

PUBLIC LAW NO. 24-278

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Governor’s Action: Approved

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AN ACT TO ADD CHAPTER 6 AND §72158, AND AMEND §72109, ALL TO TITLE 11 OF THE GUAM CODE ANNOTATED; AND TO REPEAL §70.44.1 OF ARTICLE 1, CHAPTER 70 OF TITLE 9 OF THE GUAM CODE ANNOTATED, RELATIVE TO REQUIRING SELLERS OF TOBACCO PRODUCTS TO OBTAIN A TOBACCO LICENSE AND TO ENFORCING THE PROHIBITION OF SALES OF TOBACCO PRODUCTS TO MINORS.

- Section 1... Legislative Findings.
- Section 2... Legislative Intent.
- Section 3... A New Chapter 6 is added to Title 11, Guam Code Annotated.
- Section 4... Section 70.44.1 of Title 9, Guam Code Annotated.
- Section 5... Section 72109 of Title 11, Guam Code Annotated is amended.
- Section 6... Section 72158 is added to Title 11, Guam Code Annotated.
- Section 7... Rules and Regulations.
- Section 8... Severability.
- Section 9... Effective Date.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings. *I Liheslaturan Guåhan* finds that the prevalent use of tobacco products by our Island’s youth is deemed a social and health dilemma which requires immediate intervention and redress. Reliable studies reveal that people who begin to smoke at an early age are more vulnerable and prone to develop severe levels of nicotine addiction than those who start at a later age, thus resulting in increased risk to significant health problems, such as lung cancer and other respiratory problems.

I Liheslaturan Guåhan further finds that the current statute, which allows for the complete revocation of an establishment’s business license if caught selling tobacco products to minors, is both often unenforced and, if and when enforced, too limited. The complete closure of a business

establishment disrupts and impedes the daily operations of providing valuable services to the community and the livelihood of the proprietor and his or her family. *I Liheslaturan Guåhan* further finds that noncompliance with the requirement to reduce and prohibit the use of tobacco products by minors will result in the decrease in the annual Substance Abuse Prevention and Treatment (“SAPT”) Block Grant award for Guam.

Section 2. Legislative Intent. It is the intent of *I Liheslaturan Guåhan* to create a separate licensing requirement for the retail and wholesale sales of tobacco products, and to establish comprehensive and restrictive guidelines for the sales of tobacco products, particularly to minors. Proceeds from fees and fines collected will be utilized for youth educational programs and sports activities that act as healthy alternatives, and as effective deterrents to substance abuse and criminal activities. Systematic reduction of purchase and consumption of tobacco products by minors is critical to ensuring the long-term health of our community and its residents.

Section 3. Chapter 6 is hereby *added* to Division 1 of Title 11 of the Guam Code Annotated to read as follows:

“CHAPTER 6.
TOBACCO CONTROL.

Section 6100.	Title.
Section 6101.	Definitions.
Section 6102.	Applicability of Commercial Licenses Provisions and Requirements.
Section 6103.	License: Requirement.
Section 6104.	Same: Term.
Section 6105.	Same: Renewal.
Section 6106.	Same: Vending Machines.
Section 6107.	Same: Multiple.
Section 6108.	Same: Fees.
Section 6109.	Display of License.
Section 6110.	Sale or Distribution of Tobacco Products to Minors Prohibited.
Section 6111.	Acceptable Forms of Identification.
Section 6112.	Display of Prohibition on Sales to Minors.
Section 6113.	Licensee Responsible for Employee Actions.
Section 6114.	Penalties for Selling Tobacco Products Without a License.
Section 6115.	Penalties for Selling Tobacco Products to Minors.
Section 6116.	Minors Prohibited from Possession, Use and Purchase of Tobacco Products.
Section 6117.	Tobacco Education for Minors.
Section 6118.	Notice.
Section 6119.	Hearing.
Section 6120.	Enforcement.
Section 6121.	Publication and Distribution of Laws and Rules.
Section 6122.	Use of Collected Fees and Penalties for Youth Programs.
Section 6123.	Youth Tobacco Education and Prevention Fund.
Section 6124.	Report.

Section 6100. Title. This Chapter shall be known and cited as the ‘*Tobacco Control Act of 1998.*’

Section 6101. Definitions. Unless the context otherwise requires, the definitions set forth herein shall govern the construction and interpretation of this Chapter.

