

I Mina'Trentai Kuáttro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
77-34 (COR)	Michael F.Q. San Nicolas	AN ACT TO ADD NEW ARTICLES 7 AND 8 TO CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DEFINING THE STAMP TAX ON CIGARETTES REQUIRING FOR THE PROPER AFFIXING OF STAMPS, AND TO AUTHORIZE THE DEPARTMENT OF REVENUE TO PROMULGATE REGULATIONS NECESSARY TO ESTABLISH, IMPLEMENT, AND ENFORCE THESE PROVISIONS.	4/12/17 3:58 p.m.						

I MINA'TRENTAI KUÁTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 11-34(COR)

Introduced by:

Michael F.Q. San Nicolas 

AN ACT TO *ADD NEW* ARTICLES 7 AND 8 TO CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO DEFINING THE STAMP TAX ON CIGARETTES REQUIRING FOR THE PROPER AFFIXING OF STAMPS, AND TO AUTHORIZE THE DEPARTMENT OF REVENUE TO PROMULGATE REGULATIONS NECESSARY TO ESTABLISH, IMPLEMENT, AND ENFORCE THESE PROVISIONS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A *new* Article 7 is hereby *added* to Chapter 6 of Title 11, Guam Code Annotated, to read:

“ARTICLE 7

CIGARETTE STAMP TAX LAW”

§ 6700. Legislative Findings and Intent.

§ 6701. Supplemental Definitions.

§ 6702. Taxes.

§ 6703. Records to be Kept.

§ 6704. Wholesaler and Retailer Requirements.

§ 6705. Inspection.

§ 6706. Appeals.

§ 6707. Reports.

2017 APR 12 PM 3:58


1 § 6708. Investigation.

2 § 6709. Rules and Regulations.

3
4 **§ 6700. Legislative Findings and Intent.**

5 I Liheslaturan Guåhan finds that Public Law 2-43, signed into law by
6 Governor Ford Q. Elvidge on Wednesday, July 22, 1953, established the
7 Tobacco Tax, which includes the tax on cigarettes.

8 I Liheslatura finds that the current system of administering the tax on
9 cigarettes relies upon voluntary compliance by the companies which sell
10 cigarettes. While most companies will comply with the law in the course of
11 their business, companies which do not, if not caught, would unfairly
12 benefit.

13 I Liheslatura, therefore, finds that a system which has good
14 mechanisms of accountability will level the playing field, putting those
15 companies which comply with the law in a more fair competitive position.

16 I Liheslatura further finds that utilizing cigarette tax stamps will
17 ensure that companies which comply with Guam’s cigarette tax will not be
18 unfairly disadvantaged competitively by the very act of compliance.

19 I Liheslatura finds that Guam is one (1) of only four (4) states and
20 territories which have not authorized the use tobacco tax stamps.

21 I Liheslatura finds that the Healthy Futures Fund is a major source for
22 funding for government investments in public health, including support for
23 the Guam Memorial Hospital Authority and the Department of Public Health
24 and Social Services.

25 I Liheslatura further finds that the cigarette tax is the largest source of
26 funding for the Healthy Futures Fund. In fiscal year 2016, approximately

1 eighty-one percent (81%) of Healthy Futures Fund revenue came from the
2 cigarette tax.

3 It is, therefore, the intent of *I Liheslaturan Guahan* to establish a
4 cigarette tax stamp system to improve collections of the cigarette tax and
5 promote fairness for businesses which comply with Guam's laws, by the
6 establishment of Article 7 and 8 of this Chapter.

7 **§ 6701. Supplemental Definitions.**

8 Unless the context otherwise requires, the definitions set forth herein
9 and in 11 GCA § 6101 shall govern the construction an interpretation of this
10 Article.

11 (a) 'Attorney General' means the Guam attorney general or assistant
12 attorneys general.

13 (b) 'Business location' or 'place of business' means the entire
14 premises occupied by a retail tobacco permit applicant or an entity required
15 to hold a retail tobacco permit under this chapter and shall include but is not
16 limited to any store, stand, outlet, vehicle, cart, location, vending machine,
17 or structure from which cigarettes or tobacco products are sold or distributed
18 to a consumer.

19 (c) 'Cigarette' means any roll for smoking made wholly or in part of
20 tobacco, irrespective of size and shape and whether or not the tobacco is
21 flavored, adulterated, or mixed with any other ingredient, the wrapper or
22 cover of which is made of paper or any other substance or material except
23 tobacco.

