EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

JUN 1 2 2015

Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Tres Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

2015 JUN 15 PM 1:0

Dear Madame Speaker:

Transmitted herewith is Bill No. 9-33 (COR) **"AN ACT TO ADOPT THE RULES RELATIVE TO RESPONSIBLE ALCOHOL SERVER/SELLER TRAINING PRORAMS, BY *AMENDING* CHAPTER 2 – ALCOHOLIC BEVERAGE CONTROL BOARD, OF TITLE 3, GUAM ADMINISTRATIVE RULES AND REGULATIONS - BUSINESS REGULATIONS; BY *REPEALING* AND *REENACTING* SECTION 11 OF PUBLIC LAW 32-51; AND BY *AMENDING* SUBSECTION (b) OF § 3124.1 OF TITLE 11, GUAM CODE ANNOTATED"** which I signed into law on June 10, 2015, as **Public Law 33-32.**

Senseramente,

EDDIE BAZA CALVO

33-15-0520
Office of the Speaker
Judith T. Won Pat, Ed.D

Date: 06-15-15
Time: 11:13 AM
Received By:

0520

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I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Bill No. 9-33 (COR), "AN ACT TO ADOPT THE RULES AND REGULATIONS RELATIVE TO RESPONSIBLE ALCOHOL SERVER/SELLER TRAINING PROGRAMS, BY *AMENDING* CHAPTER 2 - ALCOHOLIC BEVERAGE CONTROL BOARD, OF TITLE 3, GUAM ADMINISTRATIVE RULES AND REGULATIONS - BUSINESS REGULATIONS; BY *REPEALING AND REENACTING* SECTION 11 OF PUBLIC LAW 32-51; AND BY *AMENDING* SUBSECTION (b) OF §3124.1 OF TITLE 11, GUAM CODE ANNOTATED,"** was on the 29th day of May 2015, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 1st day of June, 2015, at 5:20 o'clock P.M.

Elizabeth A. Mafnas
Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: JUN 10 2015

Public Law No. 33-32

OFFICE OF THE GOVERNOR
RECEIVED
JUN 01 2015
TIME 5:20
REC'D BY
CENTRAL FILES

I MINA'TRENTAI TRES NA LIHESLATURAN GUAHAN
2015 (FIRST) Regular Session

Bill No. 9-33 (COR)
As amended by the Committee on Finance and Taxation,
General Government Operations, and Youth Development;
and further amended on the Floor.

Introduced by: Dennis G. Rodriguez, Jr.
T. C. Ada
V. Anthony Ada
Frank F. Blas, Jr.
FRANK B. AGUON, JR.
B. J.F. Cruz
James V. Espaldon
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
R. J. Respicio
Michael F.Q. San Nicolas
Mary Camacho Torres
N. B. Underwood, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO ADOPT THE RULES AND REGULATIONS RELATIVE TO RESPONSIBLE ALCOHOL SERVER/SELLER TRAINING PROGRAMS, BY *AMENDING* CHAPTER 2 - ALCOHOLIC BEVERAGE CONTROL BOARD, OF TITLE 3, GUAM ADMINISTRATIVE RULES AND REGULATIONS - BUSINESS REGULATIONS; BY *REPEALING AND REENACTING* SECTION 11 OF PUBLIC LAW 32-51; AND BY *AMENDING* SUBSECTION (b) OF §3124.1 OF TITLE 11, GUAM CODE ANNOTATED.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that the Alcoholic Beverage Control (ABC) Board has not promulgated the

requisite Rules and Regulations, as mandated pursuant to §2107(c) of Chapter 2, Title 3, Guam Administrative Rules and Regulations, which provides that, "[t]he Administrator shall approve classroom alcohol server/seller training programs that meet the regulations duly promulgated by the Board pursuant to Title 11, Guam Code Annotated, § 3124." Further, Section 11(a) of Public Law 32-51 provides that, "The Board shall promulgate the requisite rules and regulations mandated pursuant to § 3124 of Title 11, Guam Code Annotated, within one hundred fifty calendar days of the effective date of this Act." Public Law 32-51 was enacted into law on July 5, 2013, and eleven (11) months have passed without ABC Board action.

