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A BILL FOR AN ACT

To prohibit smoking in public places and in the workplace; and for other purposes.

BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

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Section 1. Title. This Act shall be known and may be cited as "The Anti-Smoking Act of 1996."

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Section 2. Purpose. The purpose of this Act is to provide a healthy environment for the people of the Commonwealth and its visitors. Section 9 of Article I of the Constitution of the Commonwealth of Northern Mariana Islands mandates that "each person has the right to a clean and healthful public environment in all areas, including the land, air, and water."

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Section 3. Definitions. As used in this part, unless the context requires otherwise:

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"Bar" means a place devoted to the serving of alcoholic beverages for on-site consumption by patrons and where the service of food is only incidental to the consumption of such beverages. A food service establishment may contain a bar, but the term bar shall not include the dining area of a food service establishment.

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"Building" means any area enclosed by a roof and at least three walls.

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"Dining area" means a location within a restaurant or food service establishment where meals are served.

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"Incidental" means less than one third of gross sales are of alcoholic beverages as opposed to food sales.

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"Meals" does not include snacks, pupus, hors d'oeuvres, or appetizers.

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"Open to the public" means areas within any building available to the general public during normal business hours.

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"Restaurant" means any retail eating establishment authorized by the Department of Public Health and Environmental Services to operate as a restaurant; except:

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(1) Any restaurant with a seating capacity of fifty or fewer patrons;

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(2) Any restaurant while it is being used solely for private parties or gatherings;

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(3) Any enclosed room of a restaurant, or a banquet room used solely for private parties

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or gatherings;

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(4) Any private restaurant or club to which only members or their guests are permitted;

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1 (5) Any seating area completely outside the building housing the restaurant; or

2 (6) Bars.

3 "Retail store" means any establishment organized for retailing goods including but not limited to  
4 food and grocery stores.

5 "Small business" means those business establishments having not more than five employees  
6 working on the business premises per established workshift.

7 "Smoke", "smoking" or "to smoke" means inhaling and exhaling the fumes of burning tobacco or  
8 any other plant material, or burning or carrying any lighted equipment for smoking tobacco or any other  
9 plant material, or the personal habit commonly known as smoking.

10 "Employee" means any person who is employed more than twenty hours per week by any  
11 employer in consideration for direct or indirect monetary wages or profit.

12 "Employer" means any branch, agency or instrumentality of the Commonwealth or any private  
13 corporation, firm, or association which receives Commonwealth funds.

14 "Enclosed" means closed in by a roof and four walls with openings for ingress and egress. Areas  
15 commonly described as public lobbies are not enclosed for the purposes of this Act.

16 "Office workplace" means any enclosed structure or portion thereof used by an employer.

17 "Simple majority" means any number greater than half of the persons expressing a preference in  
18 any specific work area.

19 "Cigarette vending machine" means a self-service device that dispenses cigarettes, cigars,  
20 tobacco, or any other project containing tobacco.

21 Section 4. Prohibition in Certain Places Open to the Public. Except as otherwise provided in this  
22 part, smoking shall be prohibited in the following places within the Commonwealth:

23 (1) Elevators in buildings open to and used by the public, including elevators in  
24 apartment and other multi-unit residential buildings;

25 (2) Semi-private rooms, wards, waiting rooms, lobbies, and public hallways of public  
26 and private health care facilities, including, but not limited to, hospitals, clinics, and physicians'  
27 and dentists' offices. Smoking shall be permitted in a private room or in a semi-private room  
28 when there is no objection by any patient occupying such room;

29 (3) Restaurants:

30 (a) All restaurants shall provide non-smoking areas which are reasonably  
31 proportionate to the preference of the users and so located as to obtain the maximum  
32 effect of existing physical barriers and ventilation systems, and seating arrangements, to  
33 minimize the toxic effect of smoke in adjacent non-smoking areas; provided no fixed  
34 structural or other physical modifications of the restaurant shall be required; and

1 (b) Nothing in this paragraph shall prevent a proprietor or person in charge of a  
2 facility from designating the entire restaurant as a non-smoking area. Owners or  
3 proprietors of restaurants may expand or contract the size of designated non-smoking  
4 areas to meet the requirements of their patrons;

5 (4) Any room which is used primarily for exhibiting any motion picture, stage drama,  
6 dance, musical performance, or other similar performance during the time that the room is open to  
7 the public for such performance;

8 (5) Museums, libraries, and galleries;

9 (6) The following facilities or areas in Commonwealth owned or controlled buildings:

10 (a) Meeting or conference rooms;

11 (b) Auditorium or sports areas that are enclosed;

12 (c) Community centers where persons may gather for meetings, parties, or any  
13 other purpose where the area is enclosed.

