

MINA' TRENTAI TRES NA LIHESLATURAN GUAHAN

2015 (FIRST) Regular Session

Bill No. 9-33 (COR)

Introduced by:

D.G. RODRIGUEZ, JR. 

**AN ACT TO ADOPT THE RULES AND REGULATIONS
RELATIVE TO RESPONSIBLE ALCOHOL SERVER/SELLER
TRAINING PROGRAMS, BY AMENDING CHAPTER 2 -
ALCOHOLIC BEVERAGE CONTROL BOARD, OF TITLE 3,
GUAM ADMINISTRATIVE RULES AND REGULATIONS -
BUSINESS REGULATIONS.**

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

2 **Section 1. Legislative Findings and Intent:** *I Liheslaturan Guåhan* finds
3 that Alcohol Beverage Control Board has not promulgated to the requisite *Rules*
4 *and Regulations*, as mandated pursuant to §2107(c) of Chapter 2, Title 3, Guam
5 Administrative Rules and Regulations, which provides, "[t]he Administrator shall
6 approve classroom alcohol server/seller training programs that meet the
7 regulations duly promulgated by the Board pursuant to 11 Guam Code Annotated
8 §3124." Further, Section 11(a) of P.L. 32-51 provides, "The Board shall
9 promulgate the requisite rules and regulations mandated pursuant to §3124 of Title
10 11, Guam Code Annotated, within one hundred fifty calendar days of the effective
11 date of this Act." Public Law 32-51 was enacted into law on July 05, 2013, and
12 eleven (11) months have passed without ABC Board action.

13 *I Liheslaturan Guåhan* further finds that in the interest of health and public
14 safety, and in lieu of any action by the Board, it is appropriate to initiate the policy
15 action required and legislatively provide for the regulations pursuant to law.

1 It is, therefore, the intent of *I Liheslaturan Guåhan* to provide for and adopt
2 the Rules of Procedures appended to this Act as Exhibit “A”.

3 **Section 2. Amendment of Rules; 3 GAR Chapter 2.** Chapter 2 -
4 Alcoholic Beverage Control Board, of Title 3, Guam Administrative Rules and
5 Regulations - BUSINESS REGULATIONS, is hereby *AMENDED*, as provided in
6 Exhibit “A”, which is appended to this Act.

7 **Section 3. Adoption of Rules.** Notwithstanding any other provision of
8 law, rule, regulation and Executive Order, the Rules and Regulations of Chapter 2
9 - Alcoholic Beverage Control Board, of Title 3 - BUSINESS REGULATIONS,
10 Guam Administrative Rules and Regulation, and attached hereto as Exhibit “A”,
11 are hereby *ADOPTED* by *I Mina’Trentai Tres Na Liheslaturan Guåhan*.

12 **Section 4. Amendment of Rules.** The Alcoholic Beverage Control Board
13 *shall*, in keeping with the provisions of Article 2, and § 3511 of Article 5, both of
14 Chapter 3, Title 11, and pursuant to Article 3- Rule Making Procedures, of Chapter
15 9, Title 5, Guam Code Annotated, review and amend, as may be necessary, the
16 Rules and Regulations adopted pursuant to Section 3 of this Act.

17 **Section 5.** Section 11 of P.L. 32-51, is hereby *REPEALED* and
18 *REENACTED*, to read:

19 **“Section 11. Phased Implementation for Enforcement.**

20 (a) The Board shall promulgate the requisite rules and regulations mandated
21 pursuant to §3124 of Title 11, Guam Code Annotated, within one hundred fifty
22 calendar days of the effective date of this Act.

23 (b) With the approval by the Administrator of a classroom alcohol

1 server/seller training program, and the actual commencement of program
2 availability, then the compliance, enforcement and penalty provisions of this Act
3 *shall* become effective within twelve (12) months of the effective date of this
4 Act.”

5 **Section 6. Severability.** If any provision of this Act or its application to
6 any person or circumstance is found to be invalid or contrary to law, such
7 invalidity shall not affect other provisions or applications of this Act which can be
8 given effect without the invalid provisions or application, and to this end the
9 provisions of this Act are severable.

10 **Section 7. Effective Date.** This Act shall become immediately effective
11 upon enactment.

EXHIBIT "A"

TITLE 3, GUAM ADMINISTRATIVE RULES AND REGULATIONS BUSINESS REGULATIONS

Chapter 2 - Alcoholic Beverage Control Board

[NOTE: Rule-making authority cited for Alcoholic Beverage Control Board; § 3511 of Chapter 3, Title 11 Guam Code Annotated.]

§ 2100. Introduction.

§ 2100.1. Definitions.

§ 2101. Applications.

§ 2102. Qualifications of Prospective Licenses.

§ 2103. Premises Qualifications.

§ 2104. Transfer of Licenses.

§ 2105. Responsibilities of the Licensee.

§ 2106. Employee's Responsibilities.

§ 2107. Administrator's Responsibilities.

§ 2108. Responsibilities in the Employment of Minors as Entertainers.

§ 2109. Miscellaneous Provisions.

~~§ 2110. Cancellation of Rules and Regulations.~~

§ 2110. Responsibilities of Alcohol Server/Seller Training Programs.

§ 2111. Cancellation of Rules and Regulations.

1 **§ 2100. Introduction.** The following regulations consolidate and add to
2 those previously promulgated by the Alcoholic Beverage Control Board under the
3 provisions of 11 GCA §3511. They provide necessary controls in the licensing,
4 operation and conduct of businesses that are selling or serving alcoholic beverages.
5 The penalties for violations of these regulations are indicated under 11 GCA §3611
6 and/or §3617.

7 **§ 2100.1. Definitions.** For the purposes of this Chapter, except as
8 otherwise specifically provided, the following shall have the meaning prescribed in
9 this section:

10 (a) *Board* means the Alcoholic Beverage Control Board, as provided
11 pursuant to § 3106 of Chapter 3 of Title 3, Guam Code Annotated.

12 (b) *Administrator* means the Alcoholic Beverage Control Administrator, as
13 provided pursuant to §§ 3102 and 3506 of Chapter 3, Title 11, Guam Code
14 Annotated.

15 **§ 2101. Applications.** (a) Applications for any Alcoholic Beverage
16 Control license or transfer or any license authorized under 11 GCA Chapter 3, shall
17 be submitted upon proper forms approved by the Board and furnished by the
18 Alcoholic Beverage Control Administrator;

19 (b) Each applications must be properly and completely filled out and
20 accompanied by any and all require data supplementing the application forms. If
21 the Board feels that additional information is necessary, consideration of the
22 application may be postponed and a reasonable period of time may be afforded the
23 applicant to comply with this requirement.

24 (c) Applications or other documents to be formally presented to the
25 Board must first be filed with the Alcoholic Beverage Control Administrator.

1 These documents shall be marked or stamped to indicate time and date of receipt.
2 The