

**Ministry of Health
THE UNDER SECRETARY OF PUBLIC HEALTH
APPROVES INSTRUCTIONS FOR APPLICATION OF AMENDMENTS TO LAW
Nº 19.419**

Exemption Nº 523

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Santiago, August 14, 2006.-

In light of: What is established in Law Nº 19.419, and amendments introduced by Law Nº 20.105; the international obligations assumed by the State of Chile upon ratification of the Framework Convention for Tobacco Control of the World Health Organization; what is set forth in the Decree with the force of Law Nº 1, of 2005, by this Ministry, which determines the revised text, coordinated and systematized with Decree Law Nº 2.763, of 1979, and Laws Nº 18.933 and Nº 18.469; and what is established in Resolution Nº 520, of 1996, of the General Comptroller of the Republic; and

Taking into consideration:

- The entry into force of the amendments introduced to Law Nº 19.419, by Law Nº 20.105;
- The need to make uniform the criteria that the Regional Bureaus must apply in the execution of their oversight activities;
- The need to inform citizens regarding such criteria and procedures as will enable them to comply with the law and at the same time exercise the control necessary so that the provisions of this law are respected by all, I hereby issue the following:

Resolution:

The following Ministerial Instructions to the Regional Ministerial Bureaus of Health on the implementation of amendments to Law Nº 19.419 contained in Law Nº 20.105 **are to be approved:**

**INSTRUCTS THE REGIONAL MINISTERIAL BUREAUS OF HEALTH ON
IMPLEMENTATION OF AMENDMENTS TO LAW Nº 19.419 CONTAINED IN
LAW Nº 20.105**

On August 14 of this year a series of amendments takes effect, introduced by Law Nº 20.105 to Law Nº 19.419, which regulates activities related to Tobacco.

For the purpose of expediting the implementation of these amendments and standardizing the requirements for Regional Health Authorities, this briefing has been drawn up.

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4. With regard to ENFORCEMENT by the SEREMI, as well as filing complaints before Local Police Magistrates and Civil Courts.

4.1 Applicable rules:

Article 15 of Law Nº 19.419; Law 18.287 which establishes the Procedure for Local Police Magistrates and Title XI of the Code of Civil Procedure, Articles 680 to 692, in which the summary procedure is established.

4.2 Role of SEREMI:

In Article 15 it is established that the enforcement of the Law shall be incumbent upon the Health Authority, which obligation it shall undertake through its employees. It shall be necessary to ascertain the offense and report the act to the respective magistrate: of the Local Police, when the violation detected carries a maximum fine equal to or less than 50 UTM, and to a Civil Magistrate if the violation carries a maximum fine greater than 50 UTM. It shall be incumbent upon these Tribunals to impose a sanction based on the merits of the proceeding that is conducted.

Upon ascertaining a violation of the law, whether at the request of enforcement authorities or in an independent action, it shall be required to draw up a report in triplicate, in which the facts constituting the alleged violation are noted, along with the identify of the offender, and any other background that may be useful and necessary in accordance with the law. The party will be informed that such documentation shall be presented before the competent tribunals and a copy of the report shall be delivered to him, with another copy going to the SEREMI.

4.3 Most relevant circumstances:

4.3.1 Measurement of distances: In accordance with previously established criteria, to measure the distance of the prohibition of commercialization and advertising, the Ministry of Health is working with the Ministry of Education to determine the role of Public and Private Educational Institutions in the implementation of the law.

Places for the sale of tobacco can submit a sworn statement made before a Notary recording compliance with regulations in relation to distances concerned for educational institutions; together with a map or simple sketch of the location to support this statement, which is to be submitted to the Health Authority for it to be incorporated into its database.

In the same manner, owners or administrators of places that must exercise the option to serve the public that the law affords for those at less than 100 square meters distance.

Places of sale and those indicated in 2.1.3 and 2.1.4, when they apply for a commercial permit, or upon renewal thereof, as well as for applications for the respective health authorization, must accompany the aforesaid documents.