24 (d) 'Cigarette package' means a sealed package of cigarettes
25 originating from the manufacturer and bearing the health warning required
26 by law.

1 (e) ‘Consumer’ means a person who acquires or possesses a cigarette
2 or a tobacco product for personal consumption and not for resale or
3 distribution.

4 (f) ‘Department’ means Department of Revenue and Taxation.

5 (g) ‘Distribute,’ ‘distributes,’ or ‘distribution’ means to sell, transfer,
6 give, or to leave, deliver to another, or exchange with another, or to offer or
7 agree to do the same.

8 (h) ‘Entity’ means one or more individuals, a company, corporation, a
9 partnership, an association, or any other type of legal entity.

10 (i) ‘Falsely alter’ means to change a stamp in any manner so that the
11 altered stamp falsely appears or purports to have a value or validity that is
12 not authorized or consented to by the department.

13 (j) ‘Falsely make’ means to print, manufacture, or make what purports
14 to be a stamp without the authority or consent of the department.

15 (k) ‘Falsely reuse’ means to affix a stamp that was previously affixed
16 to a package of cigarettes, to another package of cigarettes.

17 (l) ‘License’ means a license granted by Guam law, that authorizes the
18 holder to engage in the business of a Wholesaler or Retailer of cigarettes or
19 tobacco products in Guam.

20 (m) ‘Licensee’ means the holder of a license as a Wholesaler or
21 Retailer granted under this chapter.

22 (n) ‘Persons’ means one or more people, a company, corporation, a
23 partnership, or an association.

24 (o) ‘Possession’ means knowingly having direct physical control a
25 given time or knowingly having the power and the intention, at a given time,
26 to exercise dominion or control, either directly or through another entity.

1 (p) ‘Retailer’ means an entity that engages in the practice of selling
2 cigarettes or tobacco products to consumers and includes the owner of a
3 cigarette or tobacco product vending machine.

4 (q) ‘Retail price’ means the ordinary, customary, or usual price paid
5 by the consumer for the articles taxed.

6 (r) ‘Retail sale’ or ‘tobacco retailing’ means the practice of selling
7 cigarettes or tobacco products to consumers and includes the sale of
8 cigarettes or tobacco through a vending machine.

9 (s) ‘Sale’ includes every act of selling and includes any sale or act of
10 selling that originates from any order that is placed or submitted by means of
11 a telephonic or other method of voice transmission, the mail, or any other
12 delivery service, or the Internet or other online service.

13 (t) ‘Ship,’ or ‘causes to be shipped’ means to send by any means of
14 transportation.

15 (u) ‘Stamp’ means a stamp printed, manufactured, or made by
16 authority of the department, as provided in this chapter, that is issued, sold,
17 or circulated by the department, and by the use of which the tax levied under
18 this chapter is paid.

19 (v) ‘Wholesaler’ means any duly Guam licensed person who imports
20 or causes to be imported into Guam any FDA approved or compliant
21 Cigarette products which are or will be offered for sale or used for any
22 commercial purpose; any purchaser of warehouse receipts for such
23 Cigarettes stored in a warehouse in Guam who causes such Cigarettes to be
24 removed from such warehouse; and also any person who produces,
25 manufactures, compounds, mixes or rolls any such Cigarette products within
26 Guam for sale.

27 **§ 6702. Taxes.**

1 (a) Every Wholesaler who distributes Cigarettes, or Cigarette
2 Packages, will now pay for the privilege of conducting a business and other
3 activities in Guam, by purchasing stamps to be affixed to the Cigarette
4 Package. This tax shall be equal to Fifteen Dollars (\$15.00) for every one
5 hundred (100) cigarettes sold, used or possessed, ninety (90) days from the
6 day this bill is signed into law; whether or not sold at wholesale.

7 (b) Payment for the purchasing of stamps to be affixed to a Cigarette
8 Package shall be reported each month and payable no later than the 20th day
9 of the month following the month in which the stamps were purchased from
10 the Department.

11 (c) The Department is responsible and shall effectuate the printing,
12 distribution and sale of tax stamps.

13 (d) Any taxpayer under this section may delay the payment of taxes in
14 accordance with the provisions under 11 G.C.A. § 26601(c) relative to
15 cigarettes held and sold out of a Bonded Warehouse.

