



Territory of Guam

Territory of Guam

OFFICE OF THE GOVERNOR
OFISINAN I MAGA'LAHI
AGANA, GUAM 96910 U.S.A.

JUN 12 1989



The Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
Post Office Box CB-1
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 454, which the Governor signed into law on Saturday,
June 10, 1989 as Public Law 20-25.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank F. Blas'.

FRANK F. BLAS
Governor of Guam,
Acting

Attachment

200303

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 454 (LS), "AN ACT TO ADD NEW SECTIONS 47139 THROUGH 47142 TO THE GOVERNMENT CODE ON CUSTOMS INSPECTIONS AND TO AMEND SUBSECTION (a) OF SECTION 16018 OF SAID CODE ON THE POWER OF THE LICENSE BOARD TO SUSPEND LICENSES," was on the 24th day of May, 1989, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



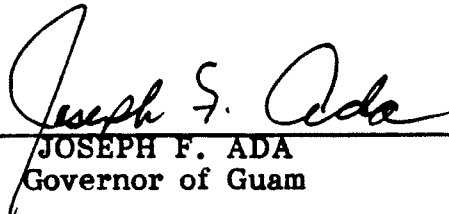
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 31st day of May, 1989,
at 12:20 o'clock P.m.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: JUN 10 1989

Public Law No. 20-25

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 454 (LS)
Substituted by the
Committee on Rules

Introduced by:

J. P. Aguon
C. T. C. Gutierrez
T. S. Nelson

E. D. Reyes
M. Z. Bordallo
H. D. Dierking
P. C. Lujan
G. Mailloux
D. Parkinson
F. J. A. Quitugua
F. R. Santos
E. P. Arriola
J. G. Bamba
D. F. Brooks
E. R. Duenas
E. M. Espaldon
M. D. A. Manibusan
M. C. Ruth
J. T. San Agustin
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO ADD NEW SECTIONS 47139
THROUGH 47142 TO THE GOVERNMENT CODE
ON CUSTOMS INSPECTIONS AND TO AMEND
SUBSECTION (a) OF SECTION 16018 OF SAID
CODE ON THE POWER OF THE LICENSE
BOARD TO SUSPEND LICENSES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:
2 Section 1. New Sections 47139 through 47142 are hereby added to
3 Chapter II, Title XLIV of the Government Code to read:
4 "§47139. Place of Inspection. Inspections of baggage,
5 passengers and cargo shall be performed only at the designated ports
6 of Guam, except that inspections of cargo may also be performed at
7 such places as the Director of Commerce shall from time to time
8 designate.

1 §47140. Release of Sealed Cargo. The seal on a container or
2 cargo shall neither be broken nor tampered with, except under the
3 direction of a Customs Inspector or until such container or cargo has
4 otherwise been officially released from Customs' custody.

5 §47141. Same: Penalties. Should the seal on a container or
6 cargo be broken or tampered with prior to its official release from
7 Customs' custody, except under the direction of a Customs Inspector,
8 then the person or firm that has accepted delivery of the sealed
9 container or cargo shall be liable for the following administrative
10 penalties levied by the Collector of Customs:

11 (a) A fine of not less than Twenty-Five Thousand Dollars
12 (\$25,000) and the confiscation of the cargo involved; and

13 (b) The suspension of the business license(s) of all
14 principals involved in the violation of this section for one (1)
15 year.

16 All fines levied under this section shall be deposited in the
17 Customs Inspection Fund. All cargo confiscated under this section
18 shall be disposed of as provided for in this Chapter. The Director of
19 Commerce shall immediately notify the License Board created by §16025
20 of this Code of a violation by any person or firm whose license is to
21 be suspended. No expenditures shall be made from the Customs
22 Inspection Fund except by appropriation of the Legislature.

23 Any person or firm charged with a violation of this section shall
24 have the burden of proving by clear and convincing evidence that
25 such person or firm was not responsible for the broken or tampered
26 with seal.

