

**Guam Code Annotated  
Applicable to  
Department of Mental Health and Substance Abuse**

**11 GCA Finance and Taxation  
Chapter 6 Tobacco Control**

**11 GCA FINANCE & TAXATION  
CH. 6 TOBACCO CONTROL**

**CHAPTER 6  
TOBACCO CONTROL**

**SOURCE:** This Chapter was added by P.L. 24-278:3 and repealed and reenacted in its entirety by P.L. 28-170:1 (Jan. 29, 2007).

- Article 1. General Provisions.
- Article 2. Licenses.
- Article 3. Issuance of Licenses.
- Article 4. Sale or Distribution to Minors Prohibited.
- Article 5. Enforcement.
- Article 6. Prohibition on Importation.

**ARTICLE 1  
GENERAL PROVISIONS**

- § 6100. Title.
- § 6101. Definitions.
- § 6102. Applicability of Commercial Licenses Provisions and Requirements.

**§ 6100. Title.**

This Chapter shall be known and cited as the ‘Tobacco Control Act of 2006.’

**§ 6101. Definitions.**

Unless the context otherwise requires, the definitions set forth herein shall govern the construction and interpretation of this Chapter.

(a) ‘Director’ means the Director of Revenue and Taxation.

(b) ‘License’ means Retail License and Wholesale License for sales of tobacco products, as defined under this Section.

(c) ‘Minor’ means any person under eighteen (18) years of age.

(d) ‘Person’ means any individual, company, corporation, firm, partnership, organization, estate, trust, limited liability company, limited liability partnership or other legal entity.

(e) ‘Retail’ means the sale of tangible personal property for consumption or use by the purchaser and not for resale.

**11 GCA FINANCE & TAXATION**  
**CH. 6 TOBACCO CONTROL**

(f) 'Retail License' means a license issued by the Director of Revenue and Taxation for the retail sale of tobacco products or sale through a vending machine.

(g) 'Tobacco product' means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other means of ingestion.

(h) 'Vending Machine' means any mechanical, electrical or electronic device that, on insertion of money, tokens or any other form of payment, automatically dispenses tobacco products.

(i) 'Wholesale' means the importation into or purchase on Guam from a manufacturer or other wholesale licensee of tangible personal property not for consumption or use by the purchaser but *solely* for resale or retail wholesale or retail sellers.

(j) 'Wholesale License' means a license issued by the Director of Revenue and Taxation for the wholesale sale of tobacco products to retailers.

**§ 6102. Applicability of Commercial Licenses Provisions and Requirements.**

Provisions and requirements of Chapters 70 and 72 of Title 11 of the Guam Code Annotated applicable to commercial licenses shall govern this Chapter in matters and provisions not specifically provided in this Chapter and when relevant.

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**ARTICLE 2**  
**LICENSES**

- § 6200. License: Required.
- § 6201. Same: Classes and Fees.
- § 6202. Same: Term.
- § 6203. Same: Renewal.
- § 6204. Same: Vending Machines.
- § 6205. Same: Multiple.
- § 6206. License: Privilege: Limitation.
- § 6207. Same: Limitation.
- § 6208. Display of License.

**11 GCA FINANCE & TAXATION  
CH. 6 TOBACCO CONTROL**

**§ 6200. License: Required.**

(a) It shall be a violation of this Chapter for any person to wholesale tobacco products without first obtaining a valid wholesale tobacco license.

(b) It shall be a violation of this Chapter for any person to retail tobacco products without first obtaining a valid retail tobacco license for each premises or vending machine in which tobacco products are sold.

(c) Any person directly or indirectly engaged in the business of manufacturing tobacco products may not retail tobacco products, directly or indirectly, or hold a retail or wholesale license. It shall not be a violation of this Chapter for any such person engaged in the business of manufacturing tobacco products to import, export or sell for resale tobacco products to a duly licensed tobacco wholesaler.

**§ 6201. Same: Classes and Fees.**

The Director is authorized to issue the following classes of licenses at the following fees, which shall be paid by the applicant at the time of application:

- (a) Annual Retail License: \$ 40.00;
- (b) Annual Vending Machine Retail License: \$ 20.00;
- (c) Annual Wholesaler License: \$ 500.00.

**§ 6202. Same: Term.**

Licenses shall be issued on an annual basis and shall expire on the thirty-first (31st) day of March following the date of issuance. The full fee shall be paid for any fraction of the year for which a license is issued.