16 **§ 6703. Records to Be Kept.**

17 (a) Each wholesaler or shall keep a record of:

18 (1) Every sale or use of cigarettes and tobacco products by the
19 wholesaler;

20 (2) The number and wholesale price of cigarettes;

21 (3) The taxes payable on tobacco products sold, possessed, or
22 used, if any; and

23 (4) The amounts of stamps purchased and used, in a form as the
24 department may prescribe. The records shall be offered for inspection
25 and examination at any time upon demand by the department or the
26 attorney general, and shall be preserved for a period of five years,
27 except that the department and the attorney general, in writing, shall

1 both consent to their destruction within the five-year period or either
2 the department or the attorney general *may* require that they be kept
3 longer. The department, by rule, *may* require the wholesaler or to keep
4 such other records as it *may* deem necessary for the proper
5 enforcement of this chapter.

6 (b) If any wholesaler or fails to keep records from which a proper
7 determination of the taxes due under this chapter *may* be made, the
8 department *may* fix the amount of the taxes for any period from the best
9 information obtainable by it and assess the taxes as provided in this chapter.

10 **§ 6704. Wholesaler and Retailer Requirements.**

11 (a) All wholesalers or distributors are required to pay the appropriate
12 tax for each cigarette in its inventory, except as provided under Section
13 26501 (c) for inventory held in a warehouse under Bond. Even though
14 wholesalers are required to affix the stamps to cigarettes prior to shipping to
15 retail outlets, every cigarette retailer is responsible for inspecting their
16 shipments upon receipt to ensure cigarette stamps have been properly
17 affixed. Unstamped packs should be removed from inventory and set aside
18 for return to the cigarette supplier.

19 (b) Any cigarette retailer that fails to properly inspect and timely
20 return any unstamped cigarette packs to the cigarette supplier within seven
21 (7) days, *shall* assume liability for any unstamped cigarettes and be subject
22 to penalties under Section 6811 of this Act.

23 **§ 6705. Inspection.**

24 (a) The Department and/or the Attorney General *may* examine all
25 records, including tax returns and reports required to be kept or filed under
26 this chapter, and books, papers, and records of any person engaged in the
27 business of wholesaling or dealing cigarettes and tobacco products, to verify

1 the accuracy of the payment of the taxes imposed by this chapter. Every
2 person in possession of any books, papers, and records, and the person's
3 agents and employees, are directed and required to give to the department
4 and the attorney general the means, facilities, and opportunities for the
5 examinations.

6 (b) The Department and/or the Attorney General may inspect the
7 operations, premises, and storage areas of any entity engaged in the sale of
8 cigarettes, or the contents of a specific vending machine, during regular
9 business hours. This inspection shall include inspection of all statements,
10 books, papers, and records in whatever format, including electronic format,
11 pertaining to the acquisition, possession, transportation, sale, or use of
12 packages of cigarettes and tobacco products other than cigarettes, to verify
13 the accuracy of the payment of taxes imposed by this chapter, and of the
14 contents of cartons and shipping or storage containers to ascertain that all
15 individual packages of cigarettes have an affixed stamp of proper
16 denomination as required by this chapter. This inspection may also verify
17 that all stamps were produced under the authority of the Department. Every
18 entity in possession of any books, papers, and records, and the entity's
19 agents and employees, are directed and required to give the Department
20 and/or the Attorney General the means, facilities, and opportunities for the
21 examinations. For purposes of this chapter "entity" means one or more
22 individuals, a company, corporation, a partnership, an association, or any
23 other type of legal entity.

24 (c) If the Department or the Attorney General has reasonable cause to
25 believe and does believe that cigarettes, stamps, or counterfeit stamps are
26 being acquired, possessed, transported, kept, sold, or offered for sale in
27 violation of this chapter, the department or the attorney general may

1 investigate or search the vehicle or premises in which the cigarettes, stamps,
2 or counterfeit stamps are believed to be located. If cigarettes, stamps, or
3 counterfeit stamps are found in a vehicle, premises, or vending machine in
4 violation of this chapter the cigarettes, vending machine, vehicle, stamps,
5 counterfeit stamps, or other tangible personal property containing those
6 cigarettes, stamps, or counterfeit stamps and any books and records in
7 possession of the entity in control or possession of the cigarettes, stamps, or
8 counterfeit stamps may be seized by the department or the attorney general
9 and are subject to forfeiture.