(a) *Director* means the Director of the Department of Revenue and Taxation.

(b) *License* means Retail License and Wholesale License for sales of tobacco products, as defined under this Section.

(c) *Minor* means any person under eighteen (18) years of age.

(d) *Person* means any individual, company, corporation, firm, partnership, organization, estate, trust, limited liability company, limited liability partnership or other legal entity.

(e) *Retail* means the sale of tangible personal property for consumption or use by the purchaser and not for resale.

(f) *Retail License* means a license issued by the Director of the Department of Revenue and Taxation for the retail sale of tobacco products or sale through a vending machine.

(g) *Tobacco product* means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other means of ingestion.

(h) *Vending machine* means any mechanical, electrical or electronic device that, on insertion of money, tokens or any other form of payment, automatically dispenses tobacco products.

(i) *Wholesale* means the importation into or purchase on Guam from a manufacturer or other wholesale licensee of tangible personal property *not* for consumption or use by the purchaser but solely for resale or retail wholesale or retail sellers.

(j) *Wholesale License* means a license issued by the Director of the Department of Revenue and Taxation for the wholesale sale of tobacco products to retailers.

Section 6102. Applicability of Commercial Licenses Provisions and Requirements.

Provisions and requirements of Chapters 70 and 72 of Title 11 of the Guam Code Annotated applicable to commercial licenses shall govern this Chapter in matters and provisions *not* specifically provided in this Chapter and when relevant.

Section 6103. License: Requirement.

(a) It shall be a violation of this Chapter for any person to wholesale tobacco products without first obtaining a valid wholesale tobacco license.

(b) It shall be a violation of this Chapter for any person to retail tobacco products without first obtaining a valid retail tobacco license for each premise or vending machine in which tobacco products are sold.

(c) Any person directly or indirectly engaged in the business of manufacturing tobacco products may not retail tobacco products, directly or indirectly, or hold a retail or wholesale license. It shall *not* be a violation of this Chapter for any such person engaged in the business of manufacturing tobacco products to import, export or sell for resale tobacco products to a duly licensed tobacco wholesaler.

(d) The Director shall *not* issue a retail or wholesale license to a minor.

Section 6104. Same: Term. Licenses shall be issued on an annual basis and shall expire on the thirty-first (31st) day of March following the date of issuance. The full fee shall be paid for any fraction of the year for which a license is issued.

Section 6105. Same: Renewal. A licensee may renew his license at the expiration thereof by the payment of the annual license fee set forth in §6108 of this Chapter and by filing with the renewal application. A licensee who fails to renew his license on or before the thirty-first (31st) day of March of each year shall be assessed a late fee of Twenty Dollars (\$20.00) and a penalty of One Dollar (\$1.00) per each calendar day he is delinquent, which penalty shall become part of the renewal fee, and the license is automatically suspended, *unless* all payments for annual fee, late fee and the daily penalty are paid in full on or before April 30 of that year, in which case the license may be reinstated by the Director immediately.

Any licensee who fails to renew his or her license on or before the thirtieth (30th) day of April shall be required to discontinue the sales of tobacco products, and shall be subject to an injunction issued by the Superior Court of Guam and to prosecution under §70119. Such failure to renew while continuing the operation of the business shall constitute refusal and failure to obtain a license under the provisions of Division 3 of this Title.

Section 6106. Same: Vending Machines.

(a) The owner of a vending machine shall obtain a retail license under §6103 and pay the fee required under Subsection (b) of §6108, for each vending machine.

(b) Any licensee who violates Subsection (a) of this Section shall be fined Fifty Dollars (\$50.00) per violation.

Section 6107. Same: Multiple. A licensee applying for retail licenses to operate more than one (1) premise or more than one (1) vending machine shall obtain a separate retail license for each premise and each machine, and shall pay the fee prescribed for each premise and each machine.

Section 6108. Same: Fees. The fee of a license for sales of tobacco products shall be paid by the applicant at the time of application and shall be as follows:

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|---|------------|
| (a) annual tobacco retailer's retail license | \$ 40.00; |
| (b) annual tobacco vending machine retail license | \$ 20.00; |
| (c) annual tobacco wholesaler's license | \$ 500.00. |

Section 6109. Display of License.

