

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 194-37 ()

Introduced by:

Sabina Flores Perez *SFP*
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AN ACT TO *AMEND* § 6209 (c) OF ARTICLE 2, *AMEND* § 6306 AND § 6308 OF ARTICLE 3, *AMEND* § 6401, § 6402, AND § 6405, ALL OF ARTICLE 4, AND *AMEND* § 6603 OF ARTICLE 6, ALL OF CHAPTER 6, TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO UPDATING FINES AND PENALTIES FOR TOBACCO AND NICOTINE VIOLATIONS.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that between 2018 and 2022 the Department of Revenue and Taxation cited a total
4 of 106 violations from tobacco outlets on Guam from a total of 329 vendors licensed
5 to sale tobacco products. Violations consisted of sales to those under 21 years of age
6 and failing to post ‘21+ Only Sales’ signages for public view.

7 *I Liheslatura* further finds that the World Health Organization, Framework
8 Convention on Tobacco Control (WHO-FCTC) recognizes that consistently
9 revisiting violation penalties along with taxation are the two highly effective
10 initiatives to tackle tobacco and nicotine consumption among youth worldwide.

11 *I Liheslatura* finds that in Chapter 6 of Title 11 in the Guam Code Annotated
12 was established in October of 1998 through Public Law 24-278 that required tobacco
13 products to obtain tobacco licenses and to enforce the prohibition of sales of tobacco
14 products to minors. Twenty five years later, updates to Chapter 6 of Title 11 have

1 included the licensing requirements for the retail and wholesale of tobacco products
2 and the restrictions of tobacco products to manufacturer’s representatives, and
3 tobacco taxation through Public Law 28-170. The passage of Public Law 32-200
4 restricted the engagement of any sellers to offer any tobacco multi-product discounts
5 and promotions. In 2017, Public Law 34-01 defined electronic cigarettes into
6 Chapter 6 and raised the consumer age of tobacco and nicotine products to twenty-
7 one years of age. Among the many regulations established on Guam, tobacco and
8 nicotine consumption and tobacco marketing strategies continue to evolve, as well
9 as, the need for policy changes.

10 *I Liheslatura* finds that according to the Annual Synar Report published by
11 the Guam Behavioral Health and Wellness Center, as of 2017 there were 106
12 violations with majority being first and second time offenders. According to the
13 Department of Revenue and Taxation as of September 2023 there are 347 active
14 retail Tobacco Business Licenses and eight active Wholesale Tobacco Business
15 Licenses. Between 2018 and 2019, one third-time offender paid a \$5,050.00 penalty
16 and had their tobacco license suspended.

17 Despite a downward trend of violations for selling tobacco and nicotine
18 products without a license or selling tobacco products to minors, data published in
19 August of 2023 finds that consumption of tobacco and nicotine remains higher in
20 Guam compared to the U.S. among adults and youth. According to the State
21 Epidemiological Outcomes Workgroup (SEOW) Epi Profile, the use of electronic
22 nicotine delivery devices or “vaping” is high amongst Guam youth, with one in four
23 (26.5%) high school students and nearly one in four (23.5%) middle school students
24 reporting current use. Tobacco use figures display marked disparities across socio-
25 economic gradients with poor and less-educated individuals more likely to smoke
26 than rich and well-educated persons who are less likely to have smoked at all.

27 Therefore it is the intent of *I Liheslaturan Guåhan* to protect our island’s
28 youth by updating statutes, which are nearly two decades old, by requiring training

1 and certification of businesses who sell tobacco and nicotine products to promote
2 compliance with tobacco control laws and regulations and to deter non-compliance
3 by increasing fines and suspension of licenses for first time violators for those
4 businesses that sell to minors.

5 **Section 2.** § 6209 (c) of Article 2, Chapter 6, Title 11, Guam Code
6 Annotated is hereby *amended* to read as:

7 **“§ 6209. Display of License.**

8 (c) Any license who violates this Section shall be fined ~~Fifty Dollars~~
9 ~~(\$50.00)~~ One Hundred Dollars (\$100.00) per violation.”

10 **Section 3.** § 6306 of Article 3, Chapter 6, Title 11, Guam Code Annotated
11 is hereby *amended* to read as:

12 **“§ 6306. Same: Application.**

13 An applicant for a license shall submit the following:

14 (a) an application, in writing to the Director, verified under oath
15 and accompanied by a:

16 (b) license fee(s);

17 (c) certificate of completion from a program administered by the
18 Guam Behavioral Health and Wellness Center (GBHWC) or the Department
19 of Public Health and Social Services (DPHSS), that includes, but is not limited
20 to, information on the rules and regulations of the sale of tobacco and nicotine
21 products, prevention of use and cessation programs of tobacco and nicotine
22 products. Managers and staff conducting the sale of tobacco and nicotine
23 products shall complete the program.”

