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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: _____

Public Law No. _____

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
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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.

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Severability. *If* any provision of this Law 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 Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.

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