

CHAPTER 90
NATASHA PROTECTION ACT OF 2005

SOURCE: This entire Chapter was enacted as 10 GCA Chapter 89 by P.L. 21-139:1 (Oct. 1, 1992). However, Chapter 89 had been previously codified as “Storage of Hazardous Materials”; therefore, the Compiler codified the law under Chapter 90, and renumbered the provisions accordingly. Amended by P.L. 28-080:2 (Dec. 9, 2005), effective 150 days from enactment.

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§ 90101. Title.

This Chapter shall be known, and may be cited, as the ‘*Natasha Protection Act of 2005.*’

2016 NOTE: This provision was formerly codified as § 90100, and renumbered § 90101 by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 90102. Legislative Findings and Purpose.

(a) The Legislature finds that numerous studies have proven that tobacco smoke is a major contributor to indoor air pollution; that breathing residual smoke is a cause of disease, including lung cancer, in healthy nonsmokers; that special risk populations are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; that a majority of both nonsmokers and smokers desire to

have restrictions placed on smoking in public places and places of employment; and that smoking is a potential cause of fires, cigarette and cigar burns, and ash stains on merchandise, causing losses to businesses.

(b) The Legislature declares that the purposes of this chapter are

(1) to protect the public health and welfare by prohibiting smoking in public places except in designated smoking areas, and by regulating smoking in places of employment; and

(2) to strike a reasonable balance between the needs of persons who smoke and the right of nonsmokers to breathe smoke-free air, and to recognize that the right to breathe smoke-free air shall take priority.

2016 NOTE: This provision was formerly codified as § 90101, and renumbered § 90102 by the Compiler pursuant to the authority of 1 GCA § 1606. The original enactment of this Chapter by P.L. 21-139:1 did not include a provision designated § 90102, and the reason for its omission is unclear from the legislative history.

§ 90103. Definitions.

The following words and phrases, when used in this Chapter, *shall* be construed as follows:

(a) *Bar*, as defined for this Chapter, means an establishment or area devoted to the serving of alcoholic beverages for consumption by guests on the premises in which the serving of food is only incidental to the consumption of such beverages, and where the sale of alcoholic beverages exceeds fifty percent (50%) of the establishment's gross revenues. The term *bar* applies to an area within a restaurant establishment when:

(1) the serving of alcoholic beverages is located within a physically enclosed area apart from the dining area; or

(2) the serving of alcoholic beverages is located at an open and well-ventilated area apart from the dining area; or

(3) the serving of alcoholic beverages exceeds fifty percent (50%) of the establishment's gross revenue between the hours of 10:00 p.m. and 4:00 a.m. during those hours.

(b) *Business* means any sole proprietorship, partnership, corporation or other business entity formed for profit-making purposes, including retail establishments, as well as professional

corporations and other entities where legal, medical, or other professional services are delivered.

(c) Dining area means any enclosed area containing a counter or tables upon which meals are served.

(d) Electronic smoking device means any electronic product that can be used to aerosolize and/or deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe, or hookah pen, and any cartridge or other component of the device or related product, whether or not sold separately.

(e) Employee means any person who is employed by an employer in consideration of direct or indirect monetary wages or profit.

(f) Employer means any business, including the government of Guam and any of its autonomous agencies, which employs the services of one (1) or more persons.

(g) Enclosed area or the term enclosed, when used relative to a structure or building, means all space between a floor and ceiling which is completely enclosed on all sides by solid walls or windows (exclusive of doors and passageways) having an air circulation system completely separate from the dining area.

(h) Open area means an outdoor area or all space between a floor and ceiling which is enclosed by *no more than* sixty percent (60%) on all sides by solid walls or windows.

(i) Place of employment means any enclosed area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms, and hallways. A private residence is not a “place of employment” unless it is used as a childcare or health care facility.

(j) Public place means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, health care facilities, public transportation facilities, reception areas, restaurants, retail food production and

marketing establishments, retail stores, theaters, and waiting rooms. A private residence is not a “public place.”

(k) Restaurant, as defined for this Chapter, means any retail eating establishment other than a bar where food is served or provided for onsite consumption by seated patrons that is regulated by the Department of Public Health and Social Services, including any private food establishment or club where food is served or provided for on-site consumption by seated patrons in which only members or their guests are permitted. If a restaurant includes an area devoted to the serving of alcoholic beverages that is not enclosed or is not located within a well-ventilated open area apart from the dining area, that area shall be deemed part of the “restaurant,” not a separate “bar,” as used in this Chapter.

(l) Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories, and in which the sale of other products is merely incidental.

(m) Service line means any indoor line at which one (1) or more persons are waiting for or receiving services of any kind.