24 **Section 4.** § 6308 of Article 3, Chapter 6, Title 11, Guam Code Annotated
25 is hereby *amended* to read as:

26 **“§ 6308. Penalties for Selling Tobacco Products Without a License.**

1 In addition to any other penalties and fines that may be levied, including those
2 under § 6405 and § 70120 of this Title, any person who violates § 6201 shall be
3 guilty of a misdemeanor as set forth in § 70119 of this Title, and punished as follows:

4 (a) in the case of a first violation, by a fine of ~~Two Hundred Fifty~~
5 ~~Dollars (\$250.00)~~ Five Thousand Dollars (\$5,000.00).

6 (b) in the case of a second violation, by a fine of ~~Five Hundred~~
7 ~~Dollars (\$500.00)~~ Ten Thousand Dollars (\$10,000.00) and the person shall
8 not be eligible to apply for a license for two (2) years after the date of
9 assessment of a fine.

10 (c) in the case of three (3) or more violations, a fine of ~~not less than~~
11 ~~One Thousand Dollars (\$1,000.00), nor more than~~ Twenty Thousand Dollars
12 (\$20,000.00) and the person shall not be eligible to apply for a license for five
13 (5) years after the date of the assessment of a fine.

14 (d) any person who is in violation of this Section, shall obtain
15 certification from the Guam Behavioral Health and Wellness Center or the
16 Department of Public Health and Social Services, who shall administer an
17 education program, that includes, but is not limited to, information of Guam
18 laws and regulations pertaining to tobacco and nicotine products, prevention
19 and cessation of tobacco and nicotine use. Certificates shall be submitted to
20 the Department of Revenue and Taxation upon completion prior to licensure.”

21 **Section 5.** § 6401 of Article 4, Chapter 6, Title 11, Guam Code Annotated
22 is hereby *amended* to read as:

23 “(a) It shall be a violation of this Chapter for any person to sell or
24 distribute tobacco products or electronic cigarettes to any person under twenty-one
25 (21) years of age.

26 (1) ~~It shall not be a violation of this Chapter for any person to~~
27 ~~refuse to sell or distribute tobacco products or electronic cigarettes to any~~
28 ~~person whom the seller or the distributor reasonably believes to be under~~

1 ~~twenty seven (27) years of age, and who is unable to produce acceptable~~
2 ~~photographic identification and proof that he or she is over the age of~~
3 ~~twenty one (21) years.~~

4 (21) The sale or distribution of electronic cigarettes to any person
5 under twenty-one (21) years of age, or its possession by such person, is
6 prohibited and shall be regulated and enforced pursuant to this Chapter.

7 (32) Any provision of this Chapter applicable to the regulation and
8 prohibition of the sale or distribution of tobacco products to any person
9 under twenty-one (21) years of age, or possession by such person, shall be
10 applicable to electronic cigarettes, and any other component of an electronic
11 cigarette, and shall be regulated and enforced in the same manner as tobacco
12 products, to include the applicability of all penalties and fines.”

13 **Section 6.** § 6402 of Article 4, Chapter 6, Title 11, Guam Code Annotated
14 is hereby *amended* to read as:

15 “**§ 6402. ~~Acceptable Forms of Identification.~~ Display of Prohibition on**
16 **Sales of Tobacco Products to Persons Under Twenty-one (21) Years of Age.**

17 All licensee shall post notice that this Chapter prohibits the sale of tobacco
18 products to persons under twenty-one (21) years of age.

19 (a) In the case of retail operation, notices *shall* be publicly and
20 conspicuously displayed in the licensee’s place of business in letters at
21 least two inches (2”) in height.

22 (b) Any the case of vending machine, the license *shall* affix to the
23 front of each vending machine in sign in letters at least one-half inch (1-
24 5”) in height.

25 (c) Any licensee who violates this Section *shall* be fined ~~Fifty~~
26 ~~Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) per violation.”