I Liheslaturan Guåhan further finds that in the interest of health and public safety, and in lieu of any action by the Board, it is appropriate to initiate the policy action required and legislatively provide for the regulations pursuant to law.

It is, therefore, the intent of *I Liheslaturan Guåhan* to provide for and adopt the Rules of Procedures appended to this Act as Exhibit "A".

Section 2. Amendment of Rules; Title 3 GARR, Chapter 2. Notwithstanding any other provision of law, rule, regulation and executive order, the rules and regulations relative to responsible alcohol server/seller training programs are hereby adopted by *I Mina'Trentai Tres Na Liheslaturan Guåhan* by amending Chapter 2 - Alcoholic Beverage Control Board, of Title 3, Guam Administrative Rules and Regulations - Business Regulations, as provided in Exhibit "A", which is appended to this Act.

Section 3. Amendment of Rules. The Alcoholic Beverage Control Board *shall*, in keeping with the provisions of Article 2, and § 3511 of Article 5, both of Chapter 3, Title 11, Guam Code Annotated, and pursuant to Article 3 - Rule Making Procedures, of Chapter 9, Title 5, Guam Code Annotated, review and

amend, as may be necessary, the rules and regulations adopted pursuant to Section 2 of this Act.

Section 4. Section 11 of Public Law 32-51 is hereby *repealed* and *reenacted* to read:

"**Section 11. Phased Implementation for Enforcement.**

(a) With the approval by the Administrator of a classroom alcohol server/seller training program, and the actual commencement of program availability, then the compliance, enforcement and penalty provisions of this Act *shall* become effective within twelve (12) months of the effective date of this Act."

Section 5. Subsection (b) of § 3124.1 of Article 1, Chapter 3 of Title 11, Guam Code Annotated, is hereby *amended* to read:

"(b) Prior to remitting the fees collected pursuant to this Section to the Alcoholic Beverage Compliance Fees and Fines Fund, the authorized non-profit organization, community college, or university *shall* deduct and retain from the fees collected the cost for tuition for the Alcohol Server /Seller Training program, which *shall not* exceed fifty percent (50%) of the cost to obtain an Alcohol Employee Server /Seller License pursuant to 11 GCA Chapter 3, § 3207."

Section 6. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

Section 7. Effective Date. This Act *shall* become effective upon enactment.

1 **EXHIBIT "A"**

2 **TITLE 3, GUAM ADMINISTRATIVE RULES AND REGULATIONS**

3 **BUSINESS REGULATIONS**

4 **Chapter 2 - Alcoholic Beverage Control Board**

5 [NOTE: Rule-making authority cited for Alcoholic
6 Beverage Control Board; § 3511 of Chapter 3,
7 Title 11 Guam Code Annotated.]

8 § 2100. Introduction.
9 § 2100.1. Definitions.
10 § 2101. Applications.
11 § 2102. Qualifications of Prospective Licenses.
12 § 2103. Premises Qualifications.
13 § 2104. Transfer of Licenses.
14 § 2105. Responsibilities of the Licensee.
15 § 2106. Employee's Responsibilities.
16 § 2107. Administrator's Responsibilities.
17 § 2108. Responsibilities in the Employment of Minors as Entertainers.
18 § 2109. Miscellaneous Provisions.
19 § 2110. Responsibilities of Alcohol Server/Seller Training Programs.
20 § 2111. Cancellation of Rules and Regulations.

21 **§ 2100. Introduction.** The following regulations consolidate and add
22 to those previously promulgated by the Alcoholic Beverage Control Board under
23 the provisions of 11 GCA §3511. They provide necessary controls in the licensing,
24 operation and conduct of businesses that are selling or serving alcoholic beverages.
25 The penalties for violations of these regulations are indicated under 11 GCA §3611
26 and/or §3617.