27 §47142. Promulgation of Rules and Regulations. The Director of
28 Commerce is responsible for the promulgation of rules and regulations
29 necessary to carry out the provisions of this Chapter. Such rules and
30 regulations shall be promulgated in accordance with the provisions of
31 the Administrative Adjudication Law."

32 Section 2. There is hereby created a Customs Inspection Fund for use
33 in the enforcement of Chapter II, Title XLIV of the Government Code.
34 Such Fund shall be kept separate and apart from the General Fund.

1 Section 3. Subsection (a) of §16018, Title XVII of the Government
2 Code, is hereby amended to read:

3 "(a) The License Board shall have power to suspend or revoke a
4 license when, after formal hearing, it finds that such business is
5 being operated inimical to public interest. The License Board may
6 suspend a license for a period not to exceed one (1) year on probable
7 cause pending formal hearing and findings thereon. Neither the
8 License Board nor the government of Guam shall be subject to any
9 claim or damages due to the action of the Board taken under the
10 provisions of this Chapter. This subsection (a) shall apply to all
11 licenses whether issued under this Chapter or in existence on the
12 effective date hereof, notwithstanding any other provisions contained
13 herein."

14 Section 4. Effective Date. This Act shall take effect sixty (60) days
15 after its enactment.

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

ROLL CALL SHEET

Bill No. 454
Res. No. _____

Date: 5/24/89

QUESTION: _____

	<u>AYE</u>	<u>NAY</u>	<u>NOT VOTING</u>	<u>ABSENT</u>
AGUON, J. P.	✓			
ARRIOLA, E. P.	✓			
BAMBA, J. G.	✓			
BORDALLO, M. Z.	✓			
BROOKS, D. F.	✓			
DIERKING, H. D.	✓			
DUENAS, E. R.	✓			
ESPALDON, E. M.	✓			
GUTIERREZ, C. T.C.	✓			
LUJAN, P. C.	✓			
MAILLOUX, G.	✓			
MANIBUSAN, M.D.A.	✓			
NELSON, T. S.	✓			
PARKINSON, D.	✓			
QUITUGUA, F. J.A.	✓			
REYES, E. R.	✓			
RUTH, M. C.	✓			
SAN AGUSTIN, J. T.	✓			
SANTOS, F. R.				✓
TANAKA, T. V.C.				✓
UNPINGCO, A. R.	✓			

19

2



Twentieth Guam Legislature

163 Chalan Santo Papa Street
Agana, Guam 96910

06 April 1989

SPEAKER JOE T. SAN AGUSTIN
Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Economic Development, to which was referred **BILL NO. 454** [An Act to Add New Sections 47139 through 47142 to Chapter II, Title XLIV of the Government Code Relative to Customs Inspections], wishes to report back to the Legislature with its recommendation to pass Bill No. 454. The voting record is as follows:

TO PASS	<u>12</u>
NOT TO PASS	<u>0</u>
TO REPORT OUT ONLY	<u>0</u>
TO PLACE IN INACTIVE FILE	<u>0</u>

Copies of the Committee Report and other pertinent documents are attached.

Your attention to this matter is greatly appreciated.

EDWARD D. REYES
Chairman, Committee on Economic
Development

Attachments.



Twentieth Guam Legislature

163 Chalan Santo Papa Street
Agana, Guam 96910

05 April 1989

MEMORANDUM

TO: Members, Committee on Economic Development
FROM: Chairman, Committee on Economic Development
SUBJECT: Committee Report - Bill No. 454

Transmitted herewith for your information and action is the Committee on Economic Development's Report on Bill No. 454 [An Act to Add New Sections 47139 through 47142 to Chapter II, Title XLIV of the Government Code Relative to Customs Inspections].

