

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

Bill No. 16 ^{US} (COR)

Introduced by:

L. A. Leon Guerrero ^{LDG}
Judith Wolkoff

AN ACT TO AMEND § 90100, § 90103, § 90107, AND ADD A NEW SUBSECTION (6) TO § 90105, 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."

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1 BE IT ENACTED BY THE PEOPLE OF GUAM:

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

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

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

1 And as of January 2004, five states – California, Connecticut, Delaware,
2 Maine, and New York – and 72 municipalities in the United States passed laws
3 prohibiting smoking in almost all workplaces, restaurants, and bars.

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

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

10 Furthermore, fourteen year old Natasha Perez, is a living testament to the
11 negative and potentially deadly effects of second-hand smoke. Diagnosed with
12 osteosarcoma, with the cancer eventually spreading to her lungs, Natasha is
13 limited to patronizing dining establishments with her family only extremely
14 early or late evenings to avoid tobacco smoke which would further compromise
15 her health.

16 **Section 2. Section 90100 Chapter 90, Division 4 is hereby amended to**
17 **read as follows:**

18 "§ 90100. Title.

19 This chapter shall be known, and may be cited, as the ~~Clean Indoor Air~~
20 ~~Act of 1992~~ Natasha Perez Protection Act of 2004."

21 **Section 3. Section 90103 Chapter 90, Division 4 is hereby amended to**
22 **read as follows:**

23 "§ 90103. Definitions. The following words and phrases, when used in this
24 chapter, shall be construed as follows:

25 *Bar* means an area which is devoted to the serving of alcoholic beverages
26 for consumption by guests on the premises and in which the serving of food is

1 only incidental to the consumption of such beverages. Although a restaurant
2 may---contain a bar, the term bar shall not include the restaurant dining area.

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

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

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

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

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

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

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

1 ~~Restaurant means any coffee shop, cafeteria, public school cafeteria or~~
2 ~~eating establishment which is operated by, under contract to, or on behalf of a~~
3 ~~business or employer as defined in this § 90103.~~

4 Restaurant means any retail eating establishment where food is served or
5 provided for on-site consumption by seated patrons that is authorized by the
6 Guam Department of Public Health and Social Services to operate as a food
7 establishment, including any private food establishment or club in which only
8 members or their guests are permitted. If a restaurant includes an area devoted
9 to the serving of alcoholic beverages, that area shall be deemed part of the
10 “restaurant,” not a separate “bar,” for this article. An establishment that is a
11 “restaurant” shall have that status for all hours of operation.

12 *Retail Tobacco Store* means a retail store utilized primarily for the sale of
13 tobacco products and accessories and in which the sale of other products is
14 merely incidental.

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

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

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

24 **ection 4. Section 90107 Chapter 90, Division 4 is hereby amended to**
25 **read as follows:**

26 “§ 90107. Where smoking not regulated.

1 (a) Notwithstanding any other provisions of this chapter, the following
2 areas shall not be subject to the smoking restrictions of this chapter:

3 (1) Bars.

4 (2) Private residences, except when used as child care facility or
5 health care facility.

6 (3) Hotel and motel rooms rented to guests.

7 (4) Retail tobacco stores.

8 ~~(5) Restaurants, hotel and motel conference or meeting rooms, and~~
9 ~~public and private assembly rooms while these places are being used for private~~
10 ~~functions.~~

11 (5) ~~(6)~~ A private enclosed office work place occupied exclusively by
12 one (1) or more smokers.”

13 **Section 5. Section 90105 Chapter 90, Division 4 is hereby amended to**
14 **read as follows:**

15 “§ 90105. Prohibition of smoking in public places. Smoking shall be
16 prohibited in all enclosed public places, including, but not limited to the
17 following places:

18 (1) Elevators.

19 (2) Buses, taxicabs, airplanes, and other means of public transit, and ticket,
20 boarding, and waiting areas of public transport depots.

21 (3) Restrooms.

22 (4) Service lines.

23 (5) All areas available to and customarily used by the general public in all
24 businesses patronized by the public.

25 (6) Restaurants. ~~; provided, however, that this prohibition does not~~
26 ~~prevent (i) designation of a contiguous area within a restaurant that contains a~~

1 ~~maximum of not more than fifty percent (50%) of the seating capacity of the~~
2 ~~restaurant as a smoking area, or (ii) providing separate rooms for smokers and~~
3 ~~nonsmokers, so long as the rooms designated for smoking do not contain more~~
4 ~~than fifty percent (50%) of the seating capacity of the restaurant.~~

5 (7) Public area of aquariums, galleries, libraries, and museums when open
6 to the public; provided, however, that this prohibition does not prevent the
7 designation of a separate room for smoking in such areas.

8 (8) Any building not open to the sky which is primarily used for
9 exhibiting motion pictures, stage shows, musical recitals or other performances,
10 except when smoking is part of a stage production.

11 (9) Sports arenas and convention halls, except in designated smoking
12 areas therein with adequate and effective ventilation which removes smoke and
13 purifies the recirculated air.

14 (10) Every place of meeting or public assembly during such time as a
15 public meeting is in progress.

16 (11) Waiting rooms, hallways, wards and semi-private rooms for health
17 facilities, including, but not limited to, hospitals, clinics, physical therapy
18 facilities, doctors' offices and dentists' offices.

19 (12) Polling places."

20 **Section 6. Severability.** *If any provisions of this Act or its application to*
21 *any person or circumstance is found to be invalid or contrary to law, such*
22 *invalidity shall not affect other provisions or applications of this Act which can*
23 *be given effect without the invalid provisions or applications, and to this end the*
24 *provisions of this Act are severable.*