

LAW No. 9.294, OF JULY 15th 1996
(updated)

Governs restrictions on the use and advertising of smoking products, alcoholic beverages, medicines, therapeutic remedies and pesticides, pursuant to the terms of Art. 220, § 4 of the Federal Constitution

I, PRESIDENT OF THE REPUBLIC, hereby make known that the National Congress and I sanction the following Law:

Art. 1. The use and advertising of smoking products, whether or not they are tobacco derivatives, of alcoholic beverages, medicines, therapeutic remedies or pesticides are subject to the restrictions and conditions established by this law, pursuant to Art. 200, § 4 of the Federal Constitution.

Sole Paragraph. For purposes of this Law, potable beverages with an alcohol content greater than thirteen degrees Gay Lussac are considered alcoholic beverages.

“Art.2 It is forbidden to use cigarettes, cigarillos, cigars, pipes or any other kind of smoking product, whether or not it is a tobacco derivative, in a common space, whether it is public or private, except in an area exclusively set aside for such purpose, duly isolated and with suitable ventilation.

§ 1. Falling within the provisions of this article are public spaces, hospitals and clinics, classrooms, libraries, workplaces and theaters and cinemas.

§ 2. It is forbidden to use the products mentioned in the heading on aircraft and other vehicles of public transportation.” (Text taken from Provisional Measure No. 190-34/01)

“Art. 3. Commercial advertising of the products referred to in the preceding article can only be carried out with posters, placards and bills, inside the places where they are sold. (Text taken from Law No. 10.167/00)

§1 The commercial advertising referred to in this article must conform to the following principles:

I – It must not suggest exaggerated or irresponsible consumption, or that it leads to wellbeing or health, or make associations with civic or religious celebrations;

II – It must not induce people to consume by attributing to products calmative or stimulating properties, that reduce fatigue or tension, or any similar effect;

III – It must not associate ideas or images of greater success in people’s sexuality, insinuating an increase in virility or femininity for people who smoke;

IV – It must not associate the use of the product with sporting activities, whether or not they are Olympic, nor suggest or induce its consumption in places or situations that are dangerous, abusive or illegal; (Text taken from Law No. 10.167/00)

V – It must not make use of imperatives that directly induce consumption;

VI – It must not include the participation of children or adolescents. (Text taken from Law No. 10.167/00)

§ 2. Advertising shall contain, in the media, and on the basis of its characteristics, a warning, both spoken and written whenever possible, about the harmful effects of tobacco, alcoholic beverages, medicines, therapeutic remedies and pesticides, following statements established by the Ministry of Health, used sequentially, either simultaneously or on a rotating basis. (Text taken from Provisional Measure No. 190-34/01)

§ 3. Packaging and packs of smoking products, with the exception of those intended for export, and the advertising material referred to in the heading of this article shall contain the warning mentioned in § 2, accompanied by images or figures that illustrate the meaning of the message. (Text taken from Provisional Measure No. 190-34/01)

§ 4. On packages, the warning statements referred to in § 2 of this article shall be used sequentially, either simultaneously or on a rotating basis, and in the latter case they must vary every five months at most, being inserted in a manner that is legible and prominently displayed, on one of the sides of the pack, carton or package customarily sold directly to consumers.

§ 5. The warning referred to in § 2 of this article, written legibly and prominently, shall be used sequentially either simultaneously or on a rotating basis, and in the latter case varying at most every five months. (Text taken from Law No. 10.167/00)

"Art. 3.-A With regard to the products referred to in Art. 2. of this Law, the following things are prohibited: (Article included by Law No. 10.167/00)

- I – sale by mail; (Item included by Law No. 10.167/00)
- II – the distribution of any type of sample or giveaway; (Item included by Law No. 10.167/00)
- III – advertising by electronic media, including the internet; (Item included by Law No. 10.167/00)
- IV – the conduct of promotional visits or free distribution in an educational institution or public place; (Item included by Law No. 10.167/00)
- V – sponsoring of cultural or sporting activities; (Item included by Law No. 10.167/00)
- VI – Fixed or mobile advertising in a stadium, a race track, stage or similar place ; (Item included by Law No. 10.167/00)
- VII – indirectly contracted advertising, also called *merchandising*, in programs produced in Brazil after the publication of this law, at any time; (Item included by Law No. 10.167/00)
- VIII – sale in educational institutions, in healthcare institutions and in agencies or institutions of the government (Item included by Law No. 10.702/03)
- IX – sale to minors under 18 years of age (Item included by Law No. 10.702/03)

