfaces the main components of this product pursuant to the terms established by the Ministry of Health.”

9) Article 10 is to be amended to read as follows::

"Article 10.- It is prohibited to smoke in the following places:

- a) Any enclosed space that is a place accessible to the public or for shared commercial use, regardless of who the owner may be or who may have the right of access to such place.
- b) Spaces, whether enclosed or open, public or private, that comprise part of the outbuildings of:
 - 1. Pre-school, primary and secondary educational institutions.
 - 2. Facilities where fuel is consumed.
 - 3. Places where explosives, inflammable materials, medications or foods are manufactured, processed, stored, or handled.
 - 4. In galleries, platforms and other spaces intended for the public in athletic facilities, gymnasiums or stadiums. This prohibition extends to the playing field and to the entire area encompassed within the perimeter consisting of such galleries, platforms and other spaces, except in places where smoking is specially authorized that may be included in such areas.

c) Public or shared means of transportation, including elevators.”

10) Article 11 is to be amended to read as follows:

"Article 11.- Without impairment to what is set forth in the foregoing article, it is prohibited to smoke in the following places, except in their courtyards or open air spaces:

- a) Public and private institutions of higher education.
- b) Airports, bus stations and train stations.
- c) Theaters and cinemas.
- d) Centers for the provision of service or facilities open to the general public.
- e) Supermarkets, shopping centers and other similar establishments with free public access.
- f) Public and private health institutions, except for hospitals for psychiatric admission that do not have open air spaces or whose patients cannot have access to them.
- g) Facilities of Government agencies.
- h) Pubs, restaurants, discotheques and gaming casinos.

In courtyards and open air spaces, when they exist, it shall be necessary to authorize special places for smokers in the cases indicated in letters f) and g) of the preceding sub-paragraph. To such end, the director of the institution, or general manager thereof, shall be responsible for establishing an area that is clearly demarcated, always seeing to it that any tobacco smoke generated does not reach the inner premises of the establishments in question. However, the director of the institution or general manager thereof can always determine that smoking is prohibited in the open areas of the institutions they direct or manage.”

11) Revocation of Article 12.

12) Revocation of Article 13.

13) In Article 14:

a) The following new first sub-paragraph is to be inserted:

"Article 14.- In places accessible to the public, warnings prohibiting smoking must be posted, and they must be prominently visible and comprehensible.”

b) In its first sub-paragraph, which has become the second one, the phrase "made with tobacco" is to be replaced by "of tobacco.”

14) In Article 15:

a) In the first sub-paragraph, the phrase “Civil Magistrate or” is to be deleted, and the term "following" is to be replaced by “third.”

b) The second and third sub-paragraphs are to be amended to read as follows:

"The inspectors of the respective municipality will also oversee compliance with this law, and will prosecute any infractions they discover before the tribunals indicated in the foregoing sub-paragraph.

The respective local police magistrate will be authorized to impose the appropriate sanction, and appeals allowed for by law may be filed against his rulings. The proceeding shall be subject to what is established in Law N°18.287."

c) In its last sub-paragraph, the term "fiscal" is to be replaced by "municipal."

15) In Article 16:

a) Every time it appears, the expression "made with tobacco" is to be replaced by "of tobacco."

b) In the first sub-paragraph:

i. A new numeral 1) is to be inserted, so that the present numerals 1) through 12) will become 2) through 13), respectively, as follows:

"1) A fine of 3 to 50 monthly tax units, and from 30 to 300 monthly tax units, if the infraction is committed by a natural or juridical person belonging to the tobacco industry, for the sale, purchase for sale, commercialization of any kind, distribution, transportation and storage of tobacco products, of any kind, class or nature, that do not comply with legal obligations with respect to health, customs, tax or intellectual property matters. In such cases, the fine shall be valid without impairment to such penal sanctions as may be applicable. Furthermore, in the event of a repeat offense, the closing shall be decreed of the establishment, store or place where the infraction shall have been committed for a period of fifteen days."

ii. In numeral 2), which has become numeral 3):

- In letter a), the continuation of the inset (.), which becomes the following point, is to have inserted the following phrase: "Furthermore, in cases of repeat offenses, it shall be possible to decree the closing of the establishment, store or place where the offense was committed for a period of fifteen days..."