The narrative report is accompanied by the following:

1. Bill No. 454;
2. Committee on Economic Development Voting Sheet;
3. Testimony of Mr. Peter R. Barcinas, Acting Director of the Department of Commerce; Mr. David B. Tydingco, General Manager of the Port Authority of Guam; and Mr. Thomas J. Hertslet, Guam Chamber of Commerce; and
4. Substitute Bill No. 454.

Should you have any questions on the narrative report or the accompanying documents, I would be most happy to answer any of them.

Please take the appropriate action on the attached voting sheet and return the documents to my office for transmittal to the other members.



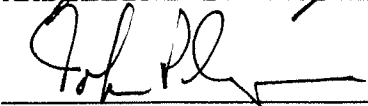
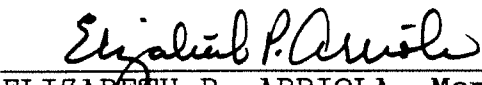
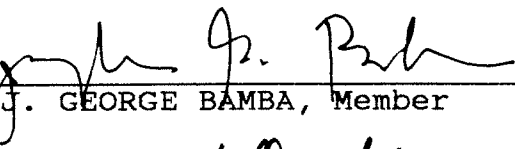
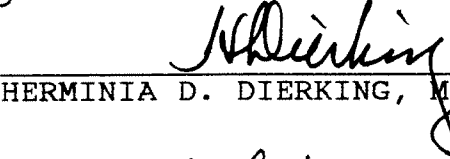



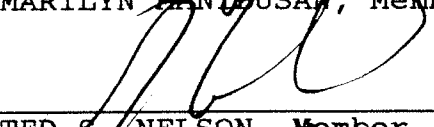
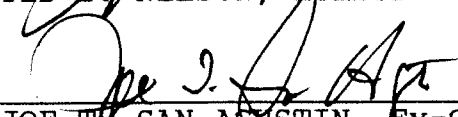
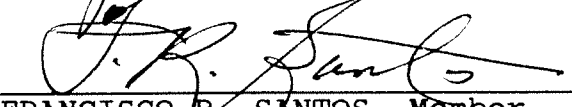
Your attention and cooperation in this matter is greatly appreciated.

EDWARD D. REYES

Attachments.

**COMMITTEE ON ECONOMIC DEVELOPMENT
TWENTIETH GUAM LEGISLATURE**

BILL NO. 454 - AN ACT TO ADD NEW SECTIONS 47139
THROUGH 47142 TO CHAPTER II, TITLE XLIV OF THE
GOVERNMENT CODE RELATIVE TO CUSTOMS INSPECTIONS

<u>COMMITTEE MEMBER</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO REPORT OUT ONLY</u>	<u>TO PLACE IN INACTIVE FILE</u>
 EDWARD D. REYES, Chairman	✓			
 MADELEINE Z. BORBALLO, Vice-Chairman	✓			
 JOHN P. AGUON, Member	✓			
 ELIZABETH P. ARRIOLA, Member	✓			
 J. GEORGE BAMBA, Member	✓			
 HERMINIA D. DIERKING, Member	✓			
 PILAR C. LUJAN, Member	✓			
 GORDON MAILLOUX, Member	✓			
 MARILYN MANIBUSAN, Member	✓			
 TED S. NELSON, Member	✓			
 JOE T. SAN AGUSTIN, Ex-Officio Member	✓			
 FRANCISCO R. SANTOS, Member	✓			

COMMITTEE ON ECONOMIC DEVELOPMENT
20th Guam Legislature

REPORT ON BILL NO. 454

[An Act to Add New Sections 47139 Through 47142
to Chapter II, Title XLIV of the Government
Code Relative to Customs Inspections]

I. PREFACE

The Committees on Economic Development and Tourism & Transportation held a joint public hearing on Monday, 13 March 1989, at 8:30 a.m. at the Session Hall of the Guam Legislature. Members present at the hearing were Senator Edward D. Reyes, Chairman of the Committee on Economic Development and Senator John P. Aguon, Chairman of the Committee on Tourism & Transportation, and Senators Elizabeth P. Arriola, Madeleine Z. Bordallo, Pilar C. Lujan, Francisco R. Santos, and Antonio R. Unpingco.

