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<td>229-37 (COR)</td>
<td>Thomas J. Fisher</td>
<td>AN ACT TO ADD A NEW SECTION TO TITLE 11, CHAPTER 6 OF GUAM CODE ANNOTATED PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS WITHIN THE TERRITORY OF GUAM</td>
<td>1/5/24</td>
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AN ACT TO ADD A NEW SECTION TO TITLE 11, CHAPTER 6 OF GUAM CODE ANNOTATED PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS WITHIN THE TERRITORY OF GUAM.

BE IT ENACTED BY THE PEOPLE OF GUAM:

SECTION 1. The Guam legislature finds that tobacco use remains the leading cause of preventable disease and death in the United States and in Guam. Tobacco use is a serious public health problem in terms of the human suffering and the loss of life it causes, as well as the financial burden it imposes on society and our health care system.

Furthermore, in a 2016 report titled "E-Cigarette Use Among Youth and Young Adults," the United States Surgeon General explained that ninety-five percent of all smokers start smoking before the age of twenty-one. A 2017 study published in the American Journal of Preventive Medicine found that eighty-one percent of youth who had previously used a tobacco product reported that the first product they used was flavored. Flavored tobacco products promote youth initiation to tobacco use and push young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and particulates, thereby increasing the appeal of tobacco products. Candy and fruit flavors also improve the taste and reduce the harshness of tobacco products, making
them more appealing and easier for beginners to try tobacco products and ultimately become addicted.

The legislature further finds that the popularity of electronic cigarettes among youth is alarming. The combination of enticing flavors and nicotine salts allows higher levels of nicotine to be inhaled with less irritation because they have a lower potential of hydrogen, also known as "pH". In the 2016 report titled "E-Cigarette Use Among Youth and Young Adults," the United States Surgeon General stated that, "Compared with older adults, the brain of the youth and young adults is more vulnerable to the negative consequences of nicotine exposure. The effects include addiction, priming for use of other addictive substances, reduced impulse control, deficits in attention and cognition, and mood disorders."

While there has been a significant and welcome decline in the use of combustible cigarettes over the last decade, there has been a dramatic increase in the use of electronic smoking devices by Guam's youth. E-cigarette usage, or vaping, in Guam is at an epidemic level.

It is no coincidence that the number of electronic cigarette flavors have skyrocketed in recent years. In a 2018 study published in The Journal of Medical Internet Research, the count of flavor labels was reported to have more than doubled from 7,776 in 2013-2014 to 15,586 in 2016-2017. Guam has experienced the heightened promotion of vape products that offer candy and local flavors designed to appeal to the territory's youth. Additionally, many packages are designed to look like candies popular with children, such as Jolly Ranchers and Sour Patch Kids. The legislature additionally finds that young people are disproportionately using flavored tobacco products.

Given the significant threat to public health posed by flavored tobacco products, states (including California, Massachusetts, New Jersey, New York, and Rhode Island) and dozens of cities have enacted laws prohibiting the sale of flavored
tobacco products. These laws now protect over twenty-five per cent of the United States population. The legislature therefore finds that Guam should also take steps to regulate these products to reduce tobacco-related health disparities and address the youth vaping epidemic.

Accordingly, the purpose of this Act is to prohibit the sale or distribution in Guam of flavored tobacco products, and prohibit the mislabeling of products as nicotine-free.

SECTION 2. Title 11, Chapter 6 of the Guam Code Annotated, is adding a new section to be appropriately designated and to read as follows:

Sale of flavored tobacco products; mislabeling as nicotine-free.

(1) Beginning six (6) months after the enactment of this bill it shall be unlawful for any retailer, or any agent or employee of the retailer, to:

(a) Sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product; or

(b) Mislabel as nicotine-free or sell or market for sale as nicotine-free, any e-liquid product that contains nicotine.

(2) Any flavored tobacco product found in a retailer's possession that is in violation of this section shall be considered contraband, promptly seized, subject to immediate forfeiture and destruction or disposal, and shall not be subject to replevin; and provided that the cost of proper disposal of electronic smoking devices and e-liquids as hazardous waste or otherwise, shall be borne by the retailer.

(3) Any retailer and any agent or employee of a retailer who violates this section shall be subject to a fine not to exceed $500. Any subsequent violation shall subject the offender to a fine of not less than $500 nor more than $2,000.

(4) For the purposes of this section:

"Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size and shape and whether or not the tobacco is flavored, adulterated,
or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Distinguishable" means perceivable by either the sense of sight, smell or taste.

"Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

"Entity" means one or more individuals, a limited liability company, corporation, a partnership, an association, or any other type of business.

"Flavored tobacco product" means any tobacco product that imparts: a taste or smell, other than the taste or smell of tobacco, distinguishable by an ordinary consumer either prior to or during the consumption of such tobacco products, including but not limited to the taste or smell of fruit, chocolate, vanilla, honey, candy cocoa, dessert, alcohol beverage, mint, wintergreen, menthol, herb or spice, or a cooling or numbing sensation distinguishable by an ordinary consumer either prior to or during the consumption of such tobacco product.

"Presumptive flavored tobacco product" means any communication by or on behalf of the manufacturer or retailer of a tobacco product that indicates that the product imparts: a taste or smell other than the taste or smell of tobacco; or a cooling or numbing sensation, constitutes presumptive evidence of a violation of this section.
Presumptive evidence may include but is not limited to the use of terms such as “cool”, “chill”, “ice”, “fresh”, or “frost” to describe the product.

"Labeling" means written, printed, pictorial, or graphic matter upon a tobacco product or any of its packaging.

"Packaging" means a pack, box, carton, or container of any kind, or if no other container, any wrapping, including cellophane, in which a tobacco product is sold or offered for sale to a consumer.

"Retailer" means an entity which sells, offers for sale, or exchanges or offers to exchange tobacco products to consumers for any form of consideration. The term "retailer" includes the owner of a tobacco retail location.

"Tobacco product" means any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; or any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes. Tobacco product does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

"Tobacco retail location" means any premises where tobacco products are sold or distributed to a consumer, including but not limited to any store, bar, lounge, cafe, stand, outlet, vehicle, cart, location, vending machine, or structure."
SECTION 3. Severability. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.