10 **§6706. Appeals.**

11 Any person aggrieved by any assessment of the taxes imposed by this
12 chapter may appeal from the assessment in the manner and within the time
13 and in all other respects as provided for by current tax protest procedures.

14 **§6707. Reports.**

15 Every wholesaler, on or before the twentieth day of each month, shall
16 file with the Department a report showing the cigarettes and tobacco
17 products sold, possessed, or used by the wholesaler during the preceding
18 calendar month and of the taxes chargeable against the taxpayer in
19 accordance with this chapter. Such reports are public records as defined by
20 5 GCA 10101, et seq. The form of the return shall be prescribed by the
21 department and shall include:

22 (a) A separate statement of the of Cigarettes imported into and sold
23 within the territory of Guam;

24 (b) The amount of stamps purchased and used; and

25 (c) Any other information that the department may deem necessary for
26 the proper administration of this Chapter.

27 **§6708. Investigation.**

1 (a) Any agent duly authorized by the Department to conduct any
2 inquiry, investigation, or hearing hereunder, shall have power to administer
3 oaths and take testimony under oath relative to the matter of inquiry or
4 investigation. At any hearing ordered by the director, the director or the
5 director's agent authorized to conduct the hearing may subpoena witnesses
6 and require the production of books, papers, and documents pertinent to the
7 inquiry. No witness under subpoena authorized to be issued by this section
8 shall be excused from testifying or from producing books or papers on the
9 ground that such testimony or the production of such books or other
10 documentary evidence would tend to incriminate the witness, or subject the
11 witness to penalty or forfeiture; but no person shall be prosecuted, punished,
12 or subjected to any penalty or forfeiture for or on account of any act,
13 transaction, matter, or thing concerning which the person shall, under oath,
14 have testified or produced documentary evidence.

15 (b) If any person disobeys such process or, having appeared in
16 obedience thereto, refuses to answer any pertinent question put to the person
17 by any duly authorized agent of the Department, or to produce any books
18 and papers pursuant thereto, the duly authorized agent may apply to the
19 Guam Superior Court setting forth such disobedience to process or refusal to
20 answer, and the court or the judge shall cite such person to appear before the
21 court or the judge to answer such question or to produce such books and
22 papers and, upon the person's refusal so to do, shall commit such person to
23 jail until the person shall testify, but not for a longer period than sixty days.
24 Notwithstanding the serving of the term of such commitment by any person,
25 the director may proceed in all respects with such inquiry and examination
26 as if the witness had not previously been called upon to testify.

27 **§6709. Rules and Regulations.**

1 The administration of this chapter is vested in the Department, and it
2 may prescribe and enforce rules and regulations for the enforcement and
3 administration of this chapter.”

4 **Section 2.** A *new* Article 8 is hereby *added* to Chapter 6 of Title 11, Guam
5 Code Annotated, to read:

6 **“ARTICLE 8**

7 **STAMPING OF CIGARETTES**

8 § 6800. Payment of Tax through the Use of Stamps.

9 § 6801. Affixation; Required prior to Distribution; Method and Manner.

10 § 6802. Department to Furnish: Stamps, their Designs, Specifications,
11 and Denominations.

12 § 6803. Purchase of Stamps.

13 § 6804. Price.

14 § 6805. Unused Stamps; Cancellation of Stamps.

15 § 6806. Transfer of Stamps.

16 § 6807. Unlicensed Possession or Use of Stamps.

17 § 6808. Counterfeiting Stamps.

18 § 6809. Sale or Purchase of Cigarette Packages without Stamps; Fines
19 and Penalties.

20 § 6810. Vending of Unstamped Cigarettes.

21 § 6811. Exemptions.

22 § 6812. Forfeiture.

23 § 6813. Deceptive Trade Practice.

24 § 6814. Public Enforcement.

25 § 6815. Private Enforcement.

26
27 **§6800. Payment of Tax through the Use of Stamps.**

1 The tax imposed under this section upon the sale or use of cigarettes
2 shall be paid by licensees through the use of stamps.

3 **§6801. Affixation; Required prior to Distribution; Method and**
4 **Manner.**

5 (a) Beginning ninety (90) days from the day this bill is signed into
6 law; a licensee or the authorized agent or designee of a licensee shall affix a
7 stamp to the bottom of each individual package of cigarettes prior to
8 distribution.

