

**PUBLIC LAW NO. 24-174**

**Bill No. 508 (COR)**

**Date Became Law:** April 17, 1998

**Governor's Action:** Approved

**Introduced by:**

A. C. Blaz

A. R. Unpingco

E. J. Cruz

J. C. Salas

M. C. Charfauros

J. M.S. Brown

T. C. Ada

F. B. Aguon, Jr.

Felix P. Camacho

Francisco P. Camacho

W. B.S.M. Flores

Mark Forbes

L. F. Kasperbauer

A. C. Lamorena, V

C. A. Leon Guerrero

L. Leon Guerrero

V. C. Pangelinan

A. L.G. Santos

F. E. Santos

J. Won Pat-Borja

**AN ACT ADDING A NEW ARTICLE 10 TO CHAPTER 22 OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A “HEALTH AND HUMAN SERVICES FUND,” AND TO DEPOSIT ALL PROPOSED SETTLEMENT MONIES ENTITLED TO GUAM FROM THE STATE ATTORNEYS GENERAL VERSUS THE TOBACCO INDUSTRY LITIGATION INTO THE HEALTH AND HUMAN SERVICE FUND.**

Section 1 ... Legislative Findings and Intent.

Section 2 ... A new Article 10 is added to Chapter 22 of Title 5, Guam Code Annotated.

Section 3. .. Tobacco Litigation Settlement.

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

**Section 1. Legislative Findings and Intent.** The Guam Legislature finds that during the last several years, various State Attorneys General have engaged in actual litigation against the tobacco industries to recover state costs associated with the treatment and care of persons afflicted with illnesses related to smoking tobacco. More importantly, the Guam Legislature also notes that more than twenty-eight (28) states have filed lawsuits against the tobacco industry.

Throughout the case the states maintained that the tobacco companies have been advertising to entice children to smoke, and that more than ten million (10,000,000) Americans died as a result of smoking cigarettes. During the landmark case it was revealed that almost one (1) in every five (5) deaths is due to a smoking-related illness, causing cardiovascular disease, lung and throat cancers; pulmonary diseases; stillbirths; and neonatal deaths. The Guam Legislature also finds that one (1) of the leading causes of preventable death on Guam today, including the United States, is cigarette smoking.

On June 7, 1997, the Guam Legislature reaffirmed its commitment to a healthier community for the people of Guam, by adopting Resolution Number 125. The resolution requests the Governor of Guam to direct the Attorney General of Guam to file suit in the U.S. District Court of Guam against the American Tobacco Company c/o Brown & Williamson, R.J. Reynolds Tobacco Company; Brown &

Williamson Tobacco Corporation, individually and as successor by merger to the American Tobacco Company, Philip Morris Incorporated, Philip Morris Companies, Inc., Lorillard Tobacco Company; United States Tobacco Company; UST.; and the Tobacco Institute, Inc., the Council for Tobacco Research-U.S.A.-Inc.

More recently the court is now proceeding to award Three Hundred Thirty-four Million dollars (\$334,000,000) for the creation of a medical research foundation in the case before Judge Robert Kaye, Miami, Florida, with a settlement case litigated by the flight attendants (ie, Norma Brion, a non-smoker attendant with a carcinoma of the lung) for “Second-hand smoker,” according to the Pacific Daily News on February 9, 1998.

The Guam Legislature is adamant that any amount received shall be appropriated toward health and human services related programs. The State Attorneys General tobacco litigation settlement of more than Three Hundred Sixty Billion Dollars (\$360,000,000,000) is before the U.S. Congress and Guam is a recipient of certain portions of the settlement and that any agreement amount should be appropriated toward Health and Human Services-related programs.

**Section 2.** A new Article 10 is hereby added to Chapter 22 of Title 5 of the Guam Code Annotated to read as follows:

**“Article 10.**

**Health and Human Services Fund.**

**Section 221001. Creation.** There is hereby created, separate and apart from the other funds of the government of Guam, a fund known as the ‘*Health And Human Services Fund*’ (‘HAHS Fund’).

**Section 221002. Separate Fund and Bank Account.** The HAHS Fund shall not be commingled with the General Fund and shall be kept in a separate bank account. The Governor, pursuant to any of his transfer authority, shall transfer no monies from the HAHS Fund.