(n) Smoke ventilation device means devices that are inspected and regulated by the Guam Environmental Protection Agency and approved by the Department of Public Health and Social Services (DPHSS) pursuant to 10 GCA § 21101 and § 21102, in accordance with the standards of the American Society of Heating, Refrigeration and Air Conditioning Engineers, which adequately improves air quality within enclosed areas where smoking occurs consisting of:

(1) an approved mechanical device that aspirates air contaminated by smoking within an enclosed area to an external open area; or

(2) an approved aeration device that filters, mechanically or ionically, air contaminated by smoking within an enclosed area improving air quality standards.

(o) Smoking means inhaling, exhaling, or burning any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form. Smoking includes the use of an electronic smoking device.

(p) Sports arena means the enclosed area of any sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(q) Tobacco product means any product made or derived from tobacco, that contains nicotine or other substances, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. Tobacco product does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

SOURCE: Added by P.L. 21-139:1 (Oct. 1, 1992) as § 89103, renumbered § 90103 by the Compiler. Amended by P.L. 28-80:3 (Dec. 9, 2005), effective 150 days from enactment. Amended by P.L. 35-047:1 (Nov. 12, 2019).

2016 NOTE: Subsection/subsitem designations added and altered pursuant to the authority of 1 GCA § 1606.

§ 90104. Application of Chapter to Territorial Facilities.

All enclosed facilities owned, leased, occupied by or operated for and on behalf of the government of Guam shall be subject to the provisions of this chapter.

§ 90105. Prohibition of Smoking in Public Places.

(a) Smoking *shall* be prohibited in all enclosed public places and within twenty (20) feet of the entrance *or* exit of enclosed public places, including, *but not limited to*, the following places:

(1) Elevators.

(2) (A) Buses, taxicabs, airplanes, and other means of public transit, and ticket, boarding, and waiting areas of public transport depots, including bus stops, bus shelters, or any facility provided for students waiting for bus transportation to and from school.

(B) All monies collected from citations issued, pursuant to this subsection, shall be deposited in the Police Services Fund.

(3) Restrooms.

(4) Service lines.

(5) All areas available to and customarily used by the general public in all businesses patronized by the public.

(6) Restaurants.

(7) Public areas of aquariums, galleries, libraries and museums when open to the public.

(8) Any building not open to the sky which is primarily used for exhibiting motion pictures, stage shows, musical recitals or other performances, except when smoking is part of a stage production.

(9) Sports arenas and convention halls.

(10) Every place of meeting or public assembly during such time as a public meeting is in progress.

(11) Waiting rooms, hallways, wards and semi-private rooms for health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.

(12) Polling places.

(13) Bars, except as provided pursuant to § 90107(b) of this Chapter. The enforcement of this Item shall become effective January 1, 2017.

(b) Any owner, operator, manager or other person who controls any establishment, facility or area described within this Chapter where smoking is not or in-part regulated, may prohibit smoking to occur within the entire establishment, facility or area and § 90109, § 90110, and § 90111 of this Chapter shall apply.

(c) Smoking may be permitted within twenty (20) feet of the entrance or exit of a public place only if such smoking area is an open outdoor patio contiguous to the public place and is controlled by the proprietor or management of the public place.

(1) This Subsection shall not apply to a location which would place the smoking area within twenty (20) feet of the public entrance of another public place not controlled by the proprietor or management.

(2) This Subsection shall not apply to government of Guam agencies and facilities, which shall comply with the twenty (20) feet prohibition pursuant to 10 GCA § 90105(a).

SOURCE: Added by P.L. 21-139:1 (Oct. 1, 1992) as § 89105, renumbered § 90105 by the Compiler. Amended by P.L. 28-80:4 (Dec. 9, 2005), effective 150 days from enactment, pursuant to P.L. 28-80:6. Subsection (a)(2) amended by P.L. 29-013:3 (Sept. 7, 2007). Subsection (a) amended by P.L. 30-063:1 (Nov. 27, 2009). Subitem (a)(13) added by P.L. 33-121:5 (Feb. 4, 2016). Subsection (c) added P.L. 30-063:2 (Nov. 27, 2009), amended by P.L. 33-121:6 (Feb. 4, 2016).

§ 90105.1. Prohibition of Smoking on Airline Flights to and from Guam.

Smoking is prohibited on board the aircraft of any flight that takes off and lands on Guam, from the point of embarkation to the point of debarkation, for the duration of the flight to and from Guam. Notwithstanding any other provision of this Chapter, the prohibition in this § 89105.1 shall be enforced by the airline personnel operating the aircraft in the same manner as any other rule or regulation authorized to be enforced by airline personnel in regard to passenger behavior on board aircraft.