14 (d) Waiting areas, baggage claim areas, and check-in counters within buildings  
15 in all Commonwealth airports; and

16 (e) All areas open to the public, including service counters and reception or  
17 waiting areas;

18 (7) Except as otherwise provided in this section, all areas open to the public in the  
19 following business establishments:

20 (a) Banks;

21 (b) Credit unions;

22 (c) Financial services loan companies;

23 (d) Retail stores; and

24 (e) Savings and loan associations;

25 (8) Any restroom open to the public;

26 (9) Taxicabs, when carrying non-smoking passengers; and

27 (10) Notwithstanding the exceptions stated in Section 5, any area open to the public  
28 which has been designated by the person having control of the area as a non-smoking area and  
29 marked with a "no smoking" sign.

30 Section 5. Exceptions. Smoking shall not be prohibited under this part in the following places  
31 subject to Section 4:

32 (1) Small businesses;

33 (2) Retail stores with less than 5000 square feet of floor space.

1 Section 6. Signs. (a) Clearly legible signs which include the words "Smoking Prohibited by  
2 Law" with letters of not less than one inch in height shall be conspicuously posted by the persons having  
3 control of such places open to the public where smoking is prohibited.

4 (b) "SMOKING PROHIBITED BY LAW" signs shall be posted in areas adjacent to  
5 smoking areas so that a clear delineation exists.

6 (c) In the case of any restaurant designated as a smoking area in its entirety, the  
7 restaurant owner or manager shall post a sign stating, "This entire establishment is a SMOKING  
8 area," or a similar statement. The sign shall be posted conspicuously at all entrances normally  
9 used by the public.

10 (d) Restaurants with controlled seating, where patrons do not seat themselves, may place  
11 a sign at the dining area entry which indicates the availability of smoking and non-smoking areas  
12 upon request in lieu of the posting requirements of this section.

13 (e) Alternate means of notification may be employed subject to the approval of the  
14 Director of the Department of Public Health and Environmental Services, or his designee.

15 Section 7. Penalties and procedures. (a) Every person who violates any provision of Section 4  
16 and 6 of this Act for which another penalty is not provided, for a conviction thereof, shall be fined not  
17 more than \$20. The court may assess costs not to exceed \$25 for issuing a penal summons upon any  
18 person who fails to appear at the place within the time specified in the citation issued to the person.

19 (b) Any authorized police officer, upon making an arrest, shall take the name and  
20 address of the alleged violator and shall issue the violator in writing a summons or citation.

21 (c) There shall be provided for use by any police officer, a form of summons or citation  
22 for use in citing violators of this part which does not provide for the physical arrest of such  
23 violators. The form and content of such summons or citation shall be as adopted or prescribed by  
24 the presiding judge of the Superior Court, shall be printed on a form commensurate with the form  
25 of other summons or citations used in modern methods of arrest, and so designed to include all  
26 necessary information to make the same valid within the laws and rules of the Commonwealth.

27 When a citation is issued, the original of the citation shall be given to the violator;  
28 provided that the presiding judge of the Superior Court may prescribe that the violator be given a  
29 carbon copy of the citation and provide for the disposition of the original and any other copies.  
30 Every citation shall be consecutively numbered and each carbon copy shall bear the same number  
31 as its respective original.

32 (d) If any person fails to comply with a penal summons given to such person, the court  
33 shall forthwith issue a warrant for the person's arrest.

34 (e) Enforcement of this part shall be under the jurisdiction of the Department of Public  
35 Safety or other duly authorized government officer or employee.

1 (f) Any police officer may eject from the premises any person to whom a citation has  
2 been issued and who continues to smoke after the person has been so cited.