Each Seremi must coordinate with the Municipalities of its Region for the implementation of this measure.

With the purpose of implementing obligations that the law imposes, the Regional Health Authorities must inform proprietors of establishments as expeditiously as possible to register in its database and tell them whether they are subject to any of the prohibitions, about the deadline for compliance with the requirement to choose between smokers and non-smokers; requirements of reserved spaces for smokers; guidelines for measuring the distance for the prohibition of advertising and commercialization in the vicinity of educational institutions; criteria for measuring the surface area intended for the public, etc.

4.3.2 Ascertaining violations:

For optimum accomplishment of the enforcement activities of the Seremis, and to facilitate social control of compliance with the Law, in the facilities indicated in item 2 of this briefing there must be a "Book of Tobacco," which shall have numbered pages, of easy access to the general public, where both complaints registered by private individuals for non-compliance with the law inside the establishment, as well as procedures carried out by the manager of the premises to comply with the law are to be recorded.

These books are to be made available to the Regional Ministerial Bureaus of Health (SEREMI - *Secretarías Regionales Ministeriales de Salud*), for inspections carried out by the Health Authority, engaged primarily in a role of assistance and

collaboration both for the proprietors as well as for the Health Authority. The foregoing is based on the fact that the law holds proprietors or administrators of facilities that are subject to absolute or relative prohibition responsible for violations, and as shall be later on, it is not necessary to be immediately present at the scene for each violation reported.

4.3.3 Complaints:

Members of the public wishing to submit complaints concerning failure to provide environments free of tobacco smoke are to be advised to record their complaints in the "Book of Tobacco".

Requests for enforcement by the public concerning the prohibition of commercialization and advertising in places of sale less than 100 and 300 meters from educational institutions must be submitted to the Health Authority, either in person, by phone, fax or e-mail, which should bring about enforcement action as soon as possible.

If the Health Authority in its random inspections or as a consequence of complaints, should detect non-compliance with the law, it shall draw up a report in which such facts are reported, identifying the alleged offender, and it shall issue a copy to him, and inform him that the facts shall be forwarded to the respective tribunal.

4.3.4 All inquiries concerning this law, whether of an educational character or for the purpose of advising users are to be taken in by SALUD RESPONDE [HEALTH ANSWERS] (phone 600 360 7777), and by the Offices of Information, Complaints and Suggestions (OIRS - *Oficinas de Información, Reclamos y Sugerencias*) of the SEREMI's of Health, pursuant to this briefing.

4.4 Upon ascertaining a violation, the Health Authority must report the fact to one of the competent Magistrates in the jurisdictional territory where the act has been committed, depending on the amount of the fine, which is established in Articles 15 and 16 of Law N° 19.419.

5. SUMMARY ON COMPLAINTS

5.1 As a general rule, the following violations are to be reported to the Local Police Magistrate:

5.1.1 Violations involving the sale and promotion of products made from tobacco:

- a. Sale of products made from tobacco in places located at a distance of less than 100 meters from institutions of primary and secondary education (with violations of what is set forth in sub-paragraph 2 of Article 4.)
- b. Sale of cigarettes individually or in packs containing fewer than ten cigarettes.

- c. Offering or giving any direct or indirect compensation for the purchase of products made from tobacco, in contravention of what is set forth in Article 5.
- d. Commercializing, offering, distributing or giving away for free products made from tobacco to minors under the age of 18, in contravention of what is set forth in sub-paragraph 1 of Article 4.
- e. Advertising for tobacco or elements of the brand related to said product outside places of sale, or communication to the public of the sale of products made from tobacco outside places of sale, in violation of what is established in Article 3. This rule entered into force on November 16, 2007.
- f. Exhibiting in places of sale of products made from tobacco, advertising notices with a surface area greater than that indicated in sub-paragraph 4 of Article 6, without the warning referred to therein, or with a warning that occupies less than 50% of the notice.
- g. Any kind of advertising of products made from tobacco in places that are located at a distance of less than 300 meters from institutions of primary and secondary education, including places of sale, in violation of sub-paragraph 2 of Article 4. An exception is made for notices authorized by Article 3, outside places of sale.

