

March, 2020

► **BILLS OF LAW ON SANITARY MATTERS, FILED IN THE CONTEXT OF THE CURRENT SITUATION**

In the context of the current sanitary alert, several bills of law have been filed with Congress, seeking to regulate certain aspects associated to states of emergency and sanitary crises in particular.

To such ends, the bills that stand out are:

1. **Bill prohibiting and penalizing price increases in the face of epidemics or pandemics:**

On Tuesday 17 March 2020, a bill was filed with the Lower Chamber (Newsletter 13.303-11); it was approved and was forwarded to the Senate the next day, Wednesday 18 March 2020.

This Bill proposes the creation of article 94 bis in the Code of Health Law that bans and penalizes, in case of epidemics or pandemics declared by the health authorities, the increase of prices for the following items:

1. Pharmaceutical products, food and medical devices that help in the prevention and treatment of the sicknesses associated to said alert.
2. Products directly or indirectly helping prevent the sanitary alert or pandemic.
3. Products aimed at personal, household or environmental hygiene.

Said prohibition would be applied to labs, drugstores, pharmaceutical shops, and other establishments selling or commercializing these items.

The health authority shall have to determine, via grounded resolution, the complete list of the items subject to this measure.

This prohibition would only be in force and effect during the sanitary alert, pandemic or epidemic.

A breach to this ban would be penalized with fines running from 50 U.T.M to 1,000 U.T.M (USD\$3,000 - USD\$6,000 approx.). Should the price increase take place once the state of constitutional exception has been declared, or once the public disaster resulting in a State of Catastrophe has taken place, it would be applicable to double the foregoing fines, plus requisition of the items involved.

The bill proposes an interim article first that states that, in the event that at the moment of inception of the law "a sanitary alert, epidemic or pandemic were in place as decreed by the relevant sanitary authority," prices of the items subject to this law shall be taken back in time to those they were at the time of the sanitary alert having been decreed.

A second interim article is also proposed, to enable the health authorities to establish a maximum quantity of critical products to be bought in the establishments set forth in new article 94 bis of the Health Code.



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II. **Bill of Law penalizing price fixing and taking advantage of a social crisis or social chaos.**

Another proposal was filed with Congress on 17 March 2020, seeking criminal sanctions for overpricing merchandise to take advantage of a social crisis or social chaos (Newsletter 13.296-07). According to the information available, said bill would include just one article, along the lines of:

“Sole article. - The Chilean Code on Criminal Law is hereby thus amended:

In article 285:

1. To incorporate, immediately after the expression “via fraudulent means”, the expression “or taking advantage of a social crisis or social chaos”.
2. To supersede the following paragraph, “will endure punishment of lesser imprisonment in its minimum to medium degree and a fine of 6 to 10 monthly tax units”, with the following, “will endure punishment of lesser imprisonment in its medium to maximum degree and a fine of 8 to 12 monthly tax units”.

III. **Bill of law limiting yield recorded by healthcare providers in the cases of epidemic, pandemic or other outbreaks, and declaring ineffective the clauses on health insurance policies denying coverage for these cases (Newsletter 13.295-11).**

The Bill entered the Upper Chamber on 17 March 2020 and was approved in general on 18 March 2020.

The text of the Bill is currently the following:

“Sole article.- Let the following article 173 ter, new, be added to Decree with Force of Law No. 1, of the Ministry of Health, from 2005, which sets the restated, coordinated and systematized text of Law Decree No. 2,763, from 1979 and laws Nos. 18,933 and 18,469, as follows:

Article 173 ter.- Once the relevant authority has declared a sanitary alert on account of an epidemic or pandemic pursuant to the provisions of the Chilean Sanitary Code and remaining sanitary regulation applicable, insomuch as the measure is in force and effect, and because it is thus required by public health standards and public interest, healthcare providing entities may not charge a price higher than that set forth in the official price [arancel] of the National Healthcare Fund for the freedom-of-choice modality for any and all the services offered, including tests, supplies, and medication, associated to the declaration of an epidemic, pandemic or outbreak, as applicable, by means of the decreeing of sanitary alert. A breach to this rule shall be penalized pursuant to that set forth in article 318 of the Criminal Code.

Should there be no comparable official price in Fonasa, and under the assumptions contemplated above, the price may not be 10% higher than the cost of the service, test, supply or medication.

For the duration of the measure and regardless of the moment in which coverage is made effective, once a sanitary alert has been decreed by the authorities pursuant to the Sanitary Code, be it because the general interest of the nation, public interest and/or health standards so require it, in healthcare-providing contracts, health insurance policies, contracts for supplementary insurance and other sorts of insurance, whatever their name and regulation, any and all clauses aimed at excluding coverage of any healthcare service [the need for which] results from the epidemic, pandemic, or outbreak having triggered the sanitary alert, shall be deemed never drafted.”