

ELEVENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

PUBLIC LAW NO. 11-75

H. B. NO. 11-336

THIRD REGULAR SESSION, 1999

AN ACT

To amend 6 CMC Sections 3110 to increase the enforcement of and the penalties for the provision of tobacco to minors or the use of tobacco by minors; to require establishments selling tobacco products to be licensed by the Department of Commerce; and to charge the Department of Commerce, Department of Public Health, and Department of Public Safety with enforcement responsibility; and for other purposes.

**BE IT ENACTED BY THE ELEVENTH NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE:**

Section 1. Findings and Purpose. The Legislature finds that current medical statistics indicate that the use of tobacco is on the rise among the minors of the Commonwealth. Current law already prohibits the use or possession of tobacco by minors and provides further for penalties associated with the violation of this law, however enforcement is lax to the point of the statute being of almost no practical effect. This situation cannot continue in the face of the enormous medical risk faced by young smokers. The legislature finds that it is the responsibility of parents, community, and government to make it clear to store owners, store clerks, and especially to minors that the provision of tobacco to minors, and the possession or use of tobacco or tobacco products by minors is unlawful and is not in the best interest of the CNMI youth population. The purpose of this legislation is to increase enforcement and penalties, to require establishments selling tobacco products to be licensed with the Department of Commerce, and provide further deterrent for the sale of tobacco to youths and use of tobacco by youths, all in an effort to effectuate a decrease of tobacco use and addiction by minors.

Section 2. Amendment. 6 CMC 3110 is hereby repealed and reenacted as follows:

(a) It is unlawful for any person to give, or permit to be given, or in any way furnish to an individual under the age of 18 (a minor), any tobacco product. It shall not be a defense to a prosecution for a violation of this section that a minor acted, or was

believed by the defendant to be acting, as an agent or representative of another. It shall be an affirmative defense that a defendant reasonably believed that an individual to whom tobacco products were given was eighteen years of age or older, if at the time of such gift, the defendant was shown a driver's license from any United States jurisdiction, a passport from any jurisdiction, or a United States military identification card by the individual, which was not expired and valid, and indicated the individual to be over the age of eighteen.

(b) It is unlawful for any person to sell, or permit to be sold to an individual under the age of 18 (a minor), any tobacco products. It shall not be a defense to a prosecution for a violation of this section that a minor acted, or was believed by the defendant to be acting, as an agent or representative of another. It shall be an affirmative defense that a defendant reasonably believed that an individual to whom tobacco products were sold was eighteen years of age or older, if at the time of such sale, the defendant was shown a driver's license from any United States jurisdiction, a passport from any jurisdiction, or a United States military identification card by the individual, which was not expired and valid, and indicated the individual to be over the age of eighteen.

(c) It shall be unlawful for any minor to smoke, use, or possess tobacco products, nor shall a minor be allowed to handle tobacco products in retail establishments as part of his or her official duties.

(d) Any person who violates this Section is guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than \$1,000 and/or up to one year in jail, or shall be required to perform no more than 250 hours of community service.

(e) For purposes of this section "tobacco products" shall mean any tobacco preparation, including but not limited to, chewing tobacco, cigars, cigarettes, any cigarette products, or snuff.

Section 3. Tobacco Control. There is hereby established within Title 4, Division 5 a new Chapter 8 creating standards for tobacco control within the CNMI, including the licensing of businesses dealing in tobacco products. There is hereby created a Division with the Department of Commerce called the Alcohol Beverage and Tobacco Control Division, which shall be responsible for performing the duties and responsibilities for Alcoholic Beverage Control as well as those duties and responsibilities created in this Chapter.

(a) "Tobacco Products" Defined. For purposes of this Chapter "tobacco products" shall mean any tobacco preparation, including but not limited to, chewing tobacco, cigars, cigarettes, any cigarette products, or snuff.

(b) License Required. It shall be unlawful for any person, business, or organization to sell tobacco products in the Commonwealth of the Northern Mariana Islands without having first received an annual license therefore issued by the Department of Commerce, Alcohol Beverage and Tobacco Control Division; provided that this Section shall not be construed to supersede any other law relating to licensing of persons and businesses engaged in the business of selling tobacco products of any sort, but shall apply concurrently with any other such laws.

(c) Fees. Such license shall be issued by the Department of Commerce, Alcohol Beverage and Tobacco Control Division, upon application therefore, and upon the payment of a fee based on the following tobacco license classifications:

Class 1	Wholesale Agent's License	\$300
Class 2	Retail Dealer (General License)	\$100
Class 3	Retail Dealer (Vending Machine)	\$75
Class 4	Distributor (Vending Machine)	\$100

(d) Power to Prescribe License Forms. The Department of Commerce shall prescribe the form for all applications for licenses or renewal of licenses and other papers it shall require including verification, and the information to be contained in such application and other papers. It shall prescribe the place for posting licenses as well as signs.

