

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

FEB 13 2014

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

32-14-1291

Office of the speaker
Judith T. Won Pat, Ed. D.

Date: 2/14/14
Time: 3:57 PM
Received by:

Dear Madame Speaker:

Transmitted herewith is Bill No. 130-32 (COR) "AN ACT TO AMEND §1106(k) OF ARTICLE 1, CHAPTER 1 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO IMPOSING LICENSING SANCTIONS FOR EMPLOYING ALIENS WITHOUT LAWFUL WORK STATUS" which I signed into law on February 10, 2014 as Public Law 32-110.

2014 FEB 14 PM 4:48 W

Senseramente,

EDDIE BAZA CALVO

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session

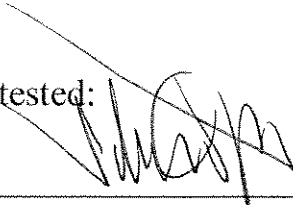
CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 130-32 (COR), "AN ACT TO AMEND §1106(k) OF ARTICLE 1, CHAPTER 1 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO IMPOSING LICENSING SANCTIONS FOR EMPLOYING ALIENS WITHOUT LAWFUL WORK STATUS," was on the 1st day of February, 2014, 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 FEB,
2014, at
10:50 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date:

FEB 10 2014

Public Law No. 32-110

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 130-32 (COR)

As substituted by the Author.

Introduced by:

T. C. Ada
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
Vicente (ben) C. Pangelinan
R. J. Respicio
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

**AN ACT TO AMEND §1106(k) OF ARTICLE 1,
CHAPTER 1 OF TITLE 22, GUAM CODE ANNOTATED,
RELATIVE TO IMPOSING LICENSING SANCTIONS
FOR EMPLOYING ALIENS WITHOUT LAWFUL
WORK STATUS.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the Guam Department of Labor (GDOL), pursuant to §1106(k) of Article 1,
4 Chapter 1, Title 22, Guam Code Annotated, has the power to investigate “*the*
5 *condition of aliens relative to their employment.*” GDOL’s investigative power is
6 limited to the verification of work status of aliens; however, should any indication

1 of improper or unauthorized employment without lawful status be discovered, the
2 Department has no enforcement power.

3 *I Liheslatura* further finds that the authority to arrest and prosecute aliens
4 who do not possess lawful work status is vested with the U.S. Department of
5 Immigration and Customs Enforcement (ICE), a Division of the U.S. Department
6 of Homeland Security (USDHS), and the Federal Immigration Court. Subsequent
7 to an arrest, the alien is either detained or released on bail pending scheduling of
8 adjudication (for deportation) in Federal Immigration Court. Oftentimes, the wait
9 time for adjudication is lengthy, lasting months, and in many cases years.

10 *I Liheslatura* further finds that it is during this period of limbo that a
11 conditionally released worker would seek employment often at exceptionally low
12 wages, or in many cases below minimum wage standards. As a consequence, local
13 workers are often edged out of the local job market by these aliens without lawful
14 work status. It is this negative impact to the local workforce that the government of
15 Guam wants to prevent.

16 *I Liheslatura* further finds that Title 8 §§1324(h)(2) of the United States
17 Code explicitly states, “*the provisions of this section preempt any state or local*
18 *law from imposing civil or criminal sanctions (other than through licensing and*
19 *similar laws) upon those who employ, or recruit or refer for a fee for employment,*
20 *unauthorized aliens.*” Therefore, because of this specific preemption, *I Liheslatura*
21 intends to protect the limited number of jobs on Guam for those who are legally
22 eligible by imposing licensing sanctions, as allowed by Title 8 USC §§1324(h)(2)
23 on those who employ aliens without lawful work status.

24 **Section 2.** §1106(k) of Article 1, Chapter 1, Title 22, Guam Code
25 Annotated, is hereby *amended* to read:

1 “(k) *May* investigate the condition or status of aliens relative to their
2 employment, and *shall* ensure compliance with all applicable Guam and
3 federal laws regarding the employment of aliens.

4 (1) To facilitate the investigation, employers *shall* ensure
5 that all alien workers at a worksite possess some form of valid,
6 government issued picture identification to include, but *not* limited to:
7 a passport, a Guam or state-issued driver’s license, or an employment
8 authorization card; and the Director or his authorized representative
9 *may* request such identification documents from any alien worker at a
10 place of work on Guam. If a worker’s immigration status is in
11 question, the Department *may* temporarily detain such individual on
12 site so that the Department can verify the worker’s status with federal
13 immigration officials.