II. BACKGROUND

Bill No. 454 was introduced by Senator John P. Aguon. It proposes to add new Sections 47139 through 47142 to Chapter II, Title XLIV, of the Government Code relative to customs inspections and the creation of a Customs Inspection Fund. The bill, if passed, will become effective forty-five (45) days upon approval.

Section 1 establishes new Sections 47139 through 47142 to Chapter II, Title XLIV of the Government Code of Guam. The new sections are as follows:

1. §47139 provides that the place of inspections shall be at designated ports of Guam for baggage, passengers and cargo. However, inspections of cargo may also be performed at such other places as designated by the Director of the Department of Commerce.
2. §47140 provides that the seal on a container or cargo shall not be broken nor tampered with except under the direction of a Customs Inspector or until the container or cargo has been officially released from Custom's custody.
3. §47141 provides for administrative penalties should the seal on a container or cargo be broken or tampered with prior to its official release from Custom's custody, except as provided for under §47140. Such penalties are:
 - a. not less than \$1000 nor more than \$5000 and/or confiscation of cargo involved for the first offense within a three-year period
 - b. \$5000 and confiscation of cargo involved for the second offense within a three-year period
 - c. \$5000, confiscation of cargo involved, and suspension of business license(s) of all principals involved for a period of ninety (90) days for the third offense within a three-

year period.

§47141 further provides that all fines levied shall be deposited in the Customs Inspection Fund as created in Section 2, and directs the Director of Commerce to immediately notify the Director of the Department of Revenue & Taxation if a third violation occurs.

4. §47142 authorizes the Director of Commerce to promulgate rules and regulations necessary to carry out the provisions of Chapter II in accordance with the Administrative Adjudication Act.

Section 2 creates the Customs Inspection Fund for use in the enforcement of Chapter II, Title XLIV of the Government Code of Guam. The Fund shall be kept separate and apart from the General Fund.

Section 3 provides that this Act shall become effective forty-five (45) days after its enactment into law.

III. TESTIMONY

There were three individuals who provided the Committees with written testimony - namely, Mr. Thomas J. Hertslet, Chairman of the Maritime Affairs Committee of the Guam Chamber of Commerce; Mr. Peter R. Barcinas, Acting Director of the Department of Commerce; and Mr. David B. Tydingco, General Manager of the Port Authority of Guam.

Mr. Hertslet testified in favor of Bill No. 454, and noted that the Chamber of Commerce had previously supported the bill's intent when similar bills were publicly heard during the Nineteenth Guam Legislature. Bill No. 454, Hertslet stated, would provide long-term solutions to inspection concerns raised by Customs which continue to be temporarily addressed in a Memorandum of Understanding executed nearly two (2) years ago between the Port Authority of Guam and the Department of Commerce.

Mr. Barcinas also testified in favor of Bill No. 454, and assured the Committees that delays which occurred two years ago would not be repeated as the measure provides a strong incentive to consignees and their agents to respect the laws regarding container seals. Barcinas also stated that the bill's intent was developed in an Ad Hoc Committee, consisting of the Port Authority of Guam, the Department of Commerce, the Chamber of Commerce, and the local USDA office.

Mr. Tydingco's testimony in essence echoed the sentiments of Mr. Hertslet and Mr. Barcinas. However, Tydingco stated that current implementation of the Memorandum of Understanding is but an interim solution, and a more permanent solution via legislation should be implemented.