§ 1. Until September 30, 2005, what is set forth in items V and VI is not applicable in the case of international sporting events that do not have a fixed headquarters in one single country and are organized or carried out by foreign institutions (Paragraph renumbered and amended by Law No. 10.702/03)

§ 2. The Ministry of Health is authorized to post, in places of the sporting events referred to in § 1, permanent advertising with the written warning message that shall contain the content referred to in § 2 of Art. 3-C, with it being up to those in charge of its organization to ensure the availability of the places for the aforesaid posting (Paragraph renumbered and amended by Law No. 10.702/03)

“Art. 3.-B Sale will only be permitted of smoking products that display on their packaging the identification of the National Agency of Sanitary Oversight, pursuant to regulation.” (Article included by Law No. 10.167/00)

“Art. 3.-C The application of what is set forth in § 1, Art. 3-A, as well as the broadcast or re-broadcast by television in Brazilian territory of cultural or sporting events with images generated abroad, sponsored by companies tied to smoking products, requires the free presentation by TV stations during the broadcast of the event of a message of warning on the harmful effects of tobacco. (Article included by Law No. 10.702/03)

§ 1. At the opening and the close of the broadcast of the event, the warning message will be presented, whose content will be determined by the Ministry of Health, with a duration of not less than thirty seconds for each insertion. (Paragraph included by Law No. 10.702/03)

§ 2. At every 15-minute interval there will be presented, superimposed on the broadcast in question, a written and spoken warning message on the harmful effects of tobacco with a duration of not less than fifteen seconds for each insertion, by means of the following phrases and others to be determined in regulations, used sequentially, each one preceded by the statement, “The Ministry of Health warns that” (Paragraph included by Law No. 10.702/03)

I – “smoking causes bad breath, loss of teeth and cancer of the mouth”; (Item included by Law No. 10.702/03)

II - “smoking causes lung cancer”; (Item included by Law No. 10.702/03)

III - “smoking causes heart attacks”; (Item included by Law No. 10.702/03)

IV - “smoking during pregnancy is harmful to the baby”; (Item included by Law No. 10.702/03)

V – “for pregnant women, cigarette smoking can cause premature birth, children with low birth weight and a susceptibility to asthma”; (Item included by Law No. 10.702/03)

VI – “children start to smoke when they see adults smoking”; (Item included by Law No. 10.702/03)

VII – “nicotine is an addictive drug”; and (Item included by Law No. 10.702/03)

VIII – “smoking causes impotence.” (Item included by Law No. 10.702/03)

§ 3. For the purposes of this article, informal or official training, practices, repeat presentations and compacts are considered part of the event. (Paragraph included by Law No. 10.702/03)

Art. 4. Commercial advertising of alcoholic beverages on television and radio stations will only be permitted between the hours of 8:00 p.m. and 6:00 a.m.

§ 1. The advertising covered by this article may not associate the product with Olympic or competitive sports, with the healthy performance of any activity, with the driving of vehicles and images or ideas of people’s increased success or sexuality.

§ 2. Labels on packaging of alcoholic beverages shall contain the following warning: “Avoid Consumption of Alcohol in Excess.”

Art. 5. The announcements and characterizations of product sponsorship indicated in Arts. 2 and 4 for events outside normal or routine programming by radio and TV stations can be made at any time, as long as they are only identified with the brand or slogan of the product, without recommending consumption.

§ 1. The restrictions in this article apply to static advertising existing in stadiums, competitive venues and similar places.

§ 2. Subject to the conditions in the heading, the announcements and characterizations of product sponsorship shall be free from the requirement of § 2, Article 3 of this Law.

Art. 6 It is prohibited to wear athletic uniforms relating to Olympic sports that present advertising for the products covered by this Law.

