

MINA'BENTE OCHO NA LIHESLATURAN GUAHAN  
2006 (SECOND) Regular Session

Bill No. 378 EC

Introduced by:

B.J.F. Cruz 

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AN ACT TO AMEND §90103, §90107 AND TO ADD  
SUBSECTION (a)(13) TO §90105 OF CHAPTER 90,  
DIVISION 4 OF TITLE 10 GUAM CODE  
ANNOTATED RELATIVE TO THE "NATASHA  
PROTECTION ACT OF 2006" TO PROHIBIT  
SMOKING IN BARS.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Purpose and Legislative Intent. *I Liheslaturan*  
3 *Guahan* finds that there is compelling public health and safety reasons  
4 to protect nonsmoking employees and the general public from the  
5 hazardous effects of environmental tobacco smoke, most commonly  
6 known as "second hand smoke". Second hand smoke has been  
7 determined to cause a number of adverse health effects.

8 On June 27, 2006, U.S. Surgeon General Richard H. Carmona  
9 issued a comprehensive scientific report which concludes that there is  
10 no risk-free level of exposure to secondhand smoke. Nonsmokers  
11 exposed to secondhand smoke at home or work increase their risk of  
12 developing heart disease by 25 to 30 percent and lung cancer by 20 to

1 30 percent. The finding is of major public health concern due to the  
2 fact that nearly half of all nonsmoking Americans are still regularly  
3 exposed to secondhand smoke.

4 The report, *The Health Consequences of Involuntary Exposure to*  
5 *Tobacco Smoke*, finds that even brief secondhand smoke exposure can  
6 cause immediate harm. The report says the only way to protect  
7 nonsmokers from the dangerous chemicals in secondhand smoke is  
8 to eliminate smoking indoors.

9 Public Law 28-80, the “Natasha Protection Act of 2006”  
10 amending Chapter 90, Division 4 of Title 10 Guam Code Annotated  
11 was passed into law in December, 2005 and was implemented on  
12 May 9, 2006. However, because of alleged constitutional vagueness,  
13 specifically the Smoke Ventilation Device and its enforceability, *I*  
14 *Liheslaturan Guahan* intends to make clear its intent that smoking in  
15 all restaurants and bars shall be prohibited.

16 **Section 2.** §90103 of Chapter 90, Division 4 of Title 10 Guam  
17 Code Annotated is hereby *amended* to read as follows:

18 “§90103. **Definitions.** The following words and phrases, when  
19 used in this Chapter, shall be construed as follows:

20 ~~Bar, as defined for this Chapter, means an establishment~~  
21 ~~or area devoted to the serving of alcoholic beverages for~~  
22 ~~consumption by guests on the premises in which the serving of~~  
23 ~~food is only incidental to the consumption of such beverages~~

1 and where the sale of alcoholic beverages exceeds fifty percent  
2 (50%) of the establishment's gross revenues. The term *bar*  
3 applies to an area within a restaurant establishment when:

4 (a) the serving of alcoholic beverages is located  
5 within a physically enclosed area apart from the  
6 dining area; or

7 (b) the serving of alcoholic beverages is located at  
8 an open and well-ventilated area apart from the  
9 dining area; or

10 (c) the serving of alcoholic beverages exceeds fifty  
11 percent (50%) of the establishment's gross revenue  
12 between the hours of 10:00 p.m. and 4:00 a.m.  
13 during those hours means an establishment in  
14 which the sale and consumption of alcoholic  
15 beverages on the premises is authorized under a  
16 license issued by the Department of Revenue and  
17 Taxation.

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

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

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

6            *Employer* means any business, including the government  
7 of Guam and any of its autonomous agencies, which employs  
8 the services of one (1) or more person.

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

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

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

4 *Open Area* means an outdoor area or all space between a  
5 floor and ceiling which is enclosed by *no more than* sixty percent  
6 (60%) on all sides by solid walls or windows.

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

14 *Public Place* means any enclosed area to which the public  
15 is invited or in which the public is permitted, including, *but not*  
16 *limited to*, banks, health care facilities, public transportation  
17 facilities, reception areas, restaurants, retail food production  
18 and marketing establishments, retail stores, theaters and  
19 waiting rooms. A private residence is not a "public place".

20 *Restaurant*, as defined for this Chapter, means any retail  
21 eating establishment other than a bar where food is served or  
22 provided for on-site consumption by seated patrons that is  
23 regulated by the Department of Public Health and Social

1 Services, including any private food establishment or club  
2 where food is served or provided for on-site consumption by  
3 seated patrons in which only members or their guests are  
4 permitted. If a restaurant includes an area devoted to the  
5 serving of alcoholic beverages that is not enclosed or is not  
6 located within a well-ventilated open area apart from the  
7 dining area, that area shall be deemed part of the "restaurant,"  
8 not a separate "bar," as used in this Chapter.

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

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

14 *Smoking* means inhaling, exhaling, or burning any lighted  
15 cigar, cigarette, pipe, weed, plant, tobacco product or related  
16 substance or product.

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

1           **Section 3.** A new subsection (a)(13) is hereby *added* to §90105 of  
2 Chapter 90, Division 4 of Title 10 Guam Code Annotated to read as  
3 follows:

4           “§90105. **Prohibition of Smoking in Public Places.** (a) Smoking  
5 shall be prohibited in all enclosed public places, including *but*  
6 *not limited to*, the following places:

7                         (13)    Bars.”

8           **Section 4.** Section 90107 of Chapter 90, Division 4 of Title 10  
9 Guam Code Annotated is hereby *amended* to read as follows:

10           “§90107. **Where Smoking Not Regulated.** (a) Notwithstanding  
11 any other provisions of this Chapter, the following areas shall  
12 not be subject to the smoking restrictions of this Chapter:

13                         ~~(1) Bars.~~

14                         ~~(2)~~ (1) Private residences, except when used as child care  
15 facility or health care facility.

16                         ~~(3)~~ (2) Hotel and motel rooms rented to guests.

17                         ~~(4)~~ (3) Retail tobacco stores.

18                         ~~(5)~~(4) A private enclosed office work place occupied  
19 exclusively by one (1) or more smokers.”

20           ~~(b) All public places and facilities located within an enclosed~~  
21 ~~area where smoking is permitted or allowed to any extent by~~  
22 ~~this Chapter shall employ an appropriate smoke ventilation~~

1       ~~device. Smoking shall not be permitted at any time within~~  
2       ~~enclosed areas not meeting the requirements of this provision."~~

3       **Section 5. Effective Date of Implementation.** This Act shall  
4       become effective ninety (90) days after enactment.

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