27 **Section 7.** § 6405 of Article 4, Chapter 6, Title 11, Guam Code Annotated
28 is hereby *amended* to read as:

1 **“§ 6405. Penalties for Selling or Distributing Tobacco Products to Persons**
2 **Under Twenty-one (21) Years of Age.**

3 (a) In addition to any other penalties and fines that may be levied, any
4 person who violates § 6401 of this Chapter shall be penalized as follows:

5 (1) In the case of the first violation ~~in any five (5) year period~~, the
6 person shall be fined ~~One Thousand Dollars (\$1,000.00)~~ Five Thousand
7 Dollars (\$5,000.00), and the license shall be suspended for ninety (90) days
8 and *shall* be notified, in writing, of penalties levied for further violations;

9 (2) in the case of a second violation ~~in any five (5) year period~~, the
10 person shall be fined ~~Two Thousand Dollars (\$2,000.00)~~ Ten Thousand
11 Dollars (\$10,000.00) and the license shall be suspended for ~~ninety (90)~~ One
12 Hundred Eighty (180) days;

13 (3) in the case of ~~third~~ three (3) or more violations ~~in any five (5) year~~
14 ~~period~~, the person *shall* be fined ~~Five~~ Twenty Thousand Dollars (~~\$5,000.00~~)
15 (\$20,000.00) and the license shall be suspended for ~~one hundred eighty (180)~~
16 ~~days~~ revoked. The revoked licensee shall be ineligible to apply for a new
17 license for five (5) years after the effective date of the revocation.

18 ~~(3) in the case of four (4) or more violations within any five (5) year~~
19 ~~period, the person shall be fined Ten Thousand Dollars (\$10,000.00) and, in~~
20 ~~the case of a licensee, the license shall be revoked. The revoked retailer shall~~
21 ~~be ineligible to apply for a new license for two (2) years after the effective~~
22 ~~date of the revocation.~~

23 (b) Failure to pay a fine levied under this Section after suspension pursuant
24 to Subsection (a) of this Section shall result in continued suspension of the licensee's
25 license until such fines are paid.

26 (c) During any suspension or revocation of a license under this Section, the
27 licensee shall not sell tobacco products and shall remove all tobacco products from
28 all areas covered by the suspended license. In addition, any new application for a

1 license to sell tobacco products while a licensee is suspended under this Section shall
2 be denied.

3 (d) All tobacco products sold over the counter shall be displayed and
4 located where they shall be inaccessible to persons under twenty-one (21) years of
5 age. Any vendor who violates this provision shall pay a penalty of ~~Two Hundred~~
6 ~~Fifty Dollars (\$250.00)~~ Two Thousand Dollars (\$2,000.00).

7 (e) any person who is in violation of this Section, shall obtain certification
8 from the Guam Behavioral Health and Wellness Center or the Department of Public
9 Health and Social Services, who shall administer an education program, that
10 includes, but is not limited to, information of Guam laws and regulations pertaining
11 to tobacco and nicotine products, prevention and cessation of tobacco and nicotine
12 use. Certificates shall be submitted to the Department of Revenue and Taxation upon
13 completion prior to licensure.”

14 **Section 8.** § 6603 of Article 6, Chapter 6, Title 11, Guam Code Annotated
15 is hereby *amended* to read as:

16 **“§6603. Penalty.**

17 Whoever transports or imports into Guam for delivery or use in Guam tobacco
18 products in violation of this Article shall penalized as follows:

19 (a) in the case of a first violation, the person shall be guilty of a
20 misdemeanor and ~~may~~ shall be fined ~~not more than~~ One Thousand Dollars
21 (\$1,000.00) or imprisoned for not more than one (1) year, or both;

22 (b) in the case of any subsequent violation, the person shall be guilty of a
23 felony of the third degree and shall be fined ~~not more than~~ Ten Thousand Dollars
24 (\$10,000.00) or imprisoned for not more than five (5) years, or both.

25 (c) any individual who imports tobacco products outside the exemptions
26 identified in this Article shall be imposed a fine of three (3) times the taxable
27 assessment, which shall be determined using the tax rate established in § 26603 of
28 Article 6, Chapter 26, Title 11, Guam Code Annotated, by the Officer of the Customs

1 and Quarantine Agency at the port of entry. The commodity shall be seized, and the
2 violator of this Section shall be fined an additional three (3) times the value of the
3 current value of the commodity for the cost of storage, destruction, and
4 administrative fees for tobacco exceeding the exemption pursuant to 9 Guam Code
5 Annotated § 47.70. This fee shall be deposited ~~in the Customs Local Forfeiture~~
6 ~~Account (CLFA)~~ according to the following:

- 7 (i) 50% in the Customs Local Forfeiture Account (CLFA);
- 8 and
- 9 (ii) 50% in the Youth Tobacco Education and Prevention
10 Fund (YTEP Fund).

11 (d) The Customs and Quarantine Agency shall maintain a database of all
12 individuals who are in violation of this Section to determine and administer
13 subsequent violation charges.

14 **Section 9. Enactment Date.** This act shall be effective upon enactment.

15 **Section 10. Severability.** If any provision of this Act or its application
16 to any person or circumstance is found to be invalid or inorganic, such invalidity
17 shall not affect other provisions or applications of this Act that can be given effect
18 without the invalid provision or application, and to this end the provisions of this
19 Act are severable.