14 (2) Should an inspection of a worksite determine that an
15 alien(s) who *does not* possess lawful work status is being employed at
16 a place of work on Guam, the employer *shall* be served a notice of
17 violation (or citation) which details the violation, and *shall* be subject
18 to licensing sanctions including: suspension or revocation of their
19 business license, and/or license sanction fees. The respondent
20 (employer) *may* request an administrative hearing. Said request for a
21 hearing must be received in writing by the Department within fifteen
22 (15) calendar days from the date of receipt of a notice of violation (or
23 citation). Notwithstanding §9220 of Title 5 GCA, Article 2, Chapter 9,
24 the hearing *shall* be conducted by the Director, who *shall* be the
25 hearing officer. The hearing process *shall* be subject to the procedures
26 of Chapter 9 Title 5 of the Guam Code Annotated; and any notice of
27 violation (or citation) served pursuant to this Section *shall* fulfill the

1 requirements of §9202 of the same. The Office of the Attorney
2 General *shall* assist in providing advice to the Director/hearing officer
3 when matters of law arise. In the event that the Director/hearing
4 officer affirms that the notice of violation (or citation) is valid, or if no
5 hearing is requested in writing within fifteen (15) days from the date
6 on the notice of violation the respondent *shall* be subject to the
7 following:

8 (A) First Offense: For the first offense, the employer
9 *shall* be subject to a license sanction fee of One Thousand
10 Dollars (\$1,000.00) per worker without lawful status found to
11 be employed at the worksite inspected, and suspension of the
12 employer's license to do business on Guam *may* be
13 recommended. The Director *may* refer the matter to the
14 appropriate licensing entity with the recommendation to
15 suspend the employer's license to do business on Guam for a
16 period of *up to* thirty (30) days, or until the employer pays all
17 license sanction fees levied for a first offense of this Section.

18 (B) Second Offense: In the instance of a second
19 offense, defined as any violation of this Section *not* on the same
20 day as the date noted on the first notice of violation (or citation),
21 but within one year of the date noted on the first notice of
22 violation (or citation), the employer *shall* be subject to a license
23 sanction fee of Two Thousand Dollars (\$2,000.00) per worker
24 without lawful status found to be employed at the worksite
25 inspected, and suspension of the employer's license to do
26 business on Guam *may* be recommended. The Director *may*
27 refer the matter to the appropriate licensing entity with the

1 recommendation to suspend the employer's license to do
2 business on Guam for a period of *up to* sixty (60) days, or until
3 the employer pays all license sanction fees levied for a second
4 offense of this Section.

5 (C) Third Offense: In the instance of a third offense,
6 defined as any violation of this Section *not* on the same day as
7 the date noted on the second notice of violation (or citation),
8 but within one year of the date noted on the second notice of
9 violation (or citation), the employer's license to do business on
10 Guam *shall* be revoked by the appropriate licensing authority
11 immediately upon the receipt of findings of the Director.

12 (D) During the appeal, the respondent (employer) who
13 is served the notice of violation *may* establish an affirmative
14 defense against the licensing sanctions imposed pursuant to this
15 Section, *if* the employer has complied in good faith with the
16 federal I-9 process to determine an alien's lawful work status
17 prior to hire.

18 (3) In the event of a violation of this Section, if the employer
19 of an alien worker without lawful work status is *not* readily
20 identifiable, the prime contractor at a job site whose name appears on
21 the building permit, or the owner named on the business license of the
22 establishment inspected *shall* be liable for the licensing sanctions
23 administered pursuant to this Section.

24 (4) The Department's Alien Labor Processing and
25 Certification Division *shall* have all necessary enforcement and
26 investigative powers needed to enforce the provisions in this Section.

1 (5) Funds generated from §1106(k)(2) *shall* be deposited in
2 the GDOL Manpower Development Fund, and expended in
3 accordance with the provisions of Title 22 GCA §7118(1)(e).”

4 **Section 3. Authorization to Adopt Rules and Regulations.** The
5 Department of Labor *may* adopt rules and regulations consistent with the Guam
6 Administrative Adjudication Law, and the laws of the United States and Guam as
7 *may* be necessary to ensure the effectiveness of the provisions of this Act.

8 **Section 4. Severability.** *If* any provision of this Law or its application to
9 any person or circumstance is found to be invalid or contrary to law, such
10 invalidity *shall not* affect other provisions or applications of this Law which can be
11 given effect without the invalid provisions or application, and to this end the
12 provisions of this Law are severable.

13 **Section 5. Effective Date.** This Act *shall* be effective thirty (30) days
14 after its enactment.