1 **§ 2100.1. Definitions.** For the purposes of this Chapter, except as
2 otherwise specifically provided, the following *shall* have the meaning prescribed
3 in this Section:
4 (a) *Board* means the Alcoholic Beverage Control Board, as
5 provided pursuant to § 3106 of Chapter 3 of Title 3, Guam Code Annotated.
6 (b) *Administrator* means the Alcoholic Beverage Control
7 Administrator, as provided pursuant to §§ 3102 and 3506 of Chapter 3, Title
8 11, Guam Code Annotated.
9 **§ 2101. Applications.** (a) Applications for any Alcoholic Beverage
10 Control license or transfer or any license authorized under 11 GCA Chapter 3,
11 *shall* be submitted upon proper forms approved by the Board and furnished by the
12 Alcoholic Beverage Control Administrator;
13 (b) Each application must be properly and completely filled out, and
14 accompanied by any and all required data supplementing the application forms. If
15 the Board feels that additional information is necessary, consideration of the
16 application may be postponed and a reasonable period of time may be afforded the
17 applicant to comply with this requirement.
18 (c) Applications or other documents to be formally presented to the
19 Board must first be filed with the Alcoholic Beverage Control Administrator.
20 These documents *shall* be marked or stamped to indicate time and date of receipt.
21 The Administrator *shall* review all applications or other documents and if not
22 complete according to instructions on the form or according to instructions on the
23 form or according to regulations, *shall* mark them "rejected as incomplete" and
24 return them to applicant for completion and resubmission.
25 (d) The required fee must have been paid into the Treasury of Guam
26 before the Board will consider the application of any person for an alcoholic
27 beverage control license. The acceptance of the fee by the Treasury of Guam *does*

1 *not* constitute Board approval or extension of license required under provisions of
2 11 GCA §3309.

3 **§ 2102. Qualifications of Prospective Licensees.** (a) Prior to the
4 Board considering an application for an alcoholic beverage control license, a
5 thorough investigation into the applicant's background will be conducted by the
6 Alcoholic Beverage Control Administrator. The Board will carefully consider the
7 results of this investigation and may make a determination as to approval or
8 disapproval of the application upon such action.

9 (b) Where the applicant for a license is a corporation, all individuals who
10 own stock in such corporations or are otherwise involved in any way as
11 proprietors, managers, employees or agents of the business being licensed *shall* be
12 listed by legal name in the current application on file with the Administrator. No
13 license shall be issued or renewed unless these listings are complete and legally
14 accurate and reveal compliance with the intent of 11 GCA §§3300 and 3301, as
15 each may be applicable.

16 **§ 2103. Premises Qualifications.** (a) Prior to the Board considering
17 an application for an alcoholic beverage control license, the Alcoholic Beverage
18 Control Board will require the Administrator to conduct an inspection of the
19 premises to determine that they meet the requirements of the law. Results of this
20 inspection will be included with the application and made available to the Board
21 upon its consideration thereof.

22 (b) Licensees *shall* provide, at the time of application or renewal of any
23 Class 4, General On-Sale license, and maintain in a sanitary and functioning
24 manner, adequate separate toilet and/or lavatory facilities with hot and cold
25 running water for men and women. Such facilities *shall* provide for reasonable
26 security and privacy.

1 **§ 2104. Transfer of Licenses.** (a) Where a license has been
2 issued to or in the name of a partnership, no substitution, addition, removal or other
3 change to the licensed partnership shall be made until the proposed change has first
4 been considered by the Board upon application for a transfer by the licensee in the
5 same manner and procedure as an application for a transfer between two distinct
6 business entities.