(e) Appropriation of License Fees. All license fees collected by the Department of Commerce, Alcohol Beverage and Tobacco Control Division, shall be allocated to that Division for the purpose of the administration of the tobacco licencing program. The expenditure authority shall lie with the Secretary of Commerce. All such license fees collected shall be deposited into a revolving fund and any unused funds at the end of a fiscal year shall not lapse and shall be available without fiscal year limitation. Said funds shall not be reprogrammed or transferred back into the general fund, or any other account.

Section 4. Exception: New Arrivals: A person entering the Commonwealth may bring with him for private use, and not for resale, tobacco products not exceeding 30 packages of twenty cigarettes each or one pound of tobacco, without paying an excise tax. Any person

bringing into the Commonwealth a quantity of tobacco products in excess of that authorized by this section shall be required to pay an excise tax in accordance with 4 CMC § 1402, or may forfeit the excess cigarettes and/or tobacco products to the Division of Customs.

Section 5. Fees: No Reduction. The fees set forth in Section 3(c) shall apply to all applicants regardless of when during the calendar year the applicant applies.

Section 6. Fees: Payment: Revocation. The applicable license fee shall be payable on the day of application for first time applicants, and on the renewal date for all others. Each license issued by the Department of Commerce, Alcohol Beverage and Tobacco Control Division, shall be valid only for twelve calendar months following its effective date. If the license fee is not paid on or before the expiration date of the license, the license shall be automatically suspended, but may be reinstated by the Secretary of Commerce within three days after payment of the license fee if payment is made within thirty-one days from the date of expiration. If payment is not made within thirty-one days from the date of expiration, the Secretary of Commerce shall not issue a license except upon a new application.

Section 7. Privileges: Limitations. A license is limited to the privileges conferred therein, and the licensee may not exercise any other privileges.

Section 8. Licenses: Limitation. A license is limited to the premises for which it is issued and a licensee may not exercise the privileges conferred by the license at other premises. Applicants with more than one establishment must apply for a separate license for each additional establishment.

Section 9. Wholesaler: Authorized Imports, Purchases and Sales. A person or establishment holding a wholesale agent license may import into or purchase in the Commonwealth from a manufacturer, agent, or wholesaler the tobacco products specified by the Department of Commerce, and sell such products to licensed retail establishments.

Section 10. Condition of Premises.

(a) Cigarettes Maintained In a Secured Area. Retail establishments shall ensure that cigarettes are displayed behind a glass partition behind the counter or in a locked cabinet that can be opened only by the owner or an agent of the retail establishment. Cigarettes shall not be sold individually, but in quantities of not less than 20 cigarettes per package.

(b) Cigarette Vending Machines. The sale of cigarettes from vending machines is prohibited unless the vending machine is located in a bar, cabaret, or any establishment for which the minimum age for admission is eighteen (18) years.

Section 11. Required Signs. Any business which sells or permits to be sold on its premises any tobacco product and/or preparation shall clearly, continuously and conspicuously post signs reading "TOBACCO SALES PROHIBITED TO PERSONS UNDER THE AGE OF 18" next to any tobacco products and/or preparations displayed or available for sale; and, next to any cash register or any other place(s) where such items may be purchased. Said signs shall be at least eleven (11) inches by eight and one-half (8.5) inches in dimension, and the letters on said signs shall be printed in a bright color, with large, capitalized letters, printed in a plain, easily read font or lettering style.

Section 12. License Issuance Restrictions. The Department of Commerce, Alcohol Beverage and Tobacco Control Division, shall not issue a license of any class to any applicant that falls into one of the following restrictions:

- (a) Real Party in Interest. The applicant is not the real party in interest.
- (b) Minors. The applicant is under eighteen (18) years of age.
- (c) Prior Revocation. Except in the case of a license revoked for non-payment of the renewal fee, the applicant is a person or establishment that held a tobacco license of any class that was revoked within the prior year by the Department of Commerce.
- (d) Retail Establishment Near School. The applicant is a retail establishment located within a distance of 300 feet from any public or private school building.

Section 13. Department of Commerce Disapproval of License Applications. The Department of Commerce may disapprove an application for a license, upon findings, through adequate investigation, that such refusal is in the public interest. Where an application for license has been denied pursuant to this section, the person aggrieved by such a denial shall be entitled to a review of the decision pursuant to the procedures established under the Administrative Procedures Act, 1 CMC § 9108 - § 9115.

Section 14. Enforcement Powers. The Department of Commerce, Alcohol Beverage and Tobacco Control Division, Department of Public Safety, and Department of Public Health shall be responsible for the enforcement of this Chapter, and may enter into Memorandums of Understanding to coordinate their enforcement efforts and to create a Task Force to educate minors about the hazards of smoking.

Section 15. Inspections.