**§ 6203. Same: Renewal.**

A licensee may renew his license at the expiration thereof by the payment of the annual license fee set forth in this Chapter and by filing a renewal application. A licensee who fails to renew his license on or before the thirty-first (31st) day of March of each year shall be assessed a late fee of Twenty Dollars (\$20.00) and a penalty of One Dollar (\$1.00) per each calendar day he is delinquent, which penalty shall become part of the renewal fee, and the license is automatically suspended, unless all payments for annual fee, late fee and the daily penalty are paid in full on or before April 30 of that year, in which case the license may be

**11 GCA FINANCE & TAXATION**  
**CH. 6 TOBACCO CONTROL**

reinstated by the Director immediately. Unless the license is so reinstated, it is automatically revoked and the Director shall not issue a license except upon a new original application. Any licensee who fails to renew his or her license on or before the thirtieth (30th) day of April shall be required to discontinue the sales of tobacco products.

Additionally, any licensee who fails to renew his or her license on or before the thirtieth (30th) day of April shall be subject to an injunction issued by the Superior Court of Guam and to prosecution under Title 11 GCA § 70119. Such failure to renew while continuing the operation of the business shall constitute refusal and failure to obtain a license pursuant to Division 3 of this Title.

**§ 6204. Same: Vending Machines.**

(a) The owner of a vending machine shall obtain a retail license and pay the fee required for each vending machine.

(b) The owner of a vending machine who violates Subsection (a) of this Section shall be fined Fifty Dollars (\$50.00) per violation.

**§ 6205. Same: Multiple.**

A person applying for retail licenses to operate more than one (1) premise or more than one (1) vending machine shall obtain a separate retail license for each premise and each vending machine, and shall pay the fee prescribed for each premise and each machine.

**§ 6206. License: Privilege: Limitation.**

A licensee is limited to the privileges conferred by the license and is not authorized to exercise any other privileges.

**§ 6207. Same: Limitation.**

A licensee is limited to the premises for which the license is issued and is not authorized to exercise the privileges conferred by the license at other premises.

**§ 6208. Display of License.**

(a) A licensee for sales of tobacco products, excluding sales through vending machines, shall prominently display the license on each licensed premise.

(b) The licensee for vending machines sales of tobacco products

**11 GCA FINANCE & TAXATION  
CH. 6 TOBACCO CONTROL**

shall affix a retail license decal furnished by the Director in a prominent position on each vending machine.

(c) Any licensee who violates this Section shall be fined Fifty Dollars (\$50.00) per violation.

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**ARTICLE 3  
ISSUANCE OF LICENSES**

- § 6300. License: Restrictions.
- § 6301. Same: Same: Real Party in Interest.
- § 6302. Same: Same: Minors.
- § 6303. Same: Same: Prior Revokee.
- § 6304. Same: Same: Unfit Person.
- § 6305. Same: Application.
- § 6306. Application: Investigation.
- § 6307. Penalties for Selling Tobacco Products Without a License.

**§ 6300. License: Restrictions.**

(a) Except in the case of a vending machine retail license, the Director shall not issue a license to any person who then holds a license of another class.

(b) No wholesaler within or outside of Guam, nor any officer, thereof, nor any subsidiary, affiliate or other entity in which a wholesaler holds any ownership or interest, directly or indirectly by stock ownership, interlocking directors, trusteeship, loan, mortgage or lien on any real or personal property, shall hold any tobacco license other than a wholesaler's license in Guam.

**§ 6301. Same: Same: Real Party in Interest.**

The Director shall not issue a license of any class to an applicant who is not the real party in interest.

**§ 6302. Same: Same: Minors.**

The Board shall not issue a license of any class to a person under eighteen (18) years of age.

11 GCA FINANCE & TAXATION  
CH. 6 TOBACCO CONTROL

**§ 6303. Same: Same: Prior Revokee.**

Except in the case of a license revoked for non-payment of a renewal fee, the Director shall not issue a license of any class to any person who held a license of any class which was revoked within a one (1) year period prior to the date of the application.

**§ 6304. Same: Same: Unfit Person.**

The Director shall not issue a license of any class to any person the Director deems unfit to hold a license.

**§ 6305. Same: Application.**

An applicant for a license shall submit an application in writing to the Director, verified under oath and accompanied by the license fee.

**§ 6306. Application: Investigation.**

Upon receipt of an application for a license and the license fee, the Director shall investigate whether the applicant and the premises qualify for a license.