7 (b) No application for transfer of a license will be considered by the
8 Board unless the applicant has met the same personal qualifications as that
9 required of an applicant for an original license, nor will an application for transfer
10 be considered by the Board if the proposed premises do not meet the qualifications
11 as that required for premises in an application for an original license. This
12 procedure does not apply to transfers as defined in 11 GCA §3310(1).

13 **§ 2105. Responsibilities of the Licensee.** (a) It *shall* be the
14 responsibility of a licensee to notify the Administrator in writing of any and all
15 changes in licensed business ownership, management, agents or any other changes
16 which materially affect or modify the data on file and recorded as the basis for
17 granting or renewal of such license, prior to the time such change occurs. Failure
18 to do so within twenty-four (24) hours of such change *shall* require immediate
19 temporary suspension of the license pending investigation and review by the
20 Board. This suspension *shall* remain in effect until removed, modified, or other
21 action as may be deemed necessary and appropriate has been taken by the Board.

22 (b) All Class 4, On-Sale establishments *shall* have a duly registered
23 manager or assistant manager on the premises, in the absence of the licensee, and
24 during the hours from 7:00 p.m. daily until closing. The manager or assistant
25 manager *shall* be capable and competent in maintenance of order and
26 responsible for compliance with pertinent laws and regulations as pertains to the
27 licensed premises.

(c) A licensee proposing to transfer or in the process of transferring his license to another party *shall* remain responsible for the conduct of the licensed business and liable for compliance with all terms of the license and all laws and regulations pertaining thereto until such time as the Board has approved the transfer and the transferred license has been re-issued by the Administrator in the new licensee's name.

(d) A licensee who proposes to be absent or who may be absent from the island of Guam for a period of forty-eight (48) hours or more *shall*, prior to departure, notify the Board in writing of the name of the person or persons who are designated responsible for the licensed premises during such absence. The person so designated must meet all qualifications for owner or manager as specified by law and/or regulations and must agree in writing that he is so qualified and accepts this responsibility prior to the licensee's departure. The Board may refuse to accept or approve such designation if, in the Board's consideration, they decide such would not be in conformance with the law, these regulations, or otherwise not in the best interest of the public.

(e) A licensee *shall* post a list of employees and their specified duty hours on the premises where such list *shall* be at all times available for inspection by duly authorized representatives of the government of Guam. These specified work periods *shall* clearly indicate the hours when each employee is considered to be on duty. The list *shall* be posted in advance and *shall not* be changed except for a bona fide reason. When such changes are made to a posted list, the change *shall* be initialed by the person making the change, and the date and time of such change entered thereon.

(f) Licensees of General On-Sale establishments *shall* be required to register or cause to be registered with the Alcoholic Beverage Control Administrator all persons employed by his establishment and engaged in the

1 mixing and/or the serving of alcoholic beverages, within seventy-two (72) hours
2 after their employment.
3 (g) Licensees *shall not* engage in business practices which are inimical or
4 discriminatory to public interest or that which may tend to create a monopoly.
5 Credit extended by or to any wholesale or retail licensee beyond forty-five (45)
6 days from date of sale or delivery of the alcoholic beverages *shall* constitute a
7 violation of provisions of 11 GCA §3429.
8 (h) Class 4, 5, 6, 7, 9, 10, 11 and 12 ABC licensees *shall not* hire or
9 employ any employee that *does not* have a valid alcohol employee license from an
10 approved alcohol server/seller training program twelve months from the effective
11 date of this act; provided, however:
12 (1) that a current ABC license *shall* continue to be valid until
13 expiration, but the licensee *shall* be required to have taken the alcohol
14 server/seller training program prior to license renewal. Further, the
15 unexpired license *shall not* be portable, as provided pursuant to §3212.1(b)
16 which only applies to a licensee who has passed an alcohol server/seller
17 training program.
18 **§ 2106. Employee's Responsibilities.** (a) Employees of an On-
19 Sale licensee, engaged in the mixing and/or the serving of alcoholic beverages,
20 *shall not* engage in dancing while on duty or scheduled for duty as per posted
21 schedule with the premises.
22 (b) Individuals of questionable reputations *shall not* be employed in a
23 General On-Sale establishment. The Alcoholic Beverage Control Board *shall* be
24 advised immediately by the Administrator when violations of this regulation
25 become evident during an inspection. The licensee *shall* be notified in writing
26 by the Board to remedy the situation within a specified time. If subsequent
27 investigation, after the specified time, determines the discrepancy continues to

exist, the Board may order a suspension of the license and require the licensee to show cause as to why his license should not be revoked.

