EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

JUL 14 2017

GL#34-17-727
Speaker Benjamin J.F. Cruz

JUL 14 2017
Time 2:20 [ ] AM [ ] PM File No. 34-059
Received By

2017 JUL 14 PM 3:17

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 40-34 (COR), **"AN ACT TO *ADD* A NEW CHAPTER 6 TO DIVISION 1 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO THE FAIR CHANCES HIRING PROCESS ACT,"** which was signed into law on July 13, 2017, as **Public Law 34-22.**

Senseramente,

EDDIE BAZA CALVO

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LÅHEN GUÅHAN*

This is to certify that **Bill No. 40-34 (COR), "AN ACT TO *ADD* A NEW CHAPTER 6 TO DIVISION 1 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO THE FAIR CHANCES HIRING PROCESS ACT,"** was on the 30th day of June 2017, duly and regularly passed.

Benjamin J.F. Cruz
Speaker

Attested:

Régine Biscoe Lee
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 03 day of July, 2017, at 2:10 o'clock P.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: JUL 13 2017

Public Law No. 34-22

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2017 (FIRST) Regular Session

Bill No. 40-34 (COR)
As amended by the Committee on Innovation and Economic, Workforce, and Youth Development; and further amended on the Floor.

Introduced by: Mary Camacho Torres
B. J.F. Cruz
Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
James V. Espaldon
Fernando Barcinas Esteves
Régine Biscoe Lee
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Michael F.Q. San Nicolas
Therese M. Terlaje

AN ACT TO *ADD* A NEW CHAPTER 6 TO DIVISION 1 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO THE FAIR CHANCES HIRING PROCESS ACT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that it is a legitimate government interest to successfully reintegrate individuals convicted of crimes into the community by removing barriers to gainful employment. Reintegration of those with criminal histories into the workforce is critical to reducing recidivism and increasing public safety and welfare, as well as

providing those convicted with the dignity of honest work. Greater employment rates will result in an increased tax base and reduced reliance on government welfare programs, both of which positively impact local taxpayers. This law in no way establishes that employers have a quota for individuals with a criminal history, nor does it require employers to hire individuals with a criminal history over more qualified individuals without a criminal history. This law does not entitle all persons with criminal histories to employment of their choosing, but it does provide a fresh start after a conviction during the job hunting process. The Fair Chances Hiring Process Act prohibits the consideration of a job applicant's criminal history that was dismissed, expunged, sealed, or did not result in a conviction during the hiring process. The Fair Chances Hiring Process Act also changes the sequencing of when an employer may ask applicants about their criminal history, postponing such questions until after an employer makes a conditional offer of employment. An offer of conditional employment to an applicant with a criminal history may still be rescinded for a legitimate business reason, as outlined in this law. The Guam Department of Labor is authorized to provide training and enforcement of this law. Finally, in an effort to protect the interests of employers, the Fair Chances Hiring Process Act creates certain immunities for employers who hire those with criminal records in accordance with this law.

Section 2. A new Chapter 6 is hereby *added* to Division 1 of Title 22, Guam Annotated Code, to read as follows:

"CHAPTER 6

FAIR CHANCES HIRING PROCESS ACT

ARTICLE 1

GENERAL PROVISIONS

§ 6101. Definitions.

§ 6102. General Policy.

ARTICLE 2
GUAM DEPARTMENT OF LABOR ADMINISTRATION AND ENFORCEMENT ROLE
§ 6103. Complaint Process.
§ 6104. Administrative Responsibilities.
§ 6105. Reporting Requirements.
ARTICLE 3
EMPLOYER PROTECTIONS AND INCENTIVES
§ 6106. Negligent Hiring Immunity.
ARTICLE 4
MISCELLANEOUS PROVISIONS
§ 6107. Severability.
§ 6108. Effective Date.

ARTICLE 1
GENERAL PROVISIONS

§ 6101. Definitions. As used in this Chapter:

(a) *Applicant* means any person considered for, or who requests to be considered for, employment by an employer; or, any employee considered for, or who requests to be considered for, another employment position, by the employer.

(b) *Arrest* means being apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement agency due to an accusation or suspicion that a person committed a crime.

(c) *Conditional offer of employment* means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's evaluation of the individual's criminal history.

(d) *Criminal history* means any conviction, plea of nolo contendere, or deferred adjudication arising from felony criminal accusation, or any misdemeanor criminal accusation, made under local or federal law, or a comparable law of a state of the United States. This does not include dismissed, expunged, or sealed cases.

