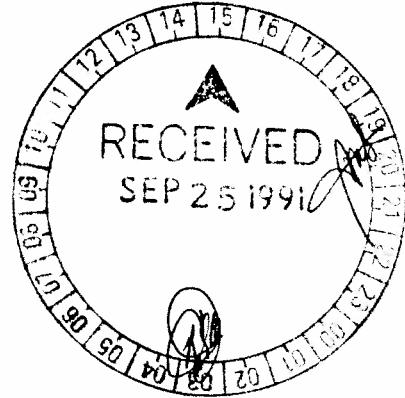




*Territory of Guam*  
*Territorio Guam*

OFFICE OF THE GOVERNOR  
LEFISINANI MAGALLANI  
AGANA, GUAM 96910 USA

SEP 20 1991



The Honorable Joe T. San Agustin  
Speaker, Twenty-First Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 524, which I have signed into law this  
date as Public Law 21-57.

Sincerely,

FRANK F. BLAS  
Governor of Guam  
Acting

Attachment



Commonwealth Now!


TWENTY-FIRST GUAM LEGISLATURE  
1991 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

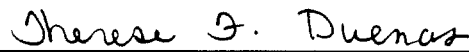
This is to certify that Bill No. 524 (COR), "AN ACT TO REPEAL SUBPARAGRAPH (c) OF §69.10, TITLE 9, GUAM CODE ANNOTATED, AND TO AMEND SUBSECTION (4) OF §69.15 OF SAID TITLE, RELATING TO TOUTING," was on the 30th day of August, 1991, duly and regularly passed.

  
\_\_\_\_\_  
JOE T. SAN AGUSTIN  
Speaker

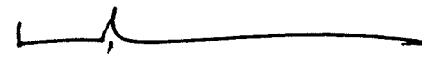
Attested:

  
\_\_\_\_\_  
PILAR C. LUJAN  
Senator and Legislative Secretary

This Act was received by the Governor this 10<sup>th</sup> day of September, 1991, at 4:45 o'clock P.m.

  
\_\_\_\_\_  
Theresese G. Duenas  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
\_\_\_\_\_  
FRANK F. BLAS  
Governor of Guam  
Acting

Date: SEP 20 1991

Public Law No: 21-57

TWENTY-FIRST GUAM LEGISLATURE  
1991 (FIRST) Regular Session

Bill No. 524 (COR)

Introduced by:

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

AN ACT TO REPEAL SUBPARAGRAPH (c) OF §69.10, TITLE 9,  
GUAM CODE ANNOTATED, AND TO AMEND SUBSECTION  
(4) OF §69.15 OF SAID TITLE, RELATING TO TOUTING.

1           **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**  
2           **Section 1.** Subparagraph (c) of §69.10, Title 9, Guam Code Annotated,  
3 is hereby repealed.

1           **Section 2. Subsection (4) of §69.15, Title 9, Guam Code Annotated, is**  
2 **hereby amended to read:**

3           **"(4) Secretly paying or allowing rebates, refunds,**  
4 **commissions, or unearned discounts, whether in the form of**  
5 **money or otherwise, or secretly extending to certain business**  
6 **consumers special services or privilege, not extended to all**  
7 **business consumers purchasing upon like terms and conditions,**  
8 **to the injury of a competitor and where such payment or**  
9 **allowance tends to destroy competition, is unlawful; or"**



21-57  
**Senator Pilar Cruz Lujan**  
**Twenty-First Guam Legislature**

**Legislative Secretary**

**Committee on Judiciary and Criminal Justice**  
**Chairman**

---

August 26, 1991

The Honorable Joe T. San Agustin  
Speaker, Twenty-First Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

VIA: Chairperson, Committee on Rules

Dear Mr. Speaker:

The Committee on Judiciary and Criminal Justice, to which was referred Bill No. 524, wishes to report its findings and recommendations for passage of Substitute Bill No. 524.