§ 2107. Administrator's Responsibilities. (a) It *shall* be the responsibility of the Alcoholic Beverage Control Administrator to enforce the provisions of these regulations and make timely reports of violations to the Board.

(b) If it is discovered by the Administrator that an establishment has acquired an unsavory reputation, this fact *shall* be reported to the Board immediately for any action they may deem appropriate and necessary.

(c) The Administrator, with the concurrence of the Board, *shall* approve classroom alcohol server/seller training programs that meet the regulations duly promulgated by the Board pursuant to 11 GCA §3124.

§ 2108. Responsibilities in the Employment of Minors as Entertainers.

(a) Minor entertainers or minor members of a group must be represented by an adult and a responsible adult *shall* accompany all minors after the legal curfew hours.

(b) The individual or group must be properly licensed.

(c) It *shall* be the responsibility of the licensee to cause the minor entertainers to be registered prior to employment, and it is likewise the licensee's responsibility to determine that all entertainers have reached their sixteenth (16th) birthday.

(d) The designated adult representative may be permitted to register the entertainers and it *shall* be his responsibility to notify the Administrator of any change in the position or membership of a group. Adequate proof of birth *shall* be presented at the time of registering entertainers.

(e) Termination of the hours of duty of minors must coincide with the sale of alcoholic beverages.

(f) It *shall* be the responsibility of the licensee to adhere to all provisions of the Alcoholic Beverage Control Act and these regulations as concerns minors. Further, he is to be held strictly liable for the general behavior of the minors during the hours of their duty.

(g) All minors employed as entertainers must remain within certain specified enclosures designated for entertainment. They will not be permitted to visit the bar or tables where alcoholic beverages are being sold or served or consumed.

§ 2109. Miscellaneous Provisions. (a) All General On-Sale Licensees *shall* register or cause to be registered with the Alcoholic Beverage Control Administrator anyone employed as a manager or assistant manager, within seventy-two (72) hours after employment and the proper Alcoholic Beverage Control forms must be accomplished at the time of registering. No person who is not eligible as a licensee will be employed as a manger or assistant manager.

(b) All persons having Class 3, Wholesale Dealer's licenses *shall* keep a copy of invoices or alcoholic beverage sales filed in the order in which made so as to be readily available for examination by the Alcoholic Beverage Control Administrator or members of the Alcoholic Beverage Control Board. These invoices must be kept separate from invoices of sales of other commodities, must show date of sale, delivery, quantity, brand and price received. Wholesalers *shall* comply with the provisions of 11 GCA §3429(k) in preparing invoices for sale of alcoholic beverages.

(c) The business entrance doorway of any premises licensed to sell or serve alcoholic beverage for consumption thereon must be kept unlocked while the premises are open for business. No licensed business establishment shall be

used for private parties when the door is locked after expiration of authorized hours for the sale of alcoholic beverages unless means are established whereby it can be determined that no alcoholic beverages are being sold therein.

(d) Requests for changing the "trade name" of the premises, licensed to sell or serve alcoholic beverages, must be filed with the Board through the Alcoholic Beverage Control Administrator. The reason for the change must be included. If the Board approves the change, the license and allied records retained by the Administrator will be amended to include the new name. The application for a name change will be coordinated with the license.

(e) If the portion of the licensed premises, open to the customers, is equipped with a bar, the preparation of all drinks *shall* be made on the top surface of the bar in such a manner as to permit any interested customer to have a clear and unobstructed view of the bartender's operation.