- In letter b), the phrases are to be eliminated: "outside places of sale or communications to the public of the sale of products made with tobacco outside places of sale, as an infraction of what is established in Article 3."

- Letters c. and d. are to be deleted, so that letter e. becomes c., and the following letter d. is to be added: "d. Violating the rules concerning percentages of distribution of warnings on tobacco products, in accordance with what is established in the fourth sub-paragraph of Article 6."

iii. In numeral 5), which has become 6), after the inset (.), which becomes the following point, the following phrase is to be inserted: "Furthermore, in the event of repeat offenses, it will be possible to decree the closing of the establishment, store or place where the infraction was committed for a period of fifteen days."

iv. Revocation of numeral 7), modifying the respective numbering.

v. In numeral 8), after the inset (.), which becomes the following point, the following phrase is to be inserted: "Furthermore, in the event of repeat offenses, it will be possible to decree the closing of the establishment, store or place where the infraction was committed for a period of fifteen days..."

vi. In numeral 10): delete letter a. and replace in letter b, the phrase, "and in places where it is not permitted to do so, in conformity with what is set forth in the final sub-paragraph of Article 13," by the following phrase: "pursuant to what is set forth in Article 14."

vii. In numeral 11), the expression "1 monthly tax unit" is to be replaced by the following phrase: "2 monthly tax units."

viii. In numeral 12), the phrase "average monthly tax unit" is to be replaced by the following phrase: "2 monthly tax units."

ix. In numeral 12), the expression "10, 11, 12 and 13" is to be replaced by the following phrase: "10 and 11."

d) The third sub-paragraph is to be amended to read as follows:

"In the event of repeat offenses, it shall be possible to double the fine. Repeated failures to comply with any of the provisions of this law, that is, two or more infractions committed in a period of less than one year counting from the first infraction, shall be considered repeat offenses..."

Transitory Article.- This law shall enter into force on the first day of the month following its publication in the *Diario Oficial*."

Having fulfilled what is established in N° 1° of Article 93 of the Political Constitution of the Republic, and inasmuch as I have found it suitable to approve and sanction it; therefore, let it be promulgated and put into effect as a Law of the Republic.

Santiago, February 1, 2013.

- SEBASTIÁN PIÑERA ECHENIQUE, President of the Republic.
- Jaime Mañalich Muxi, Minister of Health.
- Andrés Chadwick Piñera, Minister of the Interior and Public Safety.
- Pablo Longueira Montes, Minister of Economy, Growth and Tourism.

I transcribe for your consideration Law N° 20.660/2013.- With respectful greetings., Jorge Díaz Anaiz, Under Secretary of Public Health.

Constitutional Tribunal

Draft law to amend Law N° 19.419, with regard to smoke-free environments, corresponding to Bulletin N° 7914-11

The undersigned Secretary of the Constitutional Tribunal certifies that the Chamber of Deputies sent the draft law indicated in the heading, approved by the National Congress, so that this Tribunal could exercise oversight of constitutionality with respect to numeral 14) of the sole article of the draft, as well as for the judgment of January 31, 2013 in the record of the proceedings, Roll N°2.401-13-CPR:

The following is declared:

1. That this Constitutional Tribunal does not issue any pronouncement as a preventive examination of constitutionality with respect to the provisions contained in letter b), inasmuch as it replaces the second sub-paragraph of Article 15 of Law N° 19.419, and in letter c) of numeral 14) of the sole article of the draft law remitted, wherefore such precepts do not comprise part of the organic constitutional law.
2. That the provisions contained in letter a) and letter b), inasmuch as they replace sub-paragraph three of Article 15 of Law N° 19.419, of numeral 14) in the sole article of the draft law remitted, are constitutional.

Santiago, January 31, 2013.- Marta de la Fuente Olguín, Secretary.