9 (b) Beginning one hundred eighty (180) days from the day this bill is
10 signed into law; no individual package of cigarettes may be sold or offered
11 for sale to the general public unless affixed with the stamp required under
12 this section.

13 (c) Beginning one hundred eighty (180) days from the day this bill is
14 signed into law; no cigarette package may be placed or stored in a vending
15 machine unless affixed with the stamp required under subsection (a).

16 (d) The Department may adopt rules regarding the method and manner
17 of affixing stamps to a cigarette package.

18 (e) For the purpose of allowing compensation for the costs necessarily
19 incurred in affixing the proper tax stamps to each package of cigarettes prior
20 to distribution, each licensee or authorized agent or a designee of a licensee
21 purchasing stamps from the department may purchase the stamps at a
22 reduction of four-tenths of one percent (0.4%) of the denominated value of
23 each stamp purchased. The reduction shall be the only discount allowed to
24 purchasers from the department. If a purchaser does not comply with all of
25 the provisions of Guam law, the licensee shall pay the full denominated
26 value of the stamps purchased until the licensee has complied.

1 **§6802. Department to Furnish: Stamps, their Designs, Specifications,**
2 **and Denominations.**

3 The Department shall furnish stamps for sale to licensees. Stamps
4 shall be of such designs, specifications, and the Department may prescribe
5 denominations as it sees fit.

6 **§6803. Purchase of Stamps.**

7 A licensee may enter or apply to the Department to purchase stamps
8 beginning fifteen (15) days after the passage of this bill. A licensee may
9 authorize a designee to purchase stamps. Such authorization shall be in
10 writing and shall continue until written notice revoking the designation is
11 provided to the Department.

12 **§6805. Price.**

13 (a) Stamps shall be sold at their denominated values as provided for
14 herein.

15 (b) Payment for the stamps shall be made no later than the twentieth
16 (20th) day of the month following the month in which the stamps were
17 purchased from the Department.

18 (c) Any taxpayer under this section may delay the payment of taxes in
19 accordance with the provisions under Section 26501(c) relative to cigarettes
20 held and sold out of a Bonded Warehouse. Payment for the stamps for
21 cigarettes held and sold out of a Bonded Warehouse shall be made no later
22 than the Twentieth (20th) day of the month following the month in which the
23 stamps and associated cigarettes were issued and sold out of the Bonded
24 Warehouse.

25 **§6806. Unused Stamps; Cancellation of Stamps.**

1 The Department shall adopt rules for a refund or credit to a licensee in
2 the amount of the denominated values of any unused stamps. The
3 Department may provide by rule for the cancellation of stamps.

4 **§6807. Transfer of Stamps.**

5 Unused stamps shall not be sold, exchanged, or in any manner
6 negotiated or transferred by a licensee to another person. Any person who
7 violates this section shall be subject to a fine of not less than Five Hundred
8 Dollars (\$500) and not more than One Thousand Dollars (\$1,000) for each
9 violation.

10 **§6808. Unlicensed Possession or Use of Stamps.**

11 A person who is not licensed under this chapter and who knowingly
12 possesses or uses a stamp shall be guilty of a third- (3rd-) degree felony.

13 **§6809. Counterfeiting Stamps.**

14 A person shall be guilty of a third- (3rd-) degree felony if the person:

15 (a) Intentionally or knowingly makes, alters, or reuses a stamp; or

16 (b) Knowingly posses or distributes a stamp that has been falsely
17 made, unauthorized, altered or reused.

18 **§6810. Sale or Purchase of Cigarette Packages without Stamps; Fines**
19 **and Penalties.**

20 (a) Beginning one hundred eighty (180) days from the day this bill is
21 signed into law; a person shall be guilty of a third- (3rd-) degree felony if the
22 person:

23 (1) Is not a licensee, and knowingly possesses, keeps, stores,
24 acquires, or transports three thousand or more cigarettes that do not
25 have stamps affixed to the cigarette packages as required by this part;

26 or

1 (2) Knowingly sells one thousand or more cigarettes that do not
2 have stamps affixed to the cigarette packages as required by this part.