IV. FINDINGS

It is the Committee's finding that passage of Bill No. 454 is necessary for the following reasons:

1. To legitimize, as a matter of public policy, what currently is being handled administratively; and

2. To provide legal sanctions against violators of public policy, in the public's interest and welfare.

It is also the Committee's finding, on the basis of communication sent to Senator John P. Aguon from the Director of the Department of Revenue & Taxation, that §47141(c) is in conflict with §16018(a), Title XVII of the Government Code, relative to the maximum number of days a license may be suspended. The former section provides for a period of ninety (90) days; the latter provides for a period not to exceed sixty (60) days.

V. RECOMMENDATIONS

The Committee recommends that a substitute bill be passed which would incorporate the following:

1. A new Section 3 to read:

"Section 3. Section 16018(a), Title XVII, Government Code of Guam, is hereby amended to read as follows:

'The License Board shall have power to suspend or revoke a license when, after formal hearing, it finds that such business is being operated inimical to public interest. The License Board may suspend a license for a period not to exceed [thirty (30)] ninety (90) days on probable cause pending formal hearing and findings thereon. Neither the License Board nor the Government of Guam shall be subject to any claim for damages due to the action of the Board taken under the provisions of this Chapter. This Sub-section 16018(a) shall apply to all licenses whether issued under this Chapter or in existence on the effective date hereof, notwithstanding any other provisions contained herein.'


This amendment would allow for consistency with the proposed §47141(c).

2. The existing Section 3 will become a new Section 4 in the substitute bill.

TWENTIETH GUAM LEGISLATURE
1989 (FIRST) Regular Session

Bill No. 454 (LS)
As Substituted by the Committee on
Economic Development

Introduced By: J.P. Aguon


AN ACT TO ADD NEW SECTIONS 47139 THROUGH 47142
TO CHAPTER II, TITLE XLIV OF THE GOVERNMENT
CODE RELATIVE TO CUSTOMS INSPECTIONS

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

2 SECTION 1. New Sections 47139 through 47142 are added to Chapter
3 II, Title XLIV of the Government Code to read:

4 "§47139. Place of Inspection. Inspections of baggage,
5 passengers and cargo shall be performed only at the designated
6 ports of Guam, except that inspections of cargo may also be
7 performed at such places as the Director of Commerce shall from
8 time to time designate.

9 §47140. Release of Sealed Cargo. The seal on a container or
10 cargo shall neither be broken nor tampered with, except under the
11 direction of a Customs Inspector or until such container or cargo
12 has otherwise been officially released from Customs' custody.

13 §47141. Same: Penalties. Should the seal on a container or
14 cargo be broken or tampered with prior to its official release from
15 Customs' custody, except under the direction of a Customs
16 Inspector, then the person or firm that has accepted delivery of
17 the sealed container or cargo shall be liable for the following
18 administrative penalties levied by the Collector of Customs:

19 (a) For the first offense within a three-year period of
20 time, a fine of not less than One Thousand Dollars (\$1,000.00)
21 nor more than Five Thousand Dollars (\$5,000.00), and/or the

1 confiscation of the cargo involved;

2 (b) For the second offense within a three-year period
3 of time, a fine of Five Thousand Dollars (\$5,000.00) and the
4 confiscation of the cargo involved;

5 (c) For the third offense within a three-year period of
6 time, a fine of Five Thousand Dollars (\$5,000.00), the
7 confiscation of the cargo involved, and the suspension of the
8 business license(s) of all principals involved in the
9 violation of this Section for a period of ninety (90) days.

10 All fines levied under this Section shall be deposited in the
11 Customs Inspection Fund. All cargo confiscated under this Section
12 shall be disposed of as provided for in this Chapter. The Director
13 of Commerce shall immediately notify the Director of Revenue and
14 Taxation of a third violation within a three-year period of time
15 by any person or firm when such violation occurs.

16 §47142. Promulgation of Rules and Regulations. The Director
17 of Commerce is responsible for the promulgation of rules and
18 regulations necessary to carry out the provisions of this Chapter.
19 Such rules and regulations shall be promulgated in accordance with
20 the provisions of the Administrative Adjudication Act."