(a) A licensee for sales of tobacco products, excluding sales through vending machines, shall prominently display the license on each licensed premise.

(b) The licensee for vending machines sales of tobacco products shall affix a retail license decal furnished by the Department in a prominent position on each vending machine.

(c) Any licensee who violates this Section shall be fined Fifty Dollars (\$50.00) per violation.

Section 6110. Sale or Distribution of Tobacco Products to Minors Prohibited.

(a) It shall be a violation of this Chapter for any person to sell or distribute tobacco products to minors. It shall *not* be a violation of this Chapter for any person to refuse to sell or distribute tobacco products to any person whom the seller or the distributor reasonably believes to be under twenty-seven (27) years of age, and who is unable to produce acceptable photographic identification and proof that he or she is over the age of eighteen (18) years.

(b) Vending machines selling tobacco products shall be placed in such a location that they are accessible *only* to persons over the age of eighteen (18) or are under the constant, direct supervision and unobstructed line-of-sight of the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls, or his or her agent or employee. It shall be the responsibility of the supervising adult to ensure that minors do *not* purchase tobacco products from vending machines. For purposes of this Section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages, or otherwise controls, and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

This Section does *not* prohibit a licensee or an employer from distributing tobacco products to any employee who handles tobacco products in the course of the commercial distribution or sale of the products. In any proceeding for the suspension or revocation of any license, and based upon a violation of this Section, proof that the defendant licensee or his agent or employee demanded and was shown, before furnishing any tobacco product to a minor, an identification card, such person shall be a defense to such proceeding for the suspension or revocation of any license.

Section 6111. Acceptable Forms of Identification. For the purposes of this Chapter, the following instruments are the *only* acceptable types of instruments of identification as required in §6110:

- (a) a valid unexpired driver's license issued by any state, territory or possession of the United States;
- (b) an official identification issued by a Federal or state government with the individual's photograph and signature;
- (c) an armed forces identification card;
- (d) a valid, unexpired passport; and
- (e) an alien registration receipt card (green card).

Section 6112. Display of Prohibition on Sales of Tobacco Products to Minors. All licensees shall post notice of this Chapter prohibiting the sale of tobacco products to minors.

(a) In the case of a retail operation, notices shall be publicly and conspicuously displayed in the licensee's place of business in letters at least two inches (2") in height.

(b) In the case of vending machine, licensee shall affix to the front of each vending machine a sign in letters at least one-half inch (1/2") in height.

(c) Any licensee who violates this Subsection shall be fined Fifty Dollars (\$50.00) per violation.

Section 6113. Licensee Responsible for Employee Actions. Acts or omissions of an employee of a licensee that violate any provisions of this Chapter shall be deemed to be acts or omissions of the licensee.

Section 6114. Penalties for Selling Tobacco Products Without a License. In addition to any other penalties and fines that may be levied, including those under §§6115 and 70120 of this Title, any person who violates §6103 shall be guilty of a misdemeanor as set forth in §70119 of this Title, and punished as follows:

(a) in the case of a first violation, by a fine of Two Hundred Fifty Dollars (\$250.00);

(b) in the case of a second violation, by a fine of Five Hundred Dollars (\$500.00);

(c) in the case of three (3) or more violations, a fine of not less than One Thousand Dollars (\$1,000.00), nor more than Two Thousand Five Hundred Dollars (\$2,500.00), and the person shall *not* be eligible to apply for a license for five (5) years after the date of the assessment of a fine.

Section 6115. Penalties for Selling or Distributing Tobacco Products to Minors.

(a) In addition to any other penalties and fines that may be levied, any person who violates §6110 of this Chapter shall be assessed penalties and/or have their license suspended as follows:

(1) in the case of a first violation in any five-year (5) period, the person shall be fined Five Hundred Dollars (\$500.00) and shall be notified in writing of penalties levied for further violations;

(2) in the case of a second violation in any five-year (5) period, the person shall be fined One Thousand Dollars (\$1,000.00) and, in the case of a licensee, the license shall be suspended for ninety (90) days;

(3) in the case of a third violation in any five (5) year period, the person shall be fined Two Thousand Five Hundred Dollars (\$2,500.00) and, in the case of a licensee, the license shall be suspended for one hundred eighty (180) days;

(4) in the case of four (4) or more violations within any five (5) year period, the person shall be fined Five Thousand Dollars (\$5,000.00) and, in the case of a licensee, the license shall be revoked. The revoked retailer shall be ineligible to apply for a new license for two (2) years after the effective date of the revocation.