The Committee voting record is as follows:

<u>9</u>	TO PASS
<u>1</u>	NOT TO PASS
<u>2</u>	ABSTAIN
<u>0</u>	TO PLACE IN INACTIVE FILE

A copy of the Committee report and all pertinent documents are attached for your information.

Sincerely,

PILAR C. LUJAN  
Committee Chairman

Gerald Perez (DFS - Guam) read his written testimony supporting the bill (Appendix). He explained that he had communicated his company's concern with the Legislature regarding the reference to "touting" in PL 21-18. He cited that the language in the public law was too broad and questioned the legitimacy of established business practices. He suggested two (2) technical changes to the bill. One is the replacement of the semi-colon on line 8 with a comma after the word "otherwise" so that "... there is no question that the clauses regarding injury to competitors and competition relate back to the first clause." The other suggestion was to add a comma after "privilege" on line 10 to "... eliminate any question that the clause beginning 'not extended to all business consumers' qualifies all the referenced practices and not just 'special services or privilege'". Perez brought William Blair, legal counsel of DFS, to answer technical questions that may arise.

Peter Sgro, Jr. (Chamber of Commerce) gave oral testimony supporting the bill. He agreed that certain provisions in the Anti-Trust laws are too broad and reiterated the technical changes that were recommended by Gerald Perez. In the written testimony that Sgro submitted in the afternoon (Appendix), he added that the law in its present form will make all commissions, like advertising and marketing commissions, a violation of law. In addition, research conducted by the Legislative Review Committee of the Guam Chamber of Commerce showed that the term "touting" relates to activities at horse races and that the activity is not deemed to be "... an illegal or unlawful activity. Further, federal case authorities indicate that the payment of commissions to tour companies and tour guides to promote a particular store, was pro-competitive." Sgro attached a copy of the written opinion by William Schwarzer, U.S. District Judge, in the case of Peter Harris V. Duty Free Shoppers Limited Partnership which was later affirmed by the Ninth Circuit Court of Appeals.

William Blair (DFS) stated that the provision was borrowed from a California law, Section 17045, which contained the recommended technical changes. He related that Duty Free has had several cases involving the interpretation of this law.

Sen. Aguon asked Don Stock to elaborate on why they want the section repealed. Stock answered that this was modeled after the California Business and Professional Code §17045 and it did not use the term "touting". To be consistent with the California law, they want to delete the reference to "touting" and its definition. He added that the legal concept is outdated and not in use. Aguon asked for the definition of touting. Stock stated that the "tout" is the person who encourages people to patronize a business and "touting" is the practice of encouraging people to patronize a particular business. Furthermore, it is now an "archaic" term. What is considered to be illegal is if the practice is monopolistic or if the people are deprived from making choices. Stock added that with the technical

changes, the bill will take care of the concerns. He wants the adoption of DFS's recommendations.

Aguon asked Blair to comment on Stock's position. Blair stated that "tout" is used only in relation to horse racing and is not used in legal terms. Only in Guam has "touting" been used in laws to regulate tour guides. He mentioned that DFS was once charged for illegal practices and they won the case even in the Ninth Circuit Court. His preference is to adapt tried and tested statutes like the one in California.

Aguon asked Stock (AG's Office) that should they leave the bill as introduced, would it be enforceable. Stock replied that they would have difficulty enforcing it. He added that when they drafted the bill, which became PL 21-18, they conducted extensive research on "touting" and found that the California statute was the best. He believes that the provision for "touting" was added after the public hearing in the Legislature.

Sen. Bamba pointed out that the fundamental problem is with the stores that do not pay the commissions. He inquired if there are existing laws which will prevent the practice of discouraging tourists from patronizing stores that do not pay commissions.. Stock replied that §69.15 (1) will cover this issue. He added that any contract, or combination, that results in the restraint of trade or the monopolization of trade would be illegal and would cover the situation. Blair interjected that it is now illegal just to disparage a competitor. Bamba asked for the penalty. Stock answered that the crime is now a felony.

Sgro discussed the DFS case in San Francisco where the court held in favor of DFS. The judge stated that the practice of paying commissions was pro-competitive and not an unfair practice. He added that the practice of paying commissions is common in the tourism industry because the industry is commission driven.