5.1.2 Violations committed by owners, directors or administrators of facilities:

- a. Permitting the entrance of minors under the age of 18 into places authorized for smokers, in violation of the prohibition established in Article 13.
- b. Violation of the rules concerning warnings that must be displayed concerning the prohibition of smoking, as well as in places that allow smoking, in accordance with what is set forth in the last sub-paragraph of Article 13.
- c. For allowing the violation of the prohibition of smoking in places where it is not authorized.

5.1.3 Violations committed by smokers:

This applies to smokers who contravene the prohibition of smoking established in Articles 10, 11, 12 and 13, which determine the places with an absolute prohibition of smoking, and those areas where smoking is permitted where the prohibition is relative.

If the violation is observed in the act by the Health Authority, the report is to be drawn up and the legal procedure followed.

If the person in charge of the premises is the one who ascertains the infraction, he must call upon the offender to respect the terms of the law, and if the offender shows resistance, it shall be possible to call the *Carabineros* (Constabulary) in response to a disturbance of public order. In such cases, the *Carabineros* can submit the complaint to the respective magistrate.

In cases of complaints by users presented to the person in charge of the premises that are entered into the Book of Tobacco, it shall be the person in charge of the premises who shall ascertain the violation and call upon the offender to obey the law. Whatever the resolution of the case may be, he should make a record of the incident in the Book of Tobacco.

5.2 As a general rule, the following violations are to be reported to a Civil Magistrate:

- a. Commercializing, offering, distributing or giving away for free products made from tobacco to minors under the age of 18, in contravention of what is set forth in sub-paragraph 1 of Article 4, when the infraction is committed by a natural or juridical person belonging to the tobacco industry.
- b. Violation of the rules on authorization, surface area and ventilation of spaces allowed for smokers and spaces reserved for non-smokers, as established in Articles 12 and 13.
- c. Installing vending machines to sell products made from tobacco in establishments, places or premises to which access is not prohibited to minors, in contravention of what is set forth in sub-paragraph 1 of Article 4.
- d. For selling cigarettes individually or in packs containing fewer than ten cigarettes.
- e. Contravention of what is established in sub-paragraph 2 of Article 9, using additives or substances prohibited by the Ministry of Health, exceeding the maximum limits allowed for substances contained in products made from tobacco.
- f. Matters relating to infractions indicated in the Law committed by a natural or juridical person belonging to the tobacco industry (manufacturers, wholesale distributors and importers of products made from tobacco).
- g. Omitting the warning required by Article 6 from packages of national or imported products made from tobacco intended for distribution within the national territory, or executing it with a different illustration, or in different places or in proportions less than those indicated therein.
- h. Engaging in advertising actions for products made from tobacco, whether national or imported, intended for distribution within the national territory,

whatever the manner or medium in which it is done, that omits the warning required by Article 6.

- i. Failing to state clearly and visibly on one of the lateral surfaces of packages of cigarettes the main components of the product, pursuant to the terms established by the Ministry of Health in accordance with sub-paragraph 3 of Article 9.
- j. Infringing the rules on disclosure of information concerning additives and substances added to tobacco, and their effects on the health of consumers established in accordance with Article 9.
- k. Not informing the Ministry of Health with regard to the ingredients and additives that are added to products made from tobacco, or about substances used in processing tobacco, pursuant to sub-paragraph 1 of Article 9.
- l. Including in the name or properties associated with the brand of cigars or cigarettes terms such as 'light,' 'smooth,' 'mild,' 'low in tar, nicotine, carbon monoxide,' or the like prohibited in Article 8.

Let this be noted, communicated and published.-
Lidia Amarales Osorio, Under Secretary of Public Health.