**§ 6307. Penalties for Selling Tobacco Products Without a License.**

In addition to any other penalties and fines that may be levied, including those under § 6404 and § 70120 of this Title, any person who violates § 6200 shall be guilty of a misdemeanor as set forth in § 70119 of this Title, and punished as follows:

(a) in the case of a first violation, by a fine of Two Hundred Fifty Dollars (\$250.00);

(b) in the case of a second violation, by a fine of Five Hundred Dollars (\$500.00);

(c) in the case of three (3) or more violations, a fine of not less than One Thousand Dollars (\$1,000.00), nor more than Two Thousand Five Hundred Dollars (\$2,500.00), and the person shall not be eligible to apply for a license for five (5) years after the date of the assessment of a fine.

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**ARTICLE 4  
SALE OR DISTRIBUTION TO MINORS PROHIBITED**

**11 GCA FINANCE & TAXATION**  
**CH. 6 TOBACCO CONTROL**

- § 6400. Sale or Distribution of Tobacco Products to Minors Prohibited.
- § 6401. Acceptable Forms of Identification.
- § 6402. Display of Prohibition on Sales of Tobacco Products to Minors.
- § 6403. Licensee Responsible for Employee Actions.
- § 6404. Penalties for Selling or Distributing Tobacco Products to Minors.
- § 6405. Minors Prohibited from Possession, Use and Purchase of Tobacco Products.
- § 6406. Tobacco Education for Minors.

**§ 6400. Sale or Distribution of Tobacco Products to Minors Prohibited.**

It shall be a violation of this Chapter for any person to sell or distribute tobacco products to minors. It shall not be a violation of this Chapter for any person to refuse to sell or distribute tobacco products to any person whom the seller or the distributor reasonably believes to be under twenty-seven (27) years of age, and who is unable to produce acceptable photographic identification and proof that he is over the age of eighteen (18) years.

(a) Vending machines selling tobacco products shall be located so that they are accessible only to persons over the age of eighteen (18) or are under the constant, direct supervision and unobstructed line-of-sight of the person authorizing the installation or placement of the tobacco vending machine upon the premises he manages or otherwise controls, or his agent or employee. Said supervising adult shall ensure that minors do not purchase tobacco products from vending machines. A person who authorizes the installation or placement of the tobacco vending machine upon premises he manages, or otherwise controls, and who knows or should know that the tobacco vending machine will likely be used by minors, shall be liable if minors purchase tobacco products from said machines.

(b) A licensee or an employer may distribute tobacco products to any employee who handles tobacco products in the course of the commercial distribution or sale of the products. In any proceeding, for the suspension or revocation of any license, and based upon a violation of this Section, proof that the defendant licensee or his agent or employee demanded and was shown, before furnishing any tobacco product to a minor, an identification card, shall be a defense to the

**11 GCA FINANCE & TAXATION  
CH. 6 TOBACCO CONTROL**

charges.

**§ 6401. Acceptable Forms of Identification.**

The following are the only acceptable instruments of identification as required by § 6400:

- (a) a valid unexpired driver's license issued by any state, territory or possession of the United States;
- (b) an official identification issued by the Federal or a state government with the individual's photograph and signature;
- (c) an armed forces identification card;
- (d) a valid, unexpired passport; and
- (e) an alien registration receipt card (green card).

**§ 6402. Display of Prohibition on Sales of Tobacco Products to Minors.**

All licensees shall post notice that this Chapter prohibits the sale of tobacco products to minors.

(a) In the case of a retail operation, notices shall be publicly and conspicuously displayed in the licensee's place of business in letters at least two inches (2") in height.

(b) In the case of vending machine, the licensee shall affix to the front of each vending machine a sign in letters at least one-half inch (1/2") in height.

(c) Any licensee who violates this Section shall be fined Fifty Dollars (\$50.00) per violation.

**§ 6403. Licensee Responsible for Employee Actions.**

Acts or omissions of an agent or employee of a licensee that violate any provisions of this Chapter shall be deemed to be acts or omissions of the licensee.

