

**MINA'BENTE OCHO NA LIHESLATURAN GUAHAN  
2005 (FIRST) Regular Session**

**Bill No. 16 (LS)**

As amended by the Committee on Finance, Taxation and Commerce and further amended on the Floor. \*

**Introduced by:**L. A. Leon Guerrero

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**AN ACT TO AMEND §90100, §90103, §90105 AND §90107 OF CHAPTER 90, DIVISION 4 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE REGULATION OF SMOKING ACTIVITIES, TO BE KNOWN AS THE "NATASHA PROTECTION ACT OF 2005."**

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

**Section 1. Purpose and Legislative Intent.** *I Liheslaturan Guåhan* finds that cigarette smoking presents serious public health concerns. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year.

It is equally important to convey to the community that tobacco is "the only legally available consumer product which kills people when used entirely as intended" (The Oxford Medical Companion, 1994), and indisputable scientific evidence exists that links tobacco use and exposure to second-hand tobacco smoke to pulmonary and cardiovascular diseases and cancer. Second-hand smoke is the third leading cause of preventable death in the United States.

According to the Center for Disease Control and Prevention, several states have implemented smoke-free indoor air ordinances to protect employees and customers from second-hand smoke exposure, which is associated with increased risk for heart disease and lung cancer in adults and respiratory disease in children.

As of January 2004, five states – California, Connecticut, Delaware, Maine and New York – and seventy-two (72) municipalities in the United States passed laws regulating smoking in almost all workplaces, restaurant and bars.

More states are following suit and have enacted legislation to regulate smoking in facilities such as restaurants in order to protect employees and non-smoking clientele from the harmful effects of secondhand smoke.

Non-smoking island residents may find tobacco smoke to be a nuisance, but there are others such as those who suffer from asthma may also find tobacco smoke not only an inconvenience but detrimental to their health.

Furthermore, fourteen (14) year old Natasha, diagnosed with osteosarcoma, a rare bone cancer that could metastasize, and eventually spread to her lungs, is limited to patronizing dining establishments with her family during extremely early or late evenings to avoid tobacco smoke which would further compromise her health. Natasha's medical condition is complicated by the effects of second-hand smoke.

**Section 2.** Section 90100 of Chapter 90, Division 4 of Title 10, Guam Code Annotated is hereby *amended* to read as follows:

**“§90100. Title.**

This Chapter shall be known, and may be cited, as the *Natasha Protection Act of 2005.*”

**Section 3.** Section 90103 of Chapter 90, Division 4 of Title 10, Guam Code Annotated is hereby *amended* to read as follows:

**“§90103. Definitions.** The following words and phrases, when used in this Chapter, shall be construed as follows:

*Bar*, as defined for this Chapter, means an establishment or area devoted to the serving of alcoholic beverages for consumption by guests on the premises in which the serving of food is only incidental to the consumption of such beverages and where the sale of alcoholic beverages exceeds fifty percent (50%) of the establishment's gross revenues. The term *bar* applies to an area within a restaurant establishment when:

- (a) the serving of alcoholic beverages is located within a physically enclosed area apart from the dining area; or
- (b) the serving of alcoholic beverages is located at an open and well-ventilated area apart from the dining area; or
- (c) the serving of alcoholic beverages exceeds fifty percent (50%) of the establishment's gross revenue between the hours of 10:00 p.m. and 4:00 a.m. during those hours.

*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.

*Employer* 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* or the term *Enclosed*, when used relative to a structure or building, means all space between a floor and ceiling which is completely enclosed on all sides by solid walls or windows (exclusive of doors and passageways) having an air circulation system completely separate from the dining area.

*Smoke Ventilation Device* means devices that are inspected and regulated by the Guam Environmental Protection Agency and approved by the Department of Public Health and Social Services (DPH&SS) pursuant to 10 GCA §21101 and §21102, in accordance with the standards of the American Society of Heating, Refrigeration and Air Conditioning Engineers, which adequately improves air quality within enclosed areas where smoking occurs consisting of: (a) an approved mechanical device that aspirates air contaminated by smoking within an enclosed area to an external open area; or (b) an

approved aeration device that filters, mechanically or ionically, air contaminated by smoking within an enclosed area improving air quality standards.

*Open Area* means an outdoor area or all space between a floor and ceiling which is enclosed by *no more than sixty percent (60%)* on all sides by solid walls or windows.

*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. A private residence is not a "public place."

*Restaurant*, as defined for this Chapter, means any retail eating establishment other than a bar where food is served or provided for on-site consumption by seated patrons that is regulated by the Department of Public Health and Social Services, including any private food establishment or club where food is served or provided for on-site consumption by seated patrons in which only members or their guests are permitted. If a restaurant includes an area devoted to the serving of alcoholic beverages that is not enclosed or is not located within a well-ventilated open area apart from the dining area, that area shall be deemed part of the "restaurant," not a separate "bar," as used in this Chapter.

*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, pipe, weed, plant, tobacco product or related substance or 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.”

**Section 4.** Section 90105 of Chapter 90, Division 4 of Title 10, Guam Code Annotated is hereby *amended* to read as follows:

**“§90105. Prohibition of Smoking in Public Places.** (a) 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.
- (7) Public areas of aquariums, galleries, libraries and museums when open to the public.
- (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.
- (10) Every place of meeting or public assembly during such time as a public meeting is in progress.
- (11) Waiting rooms, hallways, wards and semi-private rooms for health facilities, including, *but not limited to*, hospitals, clinics, physical therapy facilities, doctors’ offices and dentists’ offices.

(12) Polling places.

(b) Any owner, operator, manager or other person who controls any establishment, facility or area described within this Chapter where smoking is not or in-part regulated, may prohibit smoking to occur within the entire establishment, facility or area and §90109, §90110, and §90111 of this Chapter shall apply.”

**Section 5.** Section 90107 of Chapter 90, Division 4 of Title 10, Guam\_Code Annotated is hereby *amended* to read as follows:

**“§90107. 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) A private enclosed office work place occupied exclusively by one (1) or more smokers.

(b) All public places and facilities located within an enclosed area where smoking is permitted or allowed to any extent by this Chapter shall employ an appropriate smoke ventilation device. Smoking shall not be permitted at any time within enclosed areas not meeting the requirements of this provision.”

**Section 6. Effective Date of Implementation.** This Act shall become effective one hundred fifty (150) days after enactment.

**Section 7. Severability.** *If* any provisions of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall *not* affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.