(e) *Employer* means any person, company, corporation, general contractor, firm, labor organization, or association, including the government of Guam, that employs more than fifteen (15) employees in Guam.

(f) *Employment* means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency; or, any form of vocational or educational training with pay, where the physical location of the employment is in whole or in substantial part, within Guam.

(g) *Inquiry* means any direct or indirect conduct intended to gather criminal history information from or about the applicant, candidate, or employee, using any method, including application forms, interviews, and criminal history or background checks.

(h) *Interview* means any direct contact by the employer with the applicant in person, or by telephone or video-teleconferencing, to discuss the employment being sought or the applicant's qualifications.

§ 6102. General Policy.

(a) An employer *shall not* request that a police clearance or a court clearance be provided as part of the application for employment; however, upon a conditional offer, an employer may request an employee provide evidence as to any pending criminal cases or criminal history, in accordance with this Chapter.

(b) For purposes of this Chapter, The Guam Police Department and the Superior Court of Guam *shall not* reveal any information concerning an arrest that did not result in a filed criminal case, or concerning a court case that has been

dismissed, whether it has been expunged or not, and whether or not it was dismissed with prejudice or without prejudice, except to the person whose record it is, or to a licensed attorney representing that person, or upon order of the Court.

(c) An employer *shall not* make any inquiry about, or require the disclosure of, an applicant's arrest record or criminal cases which resulted in dismissal, expungement, sealing, or did not result in a conviction. This prohibition, however, *shall not* apply into inquiry about pending criminal cases against the applicant, which may be inquired about according to the guidelines below.

(d) An employer *may* only inquire about or require the disclosure of an applicant's criminal history or pending criminal cases after or upon making a conditional offer of employment.

(e) The prohibition of this Section *shall not* apply:

(1) where any federal or local law or regulation requires the consideration of an applicant's criminal history for the purpose of employment;

(2) to any position designated by the employer as part of a federal or local government position or obligation that is designed to encourage the employment of those with criminal histories; or

(3) to any position which requires that employee to work in close proximity of or provides programs, services, or direct care to minors.

(f) Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant for a legitimate business reason. The employer's determination of a legitimate business reason must also be reasonable in light of the following factors:

(1) the specific duties and responsibilities necessarily related to the employment sought or held by the person;

(2) the bearing, if any, that the open criminal case or criminal history will have on the applicant's fitness or ability to perform one (1) or more such duties and responsibilities;

(3) the time which has elapsed since the occurrence of the pending criminal case or criminal history;

(4) the age of the person at the time of the pending criminal case or criminal history;

(5) the frequency and severity of the pending criminal case or criminal history; and

(6) any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct since the occurrence of the pending criminal case or criminal history.

(g) If an applicant's conditional offer is terminated or an adverse action is taken against an applicant on the basis of the pending criminal case or criminal history, the applicant may request that the employer provide the applicant within thirty (30) days:

(1) a copy of any and all records procured by the employer in consideration of the applicant or employee, including criminal records; and

(2) a written Statement of Denial which:

(A) articulates a legitimate business reason for the denial;

(B) specifically demonstrates consideration of each of the factors set forth in Subsection (d) of this Section; and

(C) advises the applicant of his or her opportunity to file an administrative complaint with the Guam Department of Labor.

(3) Failure to provide a written Statement of Denial upon request as set forth in this Subsection *shall* create a rebuttable presumption that no legitimate business reason exists for denying the applicant employment or

taking an adverse action against an employee on the basis of a criminal history.

ARTICLE 2
GUAM DEPARTMENT OF LABOR ADMINISTRATION AND ENFORCEMENT ROLE

§ 6103. Complaint Process.

(a) A person claiming to be aggrieved by a violation of this Chapter may file an administrative complaint with the Guam Department of Labor (Department), in accordance with procedures set forth by the Department.

(b) The administrative remedies outlined in Subsection (a) of this Section are exclusive. A person claiming to be aggrieved by a violation of this Chapter *shall not* have a private cause of action in any court based on a violation of this Chapter.

(c) Any administrative complaint made under the provisions of this Chapter must be made within ninety (90) days of notification of denial of employment by an employer.

§ 6104. Administrative Responsibilities.