**Section 221003. Purpose and Expenditures.** The HAHS Fund shall be expended by Legislative appropriation as follows: (1) seventy-five percent (75%) to finance various health care programs and projects, and other educational programs for tobacco prevention; and (2) Twenty-five percent (25%) to finance advance technological equipment to persons with disabilities, and other health programs specifically authorized by the Guam Legislature.

**Section 221004. Administration.** The Director of Administration shall account for, and administer, the HAHS Fund. The Director shall keep all books, records, files and account of the HAHS Fund. The Director shall prepare semi-annual reports relative to the HAHS Fund reflecting the transactions and financial condition of the HAHS Fund which semi-annual reports shall be transmitted to the Governor and the Speaker of the Guam Legislature.

**Section 221005. Designation of Single Agency; Promulgation of Rules and Regulations.**

(a) **Designation.** The Department of Public Health and Social Services (‘DPHSS’) is hereby designated as the ‘single agency’ for Guam resulting from the Federal settlement. The DPHSS shall be charged with the following responsibilities:

- (1) maintaining a licensing procedure, such that any business which sells tobacco products directly to consumers would have to apply for a special license;
- (2) conduct random, unannounced inspections at least monthly to ensure compliance with no sales to minors;
- (3) meet targets of a minimum of seventy-five percent (75%), the percentage expressed as a percentage of all random inspections in which the retailer refused sale of tobacco to minors; and
- (4) submit an annual report to the Food and Drug Administration, to the Speaker of the Guam Legislature and to the Governor of Guam concerning:
  - (i) detailed description of enforcement activities undertaken;
  - (ii) detailed description of Guam’s progress in reducing availability of tobacco products;
  - (iii) detailed description of methods used in compliance checks and in identifying outlets which were tested;

(iv) detailed description of strategies Guam intends to use in succeeding years to make further progress; and

(v) identify a single agency responsible for fulfilling the Act's requirements.

(b) **Promulgation of Rules and Regulations.** The Director of DPHSS is hereby directed to promulgate rules and regulations regarding the implementation of the provisions of this Act, including revising and creating forms and other documents, as are necessary in accordance with the procedures prescribed by the Administrative Adjudication Law.

**Section 221006. Staffing, Funding, Initial Set Up.**

(a) The Director of DPHSS is hereby authorized to employ the services of two (2) new investigative/administrative staff positions to make the required inspections, reports and for the purpose of implementing the Department's responsibilities as prescribed in §221005 of this Article and the requirements of the Federal tobacco settlement.

(b) The Director is hereby authorized to expend the necessary sums not to exceed One Hundred Thousand Dollars (\$100,000.00) from the Fund for the purpose of funding the initial set up, such as office supplies, equipment, public education, etc., and a copy of the report shall be filed with the Speaker of the Guam Legislature and the Governor of Guam within thirty (30) days.

**Section 221007. Appropriation and Exemption.** The HAHS Fund shall not be used for any purpose other than those enumerated or reasonably inferred herein or for purposes other than those relating to health care. Specifically, the HAHS Fund shall not be used as a pledge of security or as collateral for government loans without prior authorization by the Guam Legislature. The total expenditures appropriated from the HAHS Fund shall not exceed eighty percent (80%) of the available balance. The remaining twenty percent (20%) balance in the HAHS Fund shall be administered by the Guam Economic Development Authority for investment purposes into a portfolio that mirrors the Retirement Fund's investment portfolio. The proceeds from the investments shall remain within the HAHS Fund and shall be maintained separate and apart from other GEDA funds.

**Section 221008. Deposit.** All proceeds entitled to Guam from the tobacco lawsuit settlement shall be deposited into HAHS Fund established by this Act. All monies deposited into the HAHS Fund shall be expended exclusively for the purposes enumerated in §221003 and the general intent of this Act.

**Section 221009. Interest.** Notwithstanding the provisions of §§21103, 21107 and 21110, all of Title 5 of the Guam Code Annotated, or any other provisions of Guam law to the contrary, all interest earned by the HAHS Fund shall remain within the HAHS Fund."

**NOTE:** Article 10, Chapter 22, Title 5, GCA, originally added by P.L. 24-111. Compiler will publish this section of this act as Article 11, Chapter 22, Title 5, GCA.

**Section 3. Tobacco Litigation Settlement.** Any and all funds which Guam shall receive from the State Attorneys General Tobacco Litigation Settlement shall be deposited into the Health and Human Service Fund.

~~~~~