

Public Law 21-139

Bill No. 232 (COR)

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AN ACT TO ADD CHAPTER 89 TO TITLE 10, GUAM CODE ANNOTATED, TO REGULATE SMOKING WITHIN PUBLIC PLACES AND PLACES OF EMPLOYMENT.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. A new Chapter 89 is hereby added to Title 10, Guam Code Annotated, to read:

"CHAPTER 89 REGULATION OF SMOKING

§89100. Title. This chapter shall be known, and may be cited, as the Clean Indoor Air Act of 1992.

§89101. Legislative findings and purpose. The Legislature finds that numerous studies have proven that tobacco smoke is a major contributor to indoor air pollution; that breathing residual smoke is a cause of disease, including lung cancer, in healthy nonsmokers; that special risk populations are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; that a majority of both nonsmokers and smokers desire to have restrictions placed on smoking in public places and places of employment; and that smoking is a potential cause of fires, cigarette and cigar burns, and ash stains on merchandise, causing losses to businesses.

The Legislature declares that the purposes of this chapter are (i) to protect the public health and welfare by prohibiting smoking in public places except in designated smoking areas, and by regulating smoking in places of employment; and (ii) to strike a reasonable balance between the needs of persons who smoke and the right of nonsmokers to breathe smoke-free air, and to recognize that the right to breathe smoke-free air shall take priority.

§89103. **Definitions.** The following words and phrases, when used in this chapter, shall be construed as follows:

Bar means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.

Business means any sole proprietorship, partnership, corporation or other business entity formed for profit-making purposes, including retail establishments as well as professional corporations and other entities where legal, medical, or other professional services are delivered.

Dining area means any enclosed area containing a counter or tables upon which meals are served.

Employee means any person who is employed by an employer in consideration of direct or indirect monetary wages or profit.

means any business, including the government of Guam and any of its autonomous agencies, which employs the services of one (1) or more persons.

Enclosed area means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors and passageways).

Place of employment means any enclosed area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms, and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

Public place means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, health care facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail stores, theaters and waiting rooms.

Restaurant means any coffee shop, cafeteria, public school cafeteria or eating establishment which is operated by, under contract to, or on behalf of a business or employer as defined in this §89103.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Service line means any indoor line at which one (1) or more persons are waiting for or receiving services of any kind.

Smoking means inhaling, exhaling, or burning any lighted cigar, cigarette, or other tobacco product.

Sports arena means the enclosed area of any sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

§89104. **Application of chapter to territorial facilities.** All enclosed facilities owned, leased, occupied by or operated for and on behalf of the government of Guam shall be subject to the provisions of this chapter.

§89105. **Prohibition of smoking in public places.** Smoking shall be prohibited in all enclosed public places, including, but not limited to the following places:

- (1) Elevators.
- (2) Buses, taxicabs, airplanes, and other means of public transit, and ticket, boarding, and waiting areas of public transport depots.
- (3) Restrooms.
- (4) Service lines.
- (5) All areas available to and customarily used by the general public in all businesses patronized by the public.
- (6) Restaurants; **provided**, however, that this prohibition does not prevent (i) designation of a contiguous area within a restaurant that contains a maximum of not more than fifty percent (50%) of the seating capacity of the restaurant as a smoking area, or (ii) providing separate rooms for smokers and nonsmokers, so long as the rooms designated for smoking do not contain more than fifty percent (50%) of the seating capacity of the restaurant.
- (7) Public area of aquariums, galleries, libraries, and museums when open to the public; provided, however, that this prohibition does not prevent the designation of a separate room for smoking in such areas.
- (8) Any building not open to the sky which is primarily used for exhibiting motion pictures, stage shows, musical recitals or other performances, except when smoking is part of a stage production.
- (9) Sports arenas and convention halls, except in designated smoking areas therein with adequate and effective ventilation which removes smoke and purifies the recirculated air.
- (10) Every place of meeting or public assembly during such time as a public meeting is in progress.
- (11) Waiting rooms, hallways, wards and semiprivate rooms for health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.
- (12) Polling places.

§89106. **Regulation of smoking in places of employment.**

- (a) It shall be the responsibility of employers to provide smoke-free areas for nonsmoking employees within existing facilities to the maximum extent possible.

- (b) Within ninety (90) days of the effective date of this chapter, each employer having an enclosed place of employment shall adopt, implement, make known and maintain a written smoking policy, consistent with the provisions of this chapter.
- (c) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.
- (d) All employers shall supply a written copy of the smoking policy upon request of any existing or prospective employee.
- (e) Notwithstanding any other provisions of this §89106, every employer shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

§89107. Where smoking not regulated.

- (a) Notwithstanding any other provisions of this chapter, the following areas shall not be subject to the smoking restrictions of this chapter:
 - (1) Bars.
 - (2) Private residences, except when used as child care facility or health care facility.
 - (3) Hotel and motel rooms rented to guests.
 - (4) Retail tobacco stores.
 - (5) Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions.
 - (6) A private enclosed office work place occupied exclusively by one (1) or more smokers.

§89108. Posting of signs.

- (a) "Smoking or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch (1") in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building where smoking is regulated by this chapter by the owner, operator, manager or other person having control of such building or other place.
- (b) Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.
- (c) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating if a nonsmoking section is available, and where such a section is available, and every patron shall be asked to his or her preference.

§89109. Enforcement.

- (a) This chapter may be enforced by:
 - (1) Any peace officer as defined by §5.55, Title 8, Guam Code Annotated; and
 - (2) Any employee of the Department of Public Health and Social Services when authorized in writing by the Director of Public Health and Social Services to enforce the provisions of this chapter; and
 - (3) Any employee of the Guam Environmental Protection Agency when authorized in writing by the Administrator of the Guam Environmental Protection Agency to enforce the provisions of this chapter; and
 - (4) Any citizen acting under the authority of §20.20, Title 8, Guam Code Annotated.

- (b) With the exception of situations arising under the provisions of subparagraph (a)(4) of §89109 of this chapter, enforcement of this chapter shall be undertaken subject to the provisions of Chapter 25, Title 8, Guam Code Annotated.

§89110. Violations and penalties.

- (a) It shall be unlawful for any person who owns, operates or otherwise controls any premises subject to regulation under this chapter to fail to comply with any of its provisions.
- (b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- (c) Any person who violates any of the provisions of subparagraph (a) and (b) of this §89110 shall, upon conviction thereof, be punished by:
 - (1) A fine not exceeding One Hundred Dollars (\$100) for a first violation.
 - (2) A fine not exceeding Two Hundred Dollars (\$200) for a second violation.
 - (3) A fine not exceeding Five Hundred Dollars (\$500) for each additional violation thereafter.
- (d) Any business which violates any of the provisions of subparagraphs (a) and (b) of this §89110 shall, upon conviction thereof, be punished by:
 - (1) A fine not exceeding One Thousand Dollars (\$1,000) for a first violation.
 - (2) A fine not exceeding Two Thousand Dollars (\$2,000) for a second violation.
 - (3) A fine not exceeding Three Thousand Dollars (\$3,000) for each additional violation thereafter.

§89111. Nonretaliation. No person or employer shall discharge or in any manner retaliate against any employee because such employee exercises any rights afforded by this chapter.

§89112. Other applicable laws. This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

§89113. Severability. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not effect the other provisions of this chapter which can be given effect without the invalid provision or application; and to this end the provisions of this chapter are declared to be severable."

Section 2. Effective date. This Act shall be effective thirty (30) days after its enactment.