(b) Failure to pay a fine levied under this Chapter within thirty (30) days of the date the fine becomes effective shall result in the suspension of the licensee's license until such fines are paid.

(c) During any suspension or revocation of a license under this Section, the licensee so suspended may *not* sell tobacco products and must remove all tobacco products from all areas covered by that license. In addition, any new application for a license to sell tobacco products while a licensee is suspended under this Chapter shall be denied

Section 6116. Minors Prohibited from Possession, Use and Purchase of Tobacco Products. It shall be a violation of this Chapter for any minor to use or be in possession of tobacco products or attempting to purchase tobacco products using false identification.

Section 6117. Tobacco Education for Minors. Any minor who violates §6116 of this Chapter shall attend an education program on tobacco products to include smoking cessation information administered by the Department of Mental Health and Substance Abuse, Department of Public Health and Social Services, Department of Education or other government agencies with similar programs recognized by any or all of these departments.

Section 6118. Notice. Unless otherwise provided, prior to the revocation or suspension of a license issued under this Chapter, the Director shall provide a notice to the holder of said license, via certified mail, return receipt requested. The notice shall contain the following information:

- (a) the name and title of the person issuing the notice;
- (b) the date on which the fine, suspension or revocation will become effective;
- (c) the reason for the fine, revocation or suspension;
- (d) that the licensee may request a hearing regarding the fine, revocation or suspension;
- (e) that the request for a hearing shall be made in person or in writing via certified mail, return receipt requested and received by the Director within ten (10) days after receipt of the notice; and
- (f) that failure to appear in person or through mail received by the Director within ten (10) days after receipt of the notice, or by the notice's return by the U.S. Postal Service shall act as a waiver of the right to a hearing and the fine, revocation or suspension will, if applicable, become effective on the date included in the notice.

Section 6119. Hearing. Except as otherwise specifically provided for herein, the Director shall conduct proceedings on any hearing required under the provisions of this Chapter in accordance with the provisions of the Administrative Adjudication Law, and shall have all of the powers granted in such Act.

(a) Upon receipt of the request for a hearing as provided in this Section, a hearing shall be held before a Hearings Officer appointed by the Director in accordance with the Administrative Adjudication Law. The hearing shall be set and conducted within forty-eight (48) hours of receipt of the request, holidays, Saturdays and Sundays *not* to be included. The hearing can be set for a later day if the applicant or licensee so requests, but no later than as required by law.

(b) At the hearing the applicant or licensee may contest the denial, fine, revocation or suspension.

(c) If the Hearings Officer finds that the applicant is *not* eligible for a license, the Hearings Officer shall declare the license application denied. If the Hearings Officer finds that the fine, suspension or revocation is in accordance with this Chapter, then that fine, suspension or revocation shall take effect immediately. The action of the Hearings Officer is final.

(d) If the applicant or licensee does *not* appear at the scheduled hearing, in person, or through a representative as allowed by the Hearings Officer, the Hearings Officer shall enter an order supporting the denial, fine, revocation or suspension of the licensee or applicant.

Section 6120. Enforcement. The primary responsibility for enforcement of this Chapter shall be with the Department of Revenue and Taxation ("DRT") in cooperation with the Department of Mental Health and Substance Abuse. Any person may register a complaint under this Section with DRT. The Director shall notify any establishment or individual subject to this Section of a complaint regarding that establishment's or individual's alleged violation of this Section, and shall keep a record of that notification.

(a) In carrying out its enforcement responsibilities, the Director or his or her designee shall conduct random, unannounced inspections at retail sites and may enlist the assistance of persons that are between twelve (12) and seventeen (17) years of age, upon written consent of their parents or legal guardians, in conducting these enforcement activities. Participation in these enforcement activities by a minor shall *not* constitute a violation of §6116 of this Chapter, and the minor is immune from prosecution or penalties thereunder, or under any other provision of law prohibiting the purchase of these products by minors.

