

MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 20 (LS)
Introduced by:

R.J. RESPICIO
B.J.F. CRUZ
J.P. GUTHERZ

2009 JAN 28
AM 11:00

AN ACT TO REPEAL AND RE-ENACT CHAPTER 4 OF DIVISION 1, AND TO REPEAL AND RE-ENACT §5201(g) OF CHAPTER 5, DIVISION 1, BOTH OF TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO ENSURING THAT ALL EMPLOYEES ARE TREATED FAIRLY, HAVE CHOICE IN THE WORKPLACE, AND DO NOT PAY FOR BENEFITS THEY DO NOT RECEIVE.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Chapter 4 of Division 1 of Title 22 Guam Code**

3 **Annotated is Repealed and Re-enacted to read:**

4 **"CHAPTER 4**

5 **FAIR SHARE**

6 **§ 4101. Legislative Findings.**

7 **§ 4102. Policy.**

8 **§ 4103. Fair Share Fee Definition.**

9 **§ 4104. Fair Share Fee for Work Permitted.**

10 **§ 4105. Unlawful Act.**

11 **§ 4106. Unlawful Agreements.**

1 § 4107. Deductions from Wages.

2 § 4108. Collective Bargaining Agreement Violating Fair Share
3 Provisions.

4 § 4109. Penalties.

5 § 4110. Applicability of Fair Share Provisions.

6 § 4111. Guam Employment Relations Act.

7 § 4112. Severability.

8 **§4101. Legislative Findings.** *I Liheslaturan Guåhan* finds that the
9 federal government, under the National Labor Relations Act (NLRA),
10 ensures that workers who are union members, as well as workers
11 who are not members of a union, are protected equally and fairly in
12 their workplace. A right for a worker to become a union member, as
13 well as a right for a worker to decline to join a union are inherent
14 rights of individuals that are guaranteed by federal law.

15 The Supreme Court of the United States has also made several
16 landmark rulings to protect workers:

17 (a) In 1985 in *Pattern Makers v. NLRB*, the Supreme Court
18 ruled that union members have the right to resign their union
19 membership at any time without affecting their employment;

1 and

2 (b) In 1988 in *Communications Workers v. Beck*, The
3 Supreme Court ruled that an employee cannot be required to
4 join a union, and cannot be required to pay union dues.

5 In protecting union members and non-union members alike,
6 Federal law also guarantees the following:

7 (a) employees who are not union members are still fully
8 covered by any collective bargaining agreement negotiated
9 between the employer and the union;

10 (b) any benefits provided to the employee by the
11 employer based on the collective bargaining agreement,
12 including wages, seniority, vacations, pensions and health
13 insurance, are not affected by non-membership; and

14 (c) under *Communications Workers v. Beck*, Federal law also
15 guarantees that, based on a collective bargaining agreement,
16 non-union members can only be required to pay a fee for
17 union-negotiated benefits that equals their fair share of what
18 unions can prove are their costs of collective bargaining,
19 contract administration, and grievance adjustment with

1 employers.

2 **§ 4102. Policy.** It is hereby declared to be the public policy of
3 Guam:

4 (a) That all employees are treated fairly and have choice in the
5 workplace regarding union membership as guaranteed by federal
6 law.

7 (b) That employees shall not pay for benefits that they do not
8 receive.

9 (c) That employees shall pay a fee for union-negotiated benefits
10 known as "Fair Share," as defined in 94103 of this chapter.

11 **§ 4103. Fair Share Fee Definition.** A "Fair Share Fee" is a fee
12 paid by an employee who is *not* a member of a union at his
13 workplace, such fee having been determined in the collective
14 bargaining agreement covering the employee to be the fair share of
15 an amount that the labor union can prove are its costs of collective
16 bargaining, contract administration, and grievance adjustment with
17 the employer.

18 **§ 4104. Fair Share Fee For Work Permitted.** A labor union,
19 organizer, officer, member, agent, or representative of a labor union

1 may collect, receive or demand, directly or indirectly, a "fair share"
2 fee, as defined in §4103 of this chapter, from a person who is *not* a
3 member of the union *provided* the fee has been established by the
4 union and management in the collective bargaining agreement.

5 **§ 4105. Unlawful Act.** It shall be unlawful for any employer, as
6 a condition of employment, or of continuance of employment, to
7 allow any employee to receive a "fair share" benefit as defined in §
8 4103 of this chapter, for which the employee does not pay their "fair
9 share" fee.

10 **§ 4106. Unlawful Agreements.** Any agreement or combination
11 between any employer and any labor organization whereby persons
12 *not* members of such labor organization shall receive benefits
13 negotiated by the labor organization for which the employee is not
14 required to pay their "fair share" fee as defined in § 4103 of this
15 chapter, is hereby declared to be against public policy, unlawful and
16 an illegal combination or conspiracy.

17 **§ 4107. Deductions From Wages.** Nothing in this Chapter shall
18 preclude any employer from deducting from the wages of its
19 employees and paying over to any labor union, or its authorized

1 representative, membership dues in a labor organization, or "fair
2 share" fees, as defined in § 4103 of this chapter for benefits received
3 by non-members; provided, that the employer has received from
4 each employee whose account such deductions are made, a written
5 assignment from the employee.

6 **§ 4108. Collective Bargaining Agreement Violating Fair Share**
7 **Provisions.** It shall be unlawful for any employer or labor
8 organization to enter into or seek to effect any agreement, contract or
9 arrangement declared to be unlawful by this Act.

10 **§ 4109. Penalties.** Any employer, labor organization or other
11 person whomsoever who shall violate any provision of this Chapter
12 shall be guilty of a misdemeanor; and upon conviction thereof in any
13 Court of competent jurisdiction, shall be punished by imprisonment
14 for *not less than* ten (10), nor more than thirty (30) days, or by a fine of
15 *not less than* One Hundred Dollars (\$100.00) nor more than Two 2
16 Thousand Dollars (\$2,000.00), or by both at the discretion of the
17 Court.

18 **§ 4110. Applicability Of Fair Share Provisions.** The provisions
19 of this Act shall *not* apply to any contract, otherwise lawful, in force

1 and effect on the effective date of this Act, but they shall apply to all
2 contracts thereafter concluded and to any renewal or extension of
3 existing contracts.

4 **§ 4111. Guam Employment Relations Act.** The provisions of
5 this Act shall *not* be construed to conflict with provisions of the
6 Guam Employment Relations Act, Chapter 5 of Division 1 of Title 22
7 of the Guam Code Annotated.

8 **§ 4112. Severability.** *If* any provision of this Act or the
9 application of any such provision to any person or circumstance
10 should be held invalid by a Court of competent jurisdiction the
11 remainder of this Act or the application of its provisions to persons or
12 circumstances other than those to which it is held invalid shall *not* be
13 affected thereby.

14 **Section 2. Section 5201(g) of Article 2, Chapter 5, Division 1 of Title**
15 **22 of the Guam Code Annotated is repealed and reenacted to read:**

16 “(g) for any employer, labor organization or employment
17 agency to require any person to become or remain a member of any
18 labor union or labor organization as a condition of employment or
19 continuation of employment, or to require a person to abstain or

1 refrain from membership in any labor union or labor organization as
2 a condition of employment or continuation of employment.”