3 Section 8. Local laws. Nothing shall prohibit a Senatorial District from enacting local laws more  
4 stringent than the provisions of this part.

5 Section 9. Cigarette vending machines. (a) The sale of cigarettes from vending machines is  
6 prohibited unless the vending machine is located in a bar, cabaret, or any establishment for which the  
7 minimum age for admission is eighteen.

8 (b) Violations of subsection (a), including placement of a cigarette vending machine in  
9 a location other than a bar, cabaret, or any establishment for which the minimum age for  
10 admission is eighteen, are subject to a fine up to \$1,000 per day for each violation.

11 Section 10. Regulation of smoking in the office workplace. (a) Each employer in the  
12 Commonwealth shall within three months of the effective date of this Act, adopt, implement, and maintain  
13 a written smoking policy which shall contain, at the minimum, the following provisions and requirements:

14 (1) That if any non-smoking employee objects to the employer about smoke in  
15 the employee's workplace, the employer, using already available means of ventilation or  
16 separation or partition of office space, shall attempt to reach a reasonable  
17 accommodation, insofar as possible, between the preferences of non-smoking and  
18 smoking employees; provided that an employer is not required by this Act to make any  
19 expenditures or structural changes to accommodate the preferences of non-smoking or  
20 smoking employees; and

21 (2) That if an accommodation which is satisfactory to all affected employees  
22 cannot be reached in any given office workplace, the preferences of a simple majority of  
23 employees in each specifically affected area shall prevail and the employer shall  
24 accordingly prohibit or allow smoking in that particular area of the office workplace. If  
25 the employer's decision is unsatisfactory to the non-smoking employees, a simple  
26 majority of all non-smoking employees can appeal to the Director of the Department of  
27 Public Health and Environmental Services for the determination of a reasonable  
28 accommodation. Where the employer prohibits smoking in an office workplace, the area  
29 in which smoking is prohibited shall be clearly marked with signs.

30 (b) The smoking policy shall be announced within two weeks of the vote of preferences  
31 of the employees in each respective work area and posted conspicuously in all the affected  
32 workplaces.

33 Section 11. Where smoking not regulated. This Act does not regulate smoking in the following  
34 places and under the following conditions within the Commonwealth:

35 (1) Any property owned or leased by federal governmental entities; or

1 (2) Private enclosed office workplaces occupied exclusively by smokers, even though  
2 such office workplaces may be visited by non-smokers, excepting places in which smoking is  
3 prohibited by other law, rule, or regulation.

4 Section 12. Penalties and Enforcement. (a) The Director of Public Health and Environmental  
5 Services shall enforce Section 10 of this Act by the following actions:

6 (1) Serving notice requiring the correction of any violation of this part;

7 (2) Calling upon the attorney general to maintain an action for injunction to  
8 enforce this part, to cause the correction of any violation, and for assessment and  
9 recovery of a civil penalty for such violation; or

10 (3) Calling upon the governor to enforce compliance.

11 (b) Any person who violates Section 10 of this Act shall be liable for a civil penalty not  
12 to exceed \$500, which penalty shall be assessed and recovered in a civil action in any court of  
13 competent jurisdiction. Each day such violation is committed or permitted to continue shall  
14 constitute a separate offense and shall be punishable as such.

15 (c) Any member of the general public may request the Department of Public Health and  
16 Environmental Services to enforce any provision of Section 10 of this Act.

17 (d) In enforcing this Act, the Commonwealth is undertaking only to promote the general  
18 welfare. It is not assuming, nor is it imposing on its officers and employees an obligation, for  
19 breach of which it is liable in money damages to any person who claims that such breach  
20 proximately caused injury.

21 Section 13. Severability. If any section of this Act should be declared invalid by a court of  
22 competent jurisdiction, the remainder of this Act shall not be affected thereby.

23 Section 14. Effective Date. This Act shall take effect upon its approval by the Governor, or upon  
24 its becoming law without such approval.

DATE: \_\_\_\_\_

Introduced by: \_\_\_\_\_

Rep. Pete P. Reyes

Reviewed for legal sufficiency: \_\_\_\_\_

Maya B. Kara