(a) The Guam Department of Labor *shall* develop administrative rules and regulations in accordance with outlining the procedures by which it will accept, investigate, and adjudicate complaints of Fair Chances Hiring Process Act violations, and the enforcement of provisions of the Act. All rules and regulations *shall* comply with the Administrative Adjudication Law, as required in Chapter 9 of Title 5, Guam Code Annotated.

(1) The Director of Labor *shall* be the Hearing Officer in any appeals relative to enforcement actions initiated by the Fair Employment Practice Office.

(2) The Fair Employment Practice Office *shall* have all necessary enforcement and investigative powers to enforce provisions of this Act.

(3) The Department may refer any unpaid penalties to the Department of Revenue and Taxation, or other appropriate licensing entities, who *shall* require that all penalties under this Act be paid in full before renewing a business license.

(b) In the development and application of rules and regulations, the Department *shall* take into consideration penalties ranging from training, retraining, written warning, and financial penalties. The Guam Department of Labor is hereby authorized to issue fines for violations of this Act in accordance with the following monetary caps:

(1) for employers that employ fifteen (15) to thirty (30) employees, a fine of up to, but not more than, One Thousand Dollars ($1000.00) per violation;

(2) for employers that employ thirty-one (31) to ninety-nine (99) employees, a fine of up to, but not more than, Two Thousand Dollars ($2000.00) per violation; and

(3) for employers that employ one hundred (100) or more employees, or for any government of Guam agency, a fine of up to, but not more than, Four Thousand Dollars ($4000.00) per violation.

(c) The Guam Department of Labor may develop a training program and/or a plan for providing training resources for employers and their representatives, such as hiring authorities or human resource officers. The program may include a mandatory posting in each employer's premises, developed by the Department, which notifies employees of this Act and other labor laws.

(d) Any penalty fines for violations of this Act *shall* be collected by the Department of Labor. Fines collected by the Department under the provisions of this Section *shall* be deposited in the Manpower Development Fund to be employed exclusively for the training programs and enforcement operations within the Fair

Employment Practice Office. The Director of Labor *shall* submit an annual report of all expenditures and activities under this Subsection to *I Liheslatura* (the Legislature).

(e) An employer may request for an advisory opinion from the Fair Employment Practice Office with regards to a specific situation related to this Act; provided, however, that the Director may decline to entertain such requests at his or her discretion.

§ 6105. Reporting Requirements.

(a) The Guam Department of Labor Compliance Office *shall* maintain data on the number of complaints filed pursuant to this Act, demographic information on the complainants, the number of investigations it conducts, and the disposition of every complaint and investigation, complete with a summary as to the Department's compliance with its rules and regulations.

(b) In the event that an employer is found to have more than one (1) violation of this Act, the Guam Department of Labor Compliance Office *shall* post the name of the employer on the Guam Department of Labor official website. Employers found to be in violation of this Act *shall not* be posted for their first violation, but *shall* be posted for all subsequent violations. The names of applicants impacted by an employer violation *shall not* be named. This posting *shall* be made on the Guam Department of Labor official website, and *shall* include the date of the violation. Violating employers *shall* be listed on the official website for a period of seven (7) years after they are found in violation, and removed after that time period.

(c) Data maintained by the Guam Department of Labor regarding Subsection (a) of this Section *shall* be posted on its official website annually beginning one (1) year from the effective date of the Fair Chances Hiring Process Act.

ARTICLE 3

EMPLOYER PROTECTIONS AND INCENTIVES

§ 6106. Negligent Hiring Immunity.

(a) A cause of action may not be brought against an employer for negligently hiring or failing to adequately supervise an employee, based on evidence that the employee has a pending criminal case or criminal history.

(b) This Section does not preclude a cause of action for negligent hiring or the failure of an employer to provide adequate supervision of an employee, if:

(1) the employer knew or should have known of the pending criminal case or criminal history; and

(2) the employee was convicted of an offense that was committed while performing duties substantially similar to those reasonably expected to be performed in the employment, or under conditions substantially similar to those reasonably expected to be encountered in the employment, taking into consideration the factors listed in § 6102(d) of Article 1 of this Chapter.

(c) This Section does not create a cause of action or expand an existing cause of action.

ARTICLE 4

MISCELLANEOUS PROVISIONS

§ 6107. Severability. If any provision of this Act 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 Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 6108. Effective Date. This Act *shall* be effective two hundred ten (210) days after enactment."