SOURCE: Added by P.L. 22-90:1(b) as § 89105.1, renumbered § 90105.1 by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 90106. Regulation of Smoking in Places of Employment.

(a) It shall be the responsibility of employers to provide smoke-free areas for nonsmoking employees within existing facilities to the maximum extent possible.

(b) Within ninety (90) days of the effective date of this chapter, each employer having an enclosed place of employment shall adopt, implement, make known and maintain a written smoking policy, consistent with the provisions of this chapter.

(c) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

(d) All employers shall supply a written copy of the smoking policy upon request of any existing or prospective employee.

(e) Notwithstanding any other provisions of this § 90106, every employer shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

§ 90107. Where Smoking Not Regulated.

(a) Notwithstanding any other provisions of this Chapter, the following areas shall not be subject to the smoking restrictions of this Chapter:

- (1) private residences, except when used as a child care facility or health care facility;
- (2) hotel and motel rooms rented to guests;
- (3) retail tobacco stores; and
- (4) a private enclosed office work place occupied exclusively by one (1) or more smokers.

(b) The A.B. Won Pat Guam International Airport Authority is the only facility, pursuant to Board action, that may provide a separate, fully enclosed non-service room, where beverages and food are not allowed, for smoking, provided it shall be segregated and adequately ventilated with a smoke ventilation device for the size of the room pursuant to § 90103 apart from the main bar where service is provided. In addition, an air curtain shall be placed above the entrance and exit doors of the room to minimize the release of smoke into other areas of the facility.

SOURCE: Added by P.L. 21-139:1 (Oct. 1, 1992) as § 89107, renumbered § 90107 by the Compiler. Amended by P.L. 28-080:5 (Dec. 9, 2005), effective 150 days from enactment, Subsection (b) repealed by P.L. 28-170:3 (Jan. 29, 2007). Amended by P.L. 33-121:7 (Feb. 4, 2016).

§ 90108. Posting of Signs.

(a) “Smoking” or “No Smoking” signs, whichever are appropriate, with letters of not less than one inch (1”) in height or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building and within twenty (20) feet of the entrance or exit of a public place where smoking is regulated by this Chapter by the owner, operator, manager or other person having control of such building or other place.

(b) Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.

(c) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating if a nonsmoking section is available, and where such a section is available, and every patron shall be asked to his or her preference.

SOURCE: Added by P.L. 21-139:1 (Oct. 1, 1992) as 9 GCA § 89108, renumbered § 90108 by the Compiler. Subsection (a) amended by P.L. 33-121:11 (Feb. 4, 2016).

§ 90109. Enforcement.

(a) This Chapter may be enforced by:

- (1) any peace officer as defined by 8 GCA § 5.55;
- (2) any employee of the Department of Public Health and Social Services when authorized in writing by the Director of Public Health and Social Services to enforce the provisions of this Chapter;
- (3) any employee of the Guam Environmental Protection Agency when authorized in writing by the Administrator of the Guam Environmental Protection Agency to enforce the provisions of this Chapter;
- (4) a Citizen Assisted Police Enforcement (CAPE) volunteer, as provided pursuant to § 77302 of Article 3, Chapter 77, Title 10, Guam Code Annotated;
- (5) all security officers employed by the government of Guam, or performing security work for the government of Guam or employed by private entity pursuant to their employer's contract, for any government of Guam agency, authority or department, by whatever name, both autonomous and line agencies, of the government of Guam;
- (6) private security personnel employed by private security companies which have elected to provide security services for business establishments desiring to enforce the Natasha Protection Act, and who have been duly trained by a qualified government identified entity for the execution of such responsibilities; and
- (7) private security personnel employed by business establishments, which have elected to provide security services to include compliance with the Natasha Protection Act, and who have

been duly trained by a qualified government identified entity for the execution of such responsibilities.

(b) The enforcement of this Chapter shall be undertaken subject to the provisions of 8 GCA Chapter 25.

(c) The Director of a government of Guam agency, authority, department or instrumentality, by whatever name, both autonomous and line agencies, shall be authorized to delegate the authority and responsibility to an employee to additionally serve and function as a designated no-smoking enforcement officer for the purpose of ensuring compliance with this Chapter in and around a government facility.

SOURCE: Added by P.L. 21-139:1 (Oct. 1, 1992) as 9 GCA § 89109, renumbered § 90109. Amended by sections 1, 2, and 10 of P.L. 33-121 (Feb. 4, 2016), to include the repeal of subsection (a)(4).