(b) The Director shall adopt and publish guidelines for the use of minors in inspections conducted pursuant to this Section, that shall include, but not be limited to, all of the following:

- (1) the Director, or his or her designee, may, upon written consent of their parents or legal guardians, enlist the services of minors who are between twelve (12) and seventeen (17) years of age in random inspections to determine if sales of cigarettes or other tobacco products are being made to minors;

(2) a photograph or video recording of the minors shall be taken prior to each inspection or shift of inspections and retained by the Director or his or her designee for purposes of verifying appearances;

(3) the Director, or his or her designee, may use video recording equipment when conducting the inspections to record and document illegal sales or attempted sales;

(4) the minor, if questioned about his or her age, shall state his or her actual age and shall present a true and correct identification if verbally asked to present it (Any failure on the part of the minor to provide true and correct identification, if verbally asked for it, shall be a defense to any action pursuant to this Section.);

(5) the minor shall be under the supervision of a regularly employed peace officer, or an adult duly authorized by the Director, or his or her designee, during the inspection;

(6) following the completion of the sale, or attempted sale, the peace officer, or an adult duly authorized by the Director, or his or her designee accompanying the minor, shall reenter the retail establishment and inform the seller of the random inspection and identify the minor to the seller; and

(7) failure to comply with the procedures set forth in this Section shall be a defense to any action brought pursuant to this Chapter.

Section 6121. Publication and Distribution of Laws and Rules. The Director shall compile and provide a copy of the compilation of laws and rules concerning retail tobacco sales to every new licensee at no charge.

Section 6122. Use of Collected Fees and Penalties for Youth Programs. All fines and fees assessed and collected under this Chapter shall be distributed and deposited in the following manner by DRT on the final working day of the months of March, June, September and December of each year:

(a) thirty percent (30%) to the Department of Parks and Recreation Off-Island Sports Fund;

(b) twenty percent (20%) to the Health and Human Services Fund; and

(c) fifty percent (50%) to the Youth Tobacco Education and Prevention Fund.

Section 6123. Youth Tobacco Education and Prevention Fund. There is created, separate and apart from any other funds of the government of Guam, under the administration and control of the Department, the *Youth Tobacco Education and Prevention Fund* ('YTEPF'). YTEPF shall be held in an account or accounts at a Guam financial institution, or institutions, separate and apart from all other accounts and funds of the government of Guam, and shall *not* be subject to the transfer authority of *I Maga'lahan Guåhan*. One hundred percent (100%) of the funds in the YTEPF shall be utilized by the Department of Mental Health and Substance Abuse, for youth compliance monitoring and tobacco and drug prevention and education programs.

Section 6124. Report. The Director shall report monthly to the Department of Mental Health and Substance Abuse ('DMHSA') the list of all licenses granted and renewed, including the names and street addresses of the business or the location of the vending machine, the number of violations processed and the penalties imposed, and any other information that the Director and DMHSA agree upon."

Section 4. Section 70.44.1 of Article 1, Chapter 70 of Title 9 of the Guam Code Annotated is hereby *repealed*.

Section 5. Section 72109 of Article 2, Chapter 72, Division 2 of Title 11 of the Guam Code Annotated is hereby *amended* to read as follows:

Section 72109. Vending Machine Fees. Except that in the case of a licensee engaged in the selling of such property through coin vending machines, the annual fee is Five Dollars (\$5.00) for each coin machine so operated, notwithstanding 11 GCA §70121, *Two or More Business Locations*."

Section 6. Section 72158 is hereby *added* to Article 2, Chapter 72, Division 2 of Title 11 of the Guam Code Annotated to read as follows:

“Section 72158. Tobacco License. The licensing of sales of tobacco products shall be governed by the provisions of Chapter 6 of Title 11 of the Guam Code Annotated.”

Section 7. Rules and Regulations. Within one hundred twenty (120) days after the enactment of this Act, the Director of the Department of Revenue and Taxation shall, in cooperation with the Director of the Department of Mental Health and Substance Abuse, submit to *I Liheslaturan Guåhan* the rules and regulations necessary, pursuant to the Administrative Adjudication Law, to implement the provisions of this Act.

Section 8. Severability. If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does *not* affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 9. Effective Date. The provisions of this Act shall take effect immediately upon the promulgation of the rules and regulations.

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