Bamba asked how the bill affects other industries (real estate, insurance, brokers, etc.) who survive on commissions. Stock replied that when Bill 545 is adopted, those types of commissions would be legal again.

Sen. Mailloux commented that the word commission is more appropriate than "touting". Mailloux asked if it was correct to assume that a commission is legal as long as it was not given secretly and not intended to hurt a competitor. Stock answered affirmatively and stated that both situations must be present to be considered illegal. Stock stated that the language was intended to go after what was considered to be price discrimination. There are federal laws against price discrimination in the Robinson - Patton Act, which are amendments to the Clayton Act. He added that what was used in Guam was from the California Unfair Trade Practices provisions rather than in the Anti-Trust provisions.

Mailloux asked Perez if the commissions paid by DFS to taxi drivers and tour bus companies were properly reported. Perez answered affirmatively.

Sen. Arriola thanked all the gentlemen who testified.

## **COMMITTEE RECOMMENDATIONS**

The Committee recognizes the urgency of Bill 524. The bill will rectify the current situation. It will legitimize common business practices and make receiving commissions legal once again.

Committee Chairwoman Pilar Lujan recommends the passage of Bill 524.



TWENTY-FIRST GUAM LEGISLATURE  
1991 (FIRST) Regular Session

Bill No. 524  
As amended by the  
Committee on Judiciary & Criminal Justice

Introduced by:

J.P. AGUON

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AN ACT TO REPEAL SUBPARAGRAPH (c) OF §69.10, TITLE 9,  
GUAM CODE ANNOTATED, AND TO AMEND SUBSECTION  
(4) OF §69.15 OF SAID TITLE, RELATING TO TOUTING.

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

2 Section 1. Subparagraph (c) of §69.10, Title 9, Guam Code Annotated, is  
3 hereby repealed.

4 Section 2. Subsection (4) of §69.15, Title 9, Guam Code Annotated, is  
5 hereby amended to read:

6 “(4) Secretly paying or allowing rebates, refunds, commissions, or  
7 unearned discounts, whether in the form of money or otherwise ~~or~~  
8 ~~touting for a commission or a kickback;~~ or secretly extending to  
9 certain business consumers special services or privilege ~~or~~ not extended  
10 to all business consumers purchasing upon like terms and conditions,  
11 to the injury of a competitor and where such payment or allowance  
12 tends to destroy competition, is unlawful; or”

# JGTA

## JAPAN GUAM TRAVEL ASSOCIATION

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August 19, 1991

Testimony in support of Bill No. 524

Thank you very much for the opportunity, you have provided for us to express our concern with the Bill No. 524, which would repeal and amend the touting provisions in the Public Law 21-18 Section 69.

Guam

On behalf of JGTA, Japan Travel Association, which consists of 23 members of tour operators and tour bus companies, we like to support for the passage of the Bill No. 524.

Because we are concerned about the possible effect of the prohibition against "touting" on the practice of tour companies in Guam receiving a marketing commission from shops to which the tour companies take tourists.

The practice of receiving a marketing commission is widespread and generally accepted industry in Guam and common in Hawaii and the mainland United States, Canada, Europe and Australia as well. And no other U.S. jurisdiction has apparently outlawed the practice.

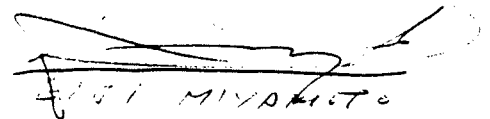
The marketing commission are not hidden payments, but are paid in the open and are reported to the tax authorities and taxes are paid them. The marketing commission income is an important and accepted part of income of tour operating companies. If receiving the marketing commission from the shops which we take our customer is unlawful, we will be forced to close our operation financially.