Art. 7. Advertising for medicine and therapeutic remedies of any kind or type can be done in specialized publications specifically and directly addressed to health professionals and institutions.

§ 1. Anodyne and over-the-counter medications that have been classified as such by the Ministry of Health can be advertised in organs of social communication with warnings regarding their abuse, as indicated by the classifying authority.

§ 2. The advertising of medications referred to in this article shall not contain statements that are not susceptible to scientific proof, nor can it use endorsements by professionals who are not legally qualified to do so.

§ 3. Phytotherapeutic products of Brazilian medicinal flora that fall within the terms of §1 of this article must present scientific proof of their therapeutic effects within five years of the publication of this Law, without which their advertising will be automatically prohibited.

§ 4. Advertising of generic medications is permitted in publicity campaigns sponsored by the Ministry of Health and in the facilities of institutions authorized to dispense them with the indication of the medication of reference. (Item included by Provisional Measure No. 2.190-34/01)

§ 5. All advertising of medications must contain, as required, a warning indicating that if symptoms persist, a physician must be consulted. (Item included by Provisional Measure No. 2.190-34/01)

Art. 8 Advertising of pesticides that contain products with toxic effects, whether immediate or indirect, on human beings, must confine itself to programs and publications addressed to farmers and livestock managers, containing a complete explanation of its application, precautions concerning employees, consumption or use, as determined by the competent agency of the Ministry of Agriculture and Supply, without impairment to rules established by the Ministry of Health or other institutions of the Single Health System (SUS).

Art. 9 Without impairment to other penalties provided for in the legislation in force, particularly in the Code of Consumer Protection and in the Telecommunications Law, the following sanctions shall apply to offenders who violate this Law: (Text taken from Law No. 10.167/00)

I – A warning;

II – Suspension in the medium of dissemination of the advertising, of any other advertising of the product, for a period of up to thirty days;

III – Requirement to present a correction or clarification to offset advertising that is distorted or in bad faith;

IV – Seizure of the product;

V – A fine ranging from R\$ 5,000.00 (five thousand reais) to R\$ 100,000.00 (one hundred thousand reais), applied on the basis of the financial capacity of the offender; (Text taken from Law No. 10.167/00)

VI – Suspension of the programming by the broadcaster of radio or television, for a period of ten minutes for each minute or fraction thereof of the duration of advertisements broadcast in violation of this Law, observing the same schedule. (Text taken from Law No. 10.167/00)

VII – In the event of a violation of the provisions of Item IX of Article 3-A, the sanctions set forth in Law No. 6,437, of August 20, 1977, without impairment to the provisions of Art. 243 of Law No. 8.069 of July 13, 1990

§ 1. The sanctions set forth in this article can be applied in a graded fashion, and in the event of repeat offenses, can be applied cumulatively, based on the individual circumstances of the offender.

§ 2. In any case, the piece of advertising is definitively prohibited.

§ 3. For the purposes of this Law, any and all persons, natural or juridical, who are directly or indirectly responsible for the dissemination of advertising or for the respective transmission of communication shall be considered an offender.

§ 4. It is incumbent upon the municipal health authorities to apply the sanctions provided for in this article, pursuant to Art. 12 of Law n.. 6.437, of August 20, 1977, except in cases of the exclusive or concurrent competence of: (Paragraph included by Law No. 10.167/00)

I – the agency of sanitary oversight of the Ministry of Health, including the sanctions applicable to advertising agencies responsible for advertising in the national domain; (Item included by Law No. 10.167/00)

II – the agency for the regulation of civil aviation of the Ministry of Defense, in relation to infractions occurring on board aircraft; (Item included by Law No. 10.167/00)

III – the agency of the Ministry of Communications, responsible for the oversight of radio and television broadcasting; (Item included by Law No. 10.167/00)

IV – the agency for the regulation of transportation of the Ministry of Transportation, concerning infractions occurring inside passenger bus, rail and water-borne transport. (Item included by Law No. 10.167/00)

Art. 11. This Law shall enter into force on the date of its publication.

Art. 12. All provisions to the contrary are hereby revoked.

Brasilia, July 15, 1996; 175th year of Independence and 108th of the Republic.