3 (b) Beginning one hundred eighty (180) days from the day this bill is
4 signed into law; a person shall be guilty of a misdemeanor if the person:

5 (1) Is not a licensee, and knowingly possesses, keeps, stores,
6 acquires, or transports one thousand or more cigarettes that do not
7 have stamps affixed to the cigarette packages as required by this part;
8 or

9 (2) Knowingly sells less than one thousand cigarettes that do
10 not have stamps affixed to the cigarette packages as required by this
11 part.

12 (c) In addition to any other authorized disposition, a corporation found
13 in violation of

14 (1) Subsection (a) is subject to a fine in an amount not to
15 exceed Fifty Thousand Dollars (\$50,000); and

16 (2) Subsection (b) is subject to a fine in an amount not to
17 exceed Twenty-Five Thousand Dollars (\$25,000).

18 **§6811. Vending of Unstamped Cigarettes.**

19 (a) Beginning one hundred (100) days from the day this bill is signed
20 into law; any person who knowingly places for sale in a cigarette vending
21 machine any cigarettes not contained in cigarette packages to which are
22 affixed stamps as required by this part, shall be guilty of a third- (3rd-)
23 degree felony.

24 (b) In addition to any other authorized disposition, a corporation
25 found in violation of subsection (a) may be fined in an amount not to exceed
26 Fifty Thousand Dollars (\$50,000).

27 **§6812. Exemptions.**

1 (a) No cigarette tax stamp shall be required to be paid upon cigarettes
2 that are sold for personal use at sales outlets operated under the regulations
3 of the armed services of the United States; provided that it shall be unlawful
4 for any person, including members of the armed services of the United
5 States, to purchase such tax-exempt cigarettes for purposes of resale. Any
6 person who intentionally, knowingly, or recklessly resells, or offers for
7 resale, tax-exempt cigarettes purchased at sales outlets operated under the
8 regulations of the armed services of the United States shall be guilty of a
9 violation of this chapter, and punishable as provided in Section 6812 or
10 6813. For purposes of this subsection, "person" means one or more people, a
11 company, corporation, a partnership, or any combination of individuals.

12 (b) No cigarette tax stamp shall be required to be paid upon cigarettes
13 that are sold outside of the Territory of Guam, including cigarettes sold for
14 export outside of Guam and cigarettes sold through duty free outlets located
15 at the Guam International Airport which are intended to be transported
16 outside of Guam by outgoing travelers; provided that it shall be unlawful for
17 any person, to purchase such tax-exempt cigarettes for purposes of resale
18 inside of the Territory of Guam.

19 (c) Unless otherwise exempt from taxes by this chapter, it shall be
20 presumed that all cigarettes are subject to the tax imposed by this chapter,
21 unless the contrary is established, and the burden of proof that they are not
22 taxable shall be upon the person having possession of them.

23 **§6813. Forfeiture.**

24 Any cigarette, package of cigarettes, carton of cigarettes, or container
25 of cigarettes unlawfully possessed, kept, stored, acquired, transported, sold,
26 imported, offered, received, or distributed in violation of this chapter may be

1 seized and confiscated by any order of the Attorney General and ordered
2 forfeited.

3 **§6814. Deceptive Trade Practice.**

4 Any violation of this part shall constitute an unfair method of
5 competition and unfair and deceptive acts or practices in the conduct of any
6 trade of commerce under section 5 GCA 3201, et seq. Guam law and shall
7 be subject to a civil penalty as provided in Guam law. Each package of
8 cigarettes sold in violation of this part shall constitute a separate violation.

9 **§6815. Public Enforcement.**

10 (a) Public enforcement of this law is under the jurisdiction of the
11 Attorney General. The Attorney General may seek assistance in the
12 enforcement of this part from other law enforcement agencies. This includes:

13 (1) any peace officer as defined by 8 G.C.A § 5.55; and

14 (2) a Citizen Assisted Police Enforcement (CAPE) volunteer as
15 provided pursuant to 10 G.C.A. § 77302.

16 (b) The Attorney General and the Guam Police Department may seize
17 and confiscate any cigarette, package of cigarettes, or carton of cigarettes
18 that is possessed, kept, stored, retained, held, owned, received, transported,
19 imported, or caused to be imported, acquired, distributed, sold, or offered for
20 sale in violation of this law.