Making shopping stops as part of the sightseeing tour are requested by tourist. We are not attempting to persuade the customer to patronize that particular store. We are providing an opportunity for shopping. Also, we provide the information of the stores through the guide book and brochure in order to allow customers to select their desirable store. There is no restraint of competition. The customers are certainly free to shop independently outside of the group. Since we have limited time on the sightseeing tour, we choose several establishments which we believe have the greatest variety of goods which are favored by the tourist and stores which have reputable business policies so that our customers will be able to obtain services on goods which they have purchased, obtain warranties, obtain the right to exchange goods, etc. The tour companies therefore, perform a service both to our tour customers and to the business establishments to which we take our customers to. The members of JGTA believe that we are entitled to be compensated for this services in the same way as any other business which earns a commission.

The member of JGTA are proud of our involvement in Guam's tourism industry and proud of our business activities in Guam. The most members of JGTA have been transacting business in Guam for a number of years. Our members have been very important in helping build Guam's tourism industry, and have been one of the moving forces in making Guam a preferred destination for the visitors. Member companies of JGTA have actively advertising Guam and promoting Guam in Japan as a tourist destination for many years.

In closing, we like to express our sincere appreciation to Sen. John P. Aguon, Vice Speaker and Chairman, Committee on Tourism & Transportation for introducing the Bill No. 524 and look forward to the passage as soon as possible.

Thank you very much and siju smasse.

  
PRESIDENT



Office of the Attorney General  
Territory of Guam

Elizabeth Barrett-Anderson  
Attorney General

Phone: (671) 475-3324  
Telefax: (671) 472-2493

Donald L. Paillette  
Chief Deputy Attorney General

August 16, 1991

Honorable Pilar C. Lujan  
Chairman, Committee on Judiciary and  
Criminal Justice  
21st Guam Legislature  
155 Hesler Street  
Agana, Guam 96910


Re: An Act to Repeal Subparagraph (c) of §69.10,  
Title 9, Guam Code Annotated, and to Amend  
Subsection (4) of §69.15 of Said Title,  
Relating to Touting

Dear Senator Lujan:

This office fully supports Bill 524, and we would recommend its passage.

On July 18, 1991, in response to a request received from Senator Aguon, this office issued an opinion concluding that 9 GCA § 69.10(c) should be repealed, and that 9 GCA § 69.15(4) should be amended as now set forth in Bill 524. For your convenience, a copy of our July 18th opinion (LEG 91-0980) is enclosed.

Sincerely,

  
ELIZABETH BARRETT-ANDERSON  
Attorney General

Enclosure

COMMONWEALTH NOW!

Letter to Sen. John J. Donohue  
July 18, 1991  
Page 2

stated in §69.15(4), touting would be illegal only if it was for a commission or kickback which had the effect of injuring a competitor and tending to destroy competition.

Our concern is with 9 GCA §69.15(4). Mr. Perez is correct in stating that §69.15(4) was modeled after §17045 of the California Business and Professional Code, which does not contain any language on touting.

The intent of §17045 is to prohibit the payment of secret commissions or allowances. Touting for a commission or a kickback may or may not involve a secret payment; thus, inclusion of this language in §69.15(4) is inconsistent with the intent of that section, i.e., the prohibition of secret payments.

9 GCA §69.10(c) and the touting language contained in 9 GCA §69.15(4) were not included in Bill 272 at the time of the bill's public hearing. We, therefore, were not able to make comment or testify regarding said provisions. Our position would have been to the effect that touting for a commission or a kickback that tends to destroy competition, is already prohibited under §69.15(1), which states "A contract, combination, or conspiracy between two (2) or more persons in restraint of, or to monopolize, trade, or commerce in a relevant market is unlawful."

This office is of the opinion that the references to touting in the antitrust section of the Consumer Protection Act should be eliminated. Therefore, this office would recommend that 9 GCA §69.10(c) should be repealed, and that 9 GCA §69.15(4) should be reenacted to read as follows:

(4) Secretly paying or allowing rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain business consumers special services or privilege not extended to all business consumers purchasing upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is unlawful.

This is issued as an opinion of the Attorney General. For a faster response to any inquiry about this letter, please use the reference number shown.

Sincerely,

  
ELIZABETH BARRETT-ANDERSON  
Attorney General