2016 NOTE: The repeal of subsection (a)(4) by P.L. 33-121:10 was incorporated as part of the general amendment of the entire provision by P.L. 33-121:1, in light of the express authorization, of 10 GCA § 77302 as amended by P.L. 33-121:4, to provide CAPE volunteers with the authority to enforce the Natasha Protection Act of 2005.

§ 90109.1. Enforcement Training.

(a) The Bureau of Community Health Services of the Department of Public Health and Social Services, in conjunction with the Peace Project of the Guam Behavioral Health and Wellness Center and the Guam Police Department, shall develop the minimum criteria for a basic training program for private security personnel, as provided pursuant to Items (7) and (8) of § 90109(a) of this Chapter, which shall, at a minimum, provide for:

- (1) an understanding of 10 GCA Chapter 90;
- (2) the proper issuance of smoking violation citations;
- (3) obtaining a certificate demonstrating the completion of a required course of instruction and training that includes training in measures to avoid dangerous confrontations with violators of this Section; and
- (4) other basic training deemed appropriate for safe and proper enforcement.

(b) The training program criteria developed by the Bureau of Community Health Services of the Department of Public Health and

Social Services, in conjunction with the Peace Project of the Guam Behavioral Health and Wellness Center and the Guam Police Department pursuant to this Section, shall be submitted to *I Liheslaturan Guåhan* for informational purposes sixty (60) days prior to the date of implementation.

SOURCE: Added by P.L. 33-121:3 (Feb. 4, 2016).

§ 90110. Violations and Penalties.

(a) It shall be unlawful for any person who owns, operates or otherwise controls any premises subject to regulation under this chapter to fail to comply with any of its provisions.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

(c) Any person who violates any of the provisions of subparagraph (a) and (b) of this § 90110 shall, upon conviction thereof, be punished by:

(1) A fine not exceeding One Hundred Dollars (\$100) for a first violation.

(2) A fine not exceeding Two Hundred Dollars (\$200) for a second violation.

(3) A fine not exceeding Five Hundred Dollars (\$500) for each additional violation thereafter.

(d) Any business which violates any of the provisions of subparagraphs (a) and (b) of this § 90110 shall, upon conviction thereof, be punished by:

(1) A fine not exceeding One Thousand Dollars (\$1,000) for a first violation.

(2) A fine not exceeding Two Thousand Dollars (\$2,000) for a second violation.

(3) A fine not exceeding Three Thousand Dollars (\$3,000) for each additional violation thereafter.

§ 90111. Nonretaliation.

No person or employer shall discharge or in any manner retaliate against any employee because such employee exercises any rights afforded by this chapter.

§ 90112. Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

§ 90113. Severability.

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not effect the other provisions of this chapter which can be given effect without the invalid provision or application; and to this end the provisions of this chapter are declared to be severable.

§ 90114. Prohibition of Smoking in a Vehicle When a Child is Present.

(a) Smoking is prohibited in a motor vehicle if a child who is seventeen (17) years of age or younger or a pregnant woman is present in the vehicle, regardless of whether the vehicle is moving or stationary.

(b) A person who is in violation of Subsection (a) shall, upon conviction thereof, be subject to a maximum fine of One Hundred Dollars (\$100.00) for a first offense. Alternatively, the offender may plead guilty to the offense and remit a fine of One Hundred Dollars (\$100.00).

(c) A person who is in violation of Subsection (a) shall, upon conviction thereof, be subject to a fine of no less than One Hundred Dollars (\$100.00) and no more than Two Hundred Dollars (\$200.00) for a second offense. The fine shall not be suspended by the court for second or subsequent offenses. Alternatively, the offender may plead guilty to the offense and remit a fine of Two Hundred Dollars (\$200.00).

(d) A person who is in violation of Subsection (a) shall, upon conviction thereof, be subject to a fine of no less than Two Hundred Dollars (\$200.00) and no more than Five Hundred Dollars (\$500.00) for a third offense, and for each additional violation thereafter. Alternatively, the offender may plead guilty to the offense and remit a fine of Five Hundred Dollars (\$500.00).

(e) Enforcement of this Section by a local law enforcement officer

shall be conducted whenever a violation is witnessed.

(f) Three (3) or more violations of this Section may be used as a basis for or evidence of child abuse or neglect.

(g) All fines paid, upon a conviction pursuant to a violation of this § 90114, shall be deposited in the Guam Cancer Trust Fund (P.L. 30-80, codified in Title 11, Chapter 26, Guam Code Annotated, as amended), and shall be expended pursuant to applicable law and regulations pertaining to the Fund.

SOURCE: Added by P.L. 31-102:2 (Sept. 30, 2011), amended by P.L. 33-121:9 (Feb. 4, 2016).