(f) Whenever a suspension is effected by the Administrator or the Board, the Administrator *shall* cause a "Notice of Suspension" to be posted in a conspicuous place on the exterior of the licensed premises. The notice will contain the following wording: "Government of Guam, Notice of Suspension, Alcoholic Beverage Control Licenses Issued for these Premises have been Suspended. By Order of: The Alcoholic Beverage Control Administrator or the Alcoholic Beverage Control Board under 11 GCA §3614. This poster shall not be removed except by authorized persons."

§ 2110. Responsibilities of Alcohol Server/Seller Training Programs.

(a) No alcohol server/seller training program shall offer or conduct alcohol server/seller training classes until they have received written approval from the Administrator.

(b) All alcohol server/seller training programs *shall* apply for approval from the Administrator by submitting their complete program,

including instructor manuals, student manuals, videos and any other materials that are used for the program.

(c) The curriculum of an alcohol server/seller training program *shall* include, at a minimum, all of the following topics:

(1) the ethics and responsibilities of serving alcoholic beverages;

(2) basic alcohol content among different types of drinks containing alcohol;

(3) the clinical effects of alcohol, including the identification of progressive stages of intoxication and the visible signs associated with each stage;

(4) variables associated with visible intoxication, including the rate of drinking, tolerance, weight, food consumption, gender, and use of other drugs;

(5) procedures for monitoring consumption, personal skills to prevent intoxication and intervention procedures;

(6) acceptable forms of personal identification, techniques for determining the validity of identification, and procedures for dealing with fraudulent identification;

(7) personal skills to assess the need to ask for identification based on appearance and company policy;

(8) the identification of potential third-party sales and furnishing of alcoholic beverages to minors by persons twenty-one (21) years of age or over;

(9) the understanding of possible legal, civil, and administrative consequences of violations of this Act, the rules of the Board, and other pertinent laws;

(10) how to identify at place of employment spirits and other alcoholic beverage products not intended for resale or commercial distribution outside of military bases, and procedures for reporting these violations to the Board;

(11) the understanding of Guam laws pertaining to minors attempting to purchase, minors in possession, and third-party sales or furnishing of alcoholic beverages by adults to minors;

(12) knowledge of the legal hours of alcohol service and occupancy;

(13) identification of signs of prohibited activities, such as gambling, solicitation for prostitution, and drug sales; and

(14) any other pertinent laws as determined by the Board or Administrator to be appropriate and in keeping with applicable law and these regulations.

(d) The alcohol server/seller training program *shall* administer a comprehensive examination to participants of the program, including individuals seeking certification as instructors within the program. The examination *shall* thoroughly test the individual's knowledge and competency in the curriculum topics required by the Board. The minimum passing grade for the examination participants of the program *shall* be *not less than* 75%. For instructor certification, the passing grade *shall* be *not less than* 90%. All tests *shall* be approved by the Administrator.

(e) The Department of Revenue and Taxation or its designee *shall* issue an alcohol employee license to the student who successfully completes the program. Certification *shall* be valid for a term of three (3) years.

(f) The Department of Revenue and Taxation or its designee *shall* issue an instructor certification card to all instructors that have been certified by the program that *shall* be valid for a term of three years, and *shall* notify the Board or Administrator. The alcohol server/seller training program *shall* immediately notify the Board or Administrator when an instructor is no longer certified by the program.

(g) The alcohol server/seller training program *shall* make available all records of students, instructors and certifications to the Board and the Administrator.

(h) The Administrator *shall* rescind approval of any alcohol server/seller training program that fails to continue to meet these requirements or fails to pay the yearly fee set by the Board.

(i) The Administrator *shall not* approve online-only alcohol server/seller training programs.

§ 2111. Cancellation of Rules and Regulations. These regulations cancel any rules and/or regulations previously promulgated by any previous Alcoholic Beverage Control Board.