21 (c) Any cigarette, package of cigarettes, or carton of cigarettes
22 unlawfully possessed, kept, stored, received, held, owned, acquired,
23 retained, transported, imported, or caused to be imported, distributed, sold,
24 or offered for sale, in violation of this part, shall be forfeited as contraband
25 and may be seized through any legal process available to the Attorney
26 General. Any cigarette, package of cigarettes, or carton of cigarettes
27 forfeited as provided in this section shall be ordered destroyed.

1 (d) Notwithstanding the existence of other remedies at law, the
2 attorney general may apply for a temporary or permanent injunction
3 restraining any person from violating or continuing to violate this part. The
4 injunction shall be issued without bond.

5 (e) The Legislature hereby establishes an enforcement account to fund
6 public enforcement of this law (the “Fund”). The Legislature appropriates
7 Two Hundred Thousand Dollars (\$200,000) to establish that fund. The
8 Attorney General shall oversee and control the Fund. In no event should the
9 Fund ever have more than Two Hundred Thousand Dollars (\$200,000). All
10 funds collected under this Act shall first be allocated to the Fund until it is
11 fully funded. Thereafter, all excess funds shall be remitted to the Department
12 of Revenue and Taxation.

13 **§6816. Private Enforcement.**

14 (a) A person may bring a civil action for violation of this law on
15 behalf of the person and the Government of Guam to enforce the fines
16 contained herein. The action shall only be dismissed if the court and the
17 Attorney General give written consent to dismissal and the reasons for the
18 dismissal.

19 (1) A copy of the complaint and written disclosure of
20 substantially all material evidence and information shall be served on
21 the Government of Guam pursuant to the Guam Rules of Civil
22 Procedure. The complaint shall be filed in camera, shall remain under
23 seal for sixty (60) days and shall not be served on the named
24 defendant until the ordered by the Superior Court. The Government
25 may elect to intervene and prosecute the action within sixty (60) days
26 after service of the complaint.

1 (2) The Government is entitled to a one-time extension of thirty
2 (30) days to evaluate the complaint filed.

3 (b) If the Government elects to intervene and proceed with the action,
4 it shall have primary responsibility for prosecuting the action and shall not
5 be bound by an act of the person bringing the action unless there is an
6 exception enumerated in this law.

7 (1) Upon the Government's assumption of the complaint, the
8 person who filed the complaint has no further participation except as
9 described herein and the Government may:

10 (A) Dismiss the action notwithstanding the objection of
11 the person bringing the complaint as long as the person bringing
12 the complaint has an opportunity to respond in writing.

13 (B) Settle the action notwithstanding the objection of the
14 person bringing the complaint as long as the Guam Superior
15 Court finds the settlement to be fair, adequate and reasonable.

16 (C) Pursue its claim through an alternate remedy
17 available to the Government in including any administrative
18 proceeding to determine a civil money penalty. If any such
19 alternate remedy is pursued in another proceeding, the person
20 initiating the action shall have the same rights in such
21 proceeding as such person would have had if the action had
22 continued under this section.

23 (D) If the Government proceeds with an action brought
24 by a person under this law, such person shall receive at least
25 fifteen percent (15%) but no more than twenty-five percent
26 (25%) of the proceeds of the action or settlement of the claim

1 plus their reasonable costs and attorneys fees incurred in filing
2 the Complaint.

3 (E) If the Government does not proceed with an action,
4 the person brining the action or settling the claim shall receive
5 an amount which the Guam Superior Court decides is
6 reasonable for collecting the civil penalty and damages. The
7 amount shall not be less than twenty-five percent (25%) and not
8 more than thirty percent (30%) of the proceeds of the action or
9 settlement. Such person shall also in addition receive an award
10 for their reasonable costs, fees, and attorneys fees.

11 (F) If the Government does not proceed with the action
12 and the person brining the action does not prevail on the claim,
13 the defendant is entitled to its reasonable attorneys fees if the
14 court finds in its discretion that the action was clearly frivolous,
15 vexatious or brought for purposes of harassment.

16 (c) All civil penalties and fines awarded by the Court in excess of the
17 reasonable amount awarded by the court to any private individual(s) who
18 bring a private enforcement action of this law shall be deposited into the
19 special enforcement account.”

20 **Section 3. Severability.** *If any provision of this Act or its application to any*
21 *person or circumstance is held invalid, the invalidity shall not affect other*
22 *provisions or applications of this Act which can be given effect without the invalid*
23 *provision or application and to this end the provisions of this Act is severable.*