**§6404. Penalties for Selling or Distributing Tobacco Products to Minors.**

(a) In addition to any other penalties and fines that may be levied, any person who violates § 6400 of this Chapter shall be penalized as follows:

**11 GCA FINANCE & TAXATION**  
**CH. 6 TOBACCO CONTROL**

(1) in the case of a first violation in any five (5) year period, the person shall be fined Five Hundred Dollars (\$500.00) and shall be notified, in writing, of penalties levied for further violations;

(2) in the case of a second violation in any five (5) year period, the person shall be fined One Thousand Dollars (\$1,000.00) and, in the case of a licensee, the license shall be suspended for ninety (90) days;

(3) in the case of a third violation in any five (5) year period, the person shall be fined Two Thousand Five Hundred Dollars (\$2,500.00) and, in the case of a licensee, the license shall be suspended for one hundred eighty (180) days;

(4) in the case of four (4) or more violations within any five (5) year period, the person shall be fined Five Thousand Dollars (\$5,000.00) and, in the case of a licensee, the license shall be revoked. The revoked retailer shall be ineligible to apply for a new license for two (2) years after the effective date of the revocation.

(b) Failure to pay a fine levied under this Chapter within thirty (30) days of the date the fine becomes effective shall result in suspension of the licensee's license until such fines are paid.

(c) During any suspension or revocation of a license under this Section, the licensee shall not sell tobacco products and shall remove all tobacco products from all areas covered by the suspended license. In addition, any new application for a license to sell tobacco products while a licensee is suspended under this Chapter shall be denied.

**§ 6405. Minors Prohibited from Possession, Use and Purchase of Tobacco Products.**

It shall be a violation of this Chapter for any minor to use or be in possession of tobacco products or to attempt to purchase tobacco products using false identification.

**§ 6406. Tobacco Education for Minors.**

Any minor who violates § 6405 of this Chapter shall attend an education program on tobacco products to include smoking cessation information administered by the Department of Mental Health and Substance Abuse, the Department of Public Health and Social Services, the Guam Public School System or other government agencies with

**11 GCA FINANCE & TAXATION  
CH. 6 TOBACCO CONTROL**

similar programs approved by one of these agencies.

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**ARTICLE 5  
ENFORCEMENT**

- § 6500. Enforcement.
- § 6501. Notice.
- § 6502. Hearing.
- § 6503. Publication and Distribution of Laws and Rules.
- § 6504. Use of Collected Fees and Penalties for Youth Programs.
- § 6505. Youth Tobacco Education and Prevention Fund.
- § 6506. Report.

**§ 6500. Enforcement.**

The Director shall enforce this Chapter in cooperation with the Department of Mental Health and Substance Abuse. Any person may register a complaint pursuant to this Chapter with the Director. The Director shall notify any establishment or individual of a complaint made pursuant to this Chapter and shall keep a record of that notification.

(a) The Director shall conduct random, unannounced inspections at retail sites and may enlist the assistance of persons who are between twelve (12) and seventeen (17) years of age, upon written consent of their parents or legal guardians. Participation in these enforcement activities by a minor shall not constitute a violation of § 6405 of this Chapter, and the minor is immune from prosecution and penalties, or under any other provision of law prohibiting the purchase of tobacco products by minors.

(b) The Director shall enact and publish guidelines for the use of minors in inspections conducted pursuant to this Section, that shall include, but not be limited to, all of the following:

(1) the Director may, upon written consent of their parents or legal guardians, enlist the services of minors who are between twelve (12) and seventeen (17) years of age in random inspections to determine if sales of cigarettes or other tobacco products are being made to minors;

(2) a photograph or video recording of the minor shall be taken

**11 GCA FINANCE & TAXATION  
CH. 6 TOBACCO CONTROL**

prior to each inspection or shift of inspections and retained by the Director for the purpose of verifying appearances;

(3) the Director may use video recording equipment when conducting the inspections to record and document illegal sales or attempted sales;

(4) the minor, if questioned by the licensee or his agents about his or her age, shall state his actual age and shall present a true and correct identification if verbally asked to present it. The minor's failure to provide true and correct identification, if requested, shall be a defense to any action pursuant to this Chapter.

(5) the minor shall be supervised of a regularly employed peace officer or an adult duly authorized by the Director during the inspection;

(6) following the sale or attempted sale, the peace officer or adult supervising the minor shall reenter the retail establishment and inform the seller of the random inspection and identify the minor to the seller; and

(7) failure to comply with the procedures set forth in this Section shall be a defense to any action brought pursuant to this Chapter.