- (a) Undercover Operations. The Department of Commerce, Alcohol Beverage and Tobacco Control Division, Department of Public Safety, and Department of Public Health are authorized under this Chapter to secure, through adopted regulations, the

voluntary assistance of minors to conduct undercover investigations against persons or businesses engaged in selling, giving, or otherwise providing tobacco products to minors (persons under the age of 18), with the written consent of such minor's parent or legal guardian; provided that no minor may so assist or be requested to so assist law enforcement agencies as a condition of probation or in connection with a minor's disposition or sentencing in juvenile delinquency proceedings.

(b) Department of Commerce Inspections. The Department of Commerce, Alcohol Beverage and Tobacco Control Division, shall have the right to conduct inspections of business establishments licensed to sell tobacco products, without prior notice during the business establishment's regular business hours. During such an inspection, the Department of Commerce, Alcohol Beverage and Tobacco Control Division representative shall have the right to visit every part of the premises to ensure compliance with this Act.

Section 16. Fines and Penalties.

(a) Suspension or Revocation of License. The Secretary of Commerce shall have the power to suspend or revoke the license of any person or business that violates this Chapter, as set forth below.

(b) Penalties and Fines for Illegal Sales of Tobacco. Any business establishment that gives, sells, or permits to be given or sold any tobacco product to an individual under the age of 18 (a minor) within the period of one year shall, upon issuance of a notice of violation to the owner, agent, or employee in charge of the business by any representative of a Department authorized to enforce this Act who has properly identified him or herself, be fined and penalized in the following manner:

- (1) First Offense: The business establishment shall receive a warning letter.
- (2) Second Offense: A maximum fine of \$500.00
- (3) Third Offense: A license suspension of up to seven (7) days;
- (4) Fourth Offense: Revocation of the license for up to one (1) year;

(c) Violations Relating to Vending Machines. Any business establishment that places a stocked or operational cigarette vending machine in a location other than a bar, cabaret, or any establishment for which the minimum age for admission is eighteen (18) years, shall be subject to a fine of up to a maximum of \$500.00 for a first offense,

up to \$750.00 for a second offense, up to a 90 day suspension of the license for a third offense, and revocation of the license for up to one (1) year for a fourth offense.

(d) Establishment Operating Without License. Any person found to be engaged in the sale, distribution, or other transfer of tobacco products without a valid license from the Department of Commerce, Alcohol Beverage and Tobacco Control Division, shall be liable for a fine of up to \$1,000 per business establishment.

(e) Revocation or Voluntary Surrender; Disposal of Stock. A person or business establishment in possession of a stock of lawfully acquired tobacco products following the revocation or voluntary surrender of, or failure to renew a license, may sell such stock, under supervision of the Department of Commerce, Alcohol Beverage and Tobacco Control Division, in such a manner as the Division shall provide to a licensee authorized to sell tobacco products.

(f) Right to Administrative Hearing. Any person or business establishment found subject to a fine or penalty, including suspension or revocation of a tobacco license, for an offense established in this Section 16 shall have the right to an administrative hearing pursuant to the procedures established under the Administrative Procedures Act, 1 CMC § 9108 - § 9115, upon the filing of a request for such hearing with the Department of Commerce, Alcohol Beverage and Tobacco Control Division.

Section 17. Appropriation of Fines and Penalties. All civil fines collected pursuant to this Chapter are hereby appropriated as follows:

(a) Fifty percent (50%) of the funds collected shall be allocated for the continuous administration of preventive health programs at the Department of Public Health. The expenditure authority shall lie with the Secretary of Public Health.

(b) The remaining fifty percent (50%) of the funds collected shall go to the Department of Public Safety for the continuous administration of the DARE Program. The expenditure authority shall lie with the Commissioner of Public Safety.

All such fines raised by this Act shall be deposited into revolving funds and any unused funds at the end of a fiscal year shall not lapse and shall be available without fiscal year limitation. Said funds shall not be reprogrammed or transferred back into the general fund, or any other account.

Section 18. Adoption of Regulation. The Department of Commerce shall have the authority to promulgate rules and regulations necessary to implement the licensing requirements established pursuant to this Act.

Section 19. Effective Date. Persons, businesses and organizations in the CNMI shall have a 90-day grace period from the effective date of this Chapter to obtain the license mentioned herein for the sale of tobacco products.

Section 20. Severability. If any Section of this Act should be declared invalid by a court of competent jurisdiction, the remainder of this Act shall not be affected thereby.

Section 21. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 22. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

/s/ Diego T. Benavente
DIEGO T. BENAVENTE
Speaker
House of Representatives

ATTESTED BY:

/s/ Evelyn C. Fleming
EVELYN C. FLEMING
House Clerk

Approved this 26th day of March, 1999

/s/ Pedro P. Tenorio
PEDRO P. TENORIO
Governor
Commonwealth of the Northern Mariana Islands