21 SECTION 2. There is hereby created a Customs Inspection Fund for
22 use in the enforcement of Chapter II, Title XLIV of the Government Code.
23 Such Fund shall be kept separate and apart from the General Fund.

24 SECTION 3. Section 16018(a), Title XVII of the Government Code of
25 Guam, is hereby amended to read:

26 "a. The License Board shall have power to suspend or revoke
27 a license when, after formal hearing, it finds that such business
28 is being operated inimical to public interest. The License Board
29 may suspend a license for a period not to exceed ninety (90) days

1 on probable cause pending formal hearing and findings thereon.
2 Neither the License Board nor the Government of Guam shall be
3 subject to any claim for damages due to the action of the Board
4 taken under the provisions of this Chapter. This Sub-section
5 16018(a) shall apply to all licenses whether issued under this
6 Chapter or in existence on the effective date hereof,
7 notwithstanding any other provisions contained herein."

8 SECTION 4. The provisions of this Act shall become effective
9 forty-five (45) days after its enactment into law.

FEB 14 '89

Bill No. 454(LS)

Introduced By:

J. P. AGUON *J.P.A.*

AN ACT TO ADD NEW SECTIONS
47139 THROUGH 47142 TO CHAPTER
II, TITLE XLIV OF THE GOVERNMENT
CODE RELATIVE TO CUSTOMS INSPECTIONS.

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

2 **Section 1.** New Sections 47139 through 47142 are added to
3 Chapter II, Title XLIV of the Government Code to read:

4 "§47139. Place of Inspection. Inspections of baggage,
5 passengers and cargo shall be performed only at the designated ports
6 of Guam, except that inspections of cargo may also be performed at
7 such other places as the Director of Commerce shall from time to
8 time designate.

9 §47140. Release of Sealed Cargo. The seal on a container or
10 cargo shall neither be broken nor tampered with, except under the
11 direction of a Customs Inspector or until such container or cargo has
12 otherwise been officially released from Customs' custody.

13 §47141. Same: Penalties. Should the seal on a container or
14 cargo be broken or tampered with prior to its official release from
15 Customs' custody, except under the direction of a Customs Inspector,
16 then the person or firm that has accepted delivery of the sealed
17 container or cargo shall be liable for the following administrative
18 penalties levied by the Collector of Customs:

19 (a) For the first offense within a three year period of time, a

1 fine of not less than One Thousand Dollars (\$1,000.00) nor more than
2 Five Thousand Dollars (\$5,000.00), and/or the confiscation of the
3 cargo involved;

4 (b) For the second offense within a three year period of time,
5 a fine of Five Thousand Dollars (\$5,000.00) and the confiscation of
6 the cargo involved;

7 (c) For the third offense within a three year period of time, a
8 fine of Five Thousand Dollars (\$5,000.00), the confiscation of the
9 cargo involved, and the suspension of the business licenses(s) of all
10 principals involved in the violation of this Section for a period of
11 ninety (90) days.

12 All fines levied under this Section shall be deposited in the
13 Customs Inspection Fund. All cargo confiscated under this Section
14 shall be disposed of as provided for in this Chapter. The Director of
15 Commerce shall immediately notify the Director of Revenue and
16 Taxation of a third violation within a three year period of time by
17 any person or firm when such violation occurs.

18 §47142. Promulgation of Rules and Regulations. The Director
19 of Commerce is responsible for the promulgation of rules and
20 regulations necessary to carry out the provisions of this Chapter.
21 Such rules and regulations shall be promulgated in accordance with
22 the provisions of the Administrative Adjudication Act."

23 **Section 2.** There is hereby created a Customs Inspection Fund for
24 use in the enforcement of Chapter II, Title XLIV of the Government
25 Code. Such Fund shall be kept separate and apart from the General Fund.

26 **Section 3.** The provisions of this Act shall become effective
27 forty-five (45) days after its enactment into law.