

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

Bill No. -37 ()

Introduced by:

Thomas J. Fisher

**AN ACT TO PROHIBIT 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 per cent 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 per cent 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,

1 making them more appealing and easier for beginners to try tobacco products and
2 ultimately become addicted.

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

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

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

25 Given the significant threat to public health posed by flavored tobacco products,
26 states (including California, Massachusetts, New Jersey, New York, and Rhode
27 Island) and dozens of cities have enacted laws prohibiting the sale of flavored

1 tobacco products. These laws now protect over twenty-five per cent of the United
2 States population. The legislature therefore finds that Guam should also take steps
3 to regulate these products to reduce tobacco-related health disparities and address
4 the youth vaping epidemic.

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

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

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

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

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

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

17 (2) A statement or claim, including but not limited to text, color, or images on the
18 tobacco product's labeling or packaging that is used to explicitly or implicitly
19 communicate that the tobacco product has a flavor other than tobacco, made by a
20 retailer, or any agent or employee of the retailer, manufacturer, or an agent or
21 employee of the manufacturer in the course of the person's agency or employment,
22 and directed to consumers or the public, or meant to be communicated or directed
23 to consumers or the public shall be prima facie evidence that the tobacco product is
24 a flavored tobacco product.

25 (3) A tobacco product shall not be determined to have a characterizing flavor
26 solely because of the use of additives or flavorings or the provision of ingredient
27 information in the absence of a distinguishable taste or aroma, or both.

(4) 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.

(5) 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.

(6) For the purposes of this section:

"Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include but are not limited to tastes or aromas relating to any candy, chocolate, vanilla, honey, fruit, cocoa, coffee, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. For purposes of this Act, characterizing flavor does not include those products created and used to imbue a tobacco product with a menthol flavor.

"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.

"Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

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

1 "Electronic smoking device" means any electronic product that can be used to
2 aerosolize and deliver nicotine or other substances to a person inhaling from the
3 device, including but not limited to an electronic cigarette, electronic cigar,
4 electronic cigarillo, or electronic pipe, and any cartridge or other component of the
5 device or related product.

6 "E-liquid" means any liquid or like substance, which may or may not contain
7 nicotine, that is designed or intended to be used in an electronic smoking device,
8 whether or not packaged in a cartridge or other container. "E-liquid" shall not
9 include prescription drugs; medical cannabis or manufactured cannabis products;
10 or medical devices used to aerosolize, inhale, or ingest prescription drugs, or
11 manufactured cannabis.

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

14 "Flavored tobacco product" means any tobacco product that contains a
15 constituent that imparts a characterizing flavor but does not include any product
16 that has received a marketing order or other authorization the United States Food
17 and Drug Administration pursuant to title 21 United States Code section 387j.

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

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

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

26 "Tobacco product" means any product containing, made of, or derived from
27 tobacco or nicotine that is intended for human consumption or is likely to be

1 consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
2 ingested by other means. "Tobacco product" includes but is not limited to a
3 cigarette, cigar, pipe tobacco, chewing or smokeless tobacco, snuff, snus, e-liquid,
4 or an electronic smoking device.

5 "Tobacco retail location" means any premises where tobacco products are sold
6 or distributed to a consumer, including but not limited to any store, bar, lounge,
7 cafe, stand, outlet, vehicle, cart, location, vending machine, or structure."

8 **SECTION 3.** Severability. If any provision of this Act, or the application
9 thereof to any person or circumstance, is held invalid, the invalidity does not affect
10 other provisions or applications of the Act that can be given effect without the
11 invalid provision or application, and to this end the provisions of this Act are
12 severable.