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I MINA'BENTE NUEBE NA LIHESLATURAN GUÅHAN
2007 (FIRST) Regular Session

Bill No. 5 (LS)

Introduced by:

J.A. Lujan *[Signature]*

AN ACT TO ADD A NEW ARTICLE 2 TO CHAPTER 3 OF TITLE 4 OF THE GUAM CODE ANNOTATED, RELATIVE TO DISCLOSING SPECIAL BENEFITS PROVIDED BY AIRLINES TO GOVERNMENT OFFICIALS

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

2 **Section 1.** A new Article 2 is hereby *added* to Chapter 3 of Title 4 of the Guam Code
3 Annotated to read as follows:

4 **“Section 3201. Title.** The name of this Act shall be the ‘Airline Transparency
5 and Accountability Act.’

6 **Section 3202. Legislative Findings and Intent.** I Liheslaturan Guåhan finds
7 that some commercial airlines serving Guam provide special benefits, such as
8 seat upgrades, use of airport first class lounge facilities and discounted or free
9 tickets to elected and appointed Government of Guam officials on a regular
10 basis, which are neither based on personal entitlement nor generally available to
11 the general public.

12 While there may be valid personal, business, lobbying and official reasons
13 for providing these special benefits to public officials, an explicit disclosure

1 policy will help members of the public decide for themselves whether benefits
2 provided to public officials and employees by airlines serving Guam are in the
3 public interest.

4 *I Liheslaturan Guåhan* further finds that promoting increased airline
5 competition for Guam-based business is in the public interest, since that will
6 lead to lower airfares and more aviation industry jobs. Airlines often unselfishly
7 support specific public and non-profit activities. The Airline Transparency and
8 Accountability Act is intended to help the public distinguish between legitimate
9 assistance for specific public functions, and lobbying effort subject to
10 registration and disclosure laws.

11 **Section 3203. Definitions.**

12 (a) **Airline.** "Airline" means any regularly scheduled commercial air
13 transportation service, and shall not include private aircraft, military or
14 other government owned aircraft or charter services.

15 (b) **Days.** Days means calendar days but excluding the day on which the
16 special benefit is provided or received but including the day on which it is
17 disclosed.

18 (c) **Provided or Providing.** Provided or providing means crediting to or
19 delivering by any means, including but not limited to verbal notification,
20 invitation, escorting, or ticket or boarding pass coding or endorsement.

21 (d) **Public Official.** Public official means any person elected to any
22 position in any Guam election and their employees or paid consultants, or
23 who is required to be confirmed in any position by the voters of Guam or
24 the Guam Legislature, or who is employed as an employee of any branch
25 of the Government of Guam, or is an employee of any public corporation,

1 instrumentality or any other entity of the Government of Guam, or who is
2 appointed by the Governor of Guam to serve in any position created by the
3 Guam Legislature or the Governor of Guam.

4 **(e) Received or Receiving.** Received or receiving means the day a
5 special benefit is used by a public official.

6 **(f) Special Benefits.** Shall mean any benefit that is not advertised as
7 generally available and actually made available to any other member of
8 the general public under the same conditions, such as but not limited to,
9 use of airline first class lounges, clubs or club facilities or other similar
10 facilities, seat upgrades, free or reduced fare airline tickets or free or
11 reduced price cargo transport, hotel rooms or hotel room upgrades,
12 limousine or private car services or when such benefits are provided to a
13 spouse, child, parent or sibling of a public official.

14 **Section 3204. Disclosure.** Any air carrier and any public official, within thirty
15 (30) days after providing or receiving any special benefit, shall notify the
16 Secretary of *I Liheslaturan Guåhan* and the Public Auditor of Guam of the
17 nature of the special benefit provided or received, describing it with particularity
18 so that the full nature of the benefit provided or received can be ascertained from
19 the description, the date the benefit was provided and received, the duration of
20 the benefit, the name and address of the person to whom the special benefit was
21 provided or received and the reasons for providing or receiving this special
22 benefit and the approximate fair market value of the special benefit. Said
23 notifications and their contents shall be public records.

24 **Section 3205. Penalties.** A failure to disclose special benefits as required by
25 §3204 shall be a misdemeanor criminal offense for each special benefit provided

1 or received and for which no disclosure was made. The statute of limitations for
2 commencing prosecution for a failure to disclose as required herein shall be one
3 (1) year, commencing when the violation of the disclosure requirement is
4 discovered, or, commencing when the receiving public official is no longer a
5 public official, whichever is later. Restitution to the Government shall be the
6 fair market value amount of the special benefit at the time the special benefit is
7 received.

8 In addition to the Attorney General of Guam, any competitor or potential
9 competitor, or any consumer or potential consumer, of any air carrier in violation
10 of the disclosure requirements herein shall have standing to bring an action in
11 the Superior Court of Guam against the non-disclosing airline and/or non-
12 disclosing public official, for any damages caused to them, or to the Government
13 of Guam in the case of the Attorney General bringing an action, due to the
14 special benefit provided or received, and shall be entitled to treble said damages
15 in any recovery, and shall be further entitled to recover reasonable attorney's
16 fees and costs for bringing a successful action. In bringing any action wherein
17 any public official received non-disclosed benefits, and said public official made
18 or refused to make any decision(s) or refused to take any action in their official
19 capacity which resulted or could have resulted in any benefit to the non-
20 disclosing airline, it shall be presumed that the public official made or refused to
21 make said decision(s) or refused to take such action against the public interest
22 and in the interests of the non-disclosing airline resulting in a more limited
23 competitive aviation environment and higher airfares on Guam."

24 **Section 2. Severability.** *If any provision of this Law or its application to any person*
25 *or circumstance is found to be invalid or contrary to law, such invalidity shall not*

1 affect other provisions or applications of this Law which can be given effect without
2 the invalid provisions or application, and to this end the provisions of this Law are
3 severable.