**§ 6501. Notice.**

Prior to the revocation or suspension of a license issued under this Chapter, the Director shall provide a notice to the defendant, via certified mail, return receipt requested. The notice shall contain the following information:

(a) the name and title of the person issuing the notice;

(b) the date on which the fine, suspension or revocation will become effective;

(c) the reason for the fine, revocation or suspension;

(d) that the licensee may request a hearing regarding the fine, revocation or suspension;

(e) that the person must request a hearing in person or in writing via certified mail, return receipt requested, and received by the Director within ten (10) days after receipt of the notice; and

**11 GCA FINANCE & TAXATION**  
**CH. 6 TOBACCO CONTROL**

(f) that failure to appear in person or through mail received by the Director within ten (10) days after receipt of the notice, or by the notice's return by the U.S. Postal Service, shall be a waiver of the right to a hearing and the fine, revocation or suspension will become effective on the date specified in the notice.

**§ 6502. Hearing.**

Except as otherwise specifically provided for herein, the Director shall conduct any proceedings required by this Chapter in accordance with the Administrative Adjudication Law, and shall have all of the powers granted in said Law.

(a) Upon receipt of the request for a hearing as provided in § 6501, supra, a hearing shall be held before a Hearing Officer appointed by the Director in accordance with the Administrative Adjudication Law. The hearing shall be conducted within forty-eight (48) hours of receipt of the request, holidays, Saturdays and Sundays not included. The hearing may be set for a later day if the applicant or licensee so requests.

(b) At the hearing the applicant, defendant or licensee may contest the denial, fine, revocation or suspension.

(c) If the Hearing Officer finds that the applicant is not eligible for a license, the Hearing Officer shall declare the license application denied. If the Hearing Officer finds that the fine, suspension or revocation is in accordance with this Chapter, the fine, suspension or revocation shall take effect immediately. The action of the Hearings Officer is final.

(d) If the applicant or licensee does not appear at the scheduled hearing in person, or through a representative as allowed by the Hearing Officer, the Hearing Officer shall affirm the denial, fine, revocation or suspension of the licensee or applicant.

**§ 6503. Publication and Distribution of Laws and Rules.**

The Director shall compile and provide a copy of the laws and rules concerning retail tobacco sales to every new licensee at no charge.

**§ 6504. Use of Collected Fees and Penalties for Youth Programs.**

All fines and fees assessed and collected under this Chapter shall be distributed and deposited in the following manner by the Director on the

**11 GCA FINANCE & TAXATION**  
**CH. 6 TOBACCO CONTROL**

final working day of the months of March, June, September and December of each year:

(a) thirty percent (30%) to the Department of Parks and Recreation Off-Island Sports Fund;

(b) twenty percent (20%) to the Health and Human Services Fund; and

(c) fifty percent (50%) to the Youth Tobacco Education and Prevention Fund.

**§ 6505. Youth Tobacco Education and Prevention Fund.**

There is created, separate and apart from any other funds of the government of Guam, under the administration and control of the Director, the Youth Tobacco Education and Prevention Fund ('YTEPF'). YTEPF shall be held in an account or accounts at a Guam financial institution, or institutions, separate and apart from all other accounts and funds of the government of Guam, and shall not be subject to the transfer authority of *I Maga 'lahen Guahan*. One hundred percent (100%) of the funds in the YTEPF shall be used by the Department of Mental Health and Substance Abuse for youth compliance monitoring and tobacco and drug prevention and education programs.

**§ 6506. Report.**

The Director shall report monthly to the Department of Mental Health and Substance Abuse ('DMHSA') a list of all licenses granted and renewed, including the names and street addresses of the business or the location of the vending machines, the number of violations processed and the penalties imposed, and any other information that the Director and DMHSA agree upon.

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**ARTICLE 6**  
**PROHIBITION ON IMPORTATION**

§ 6600. Who May Import.

§ 6601. Prohibitions.

§ 6602. Penalty.

**§ 6600. Who May Import.**

**11 GCA FINANCE & TAXATION**  
**CH. 6 TOBACCO CONTROL**

Tobacco products may be brought into Guam from without Guam for delivery or use within Guam only if the tobacco products are imported by or consigned to a licensed wholesaler.

**§ 6601. Prohibitions.**

The transportation or importation into Guam for delivery or use in Guam of tobacco products without payment of the tax provided by Chapter 26, Article 6, of this Code, or contrary to the provisions of Article 6, is hereby prohibited.

**§ 6602. Penalty.**

Whoever transports or imports into Guam for delivery or use in Guam tobacco products in violation of this Article shall be penalized as follows:

(a) in the case of a first violation, the person shall be guilty of a misdemeanor and may be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both;

(b) in the case of any subsequent violation, the person shall be guilty of a felony of the third degree and shall be fined not more than Ten Thousand Dollars (\$10,000.00) or imprisoned for not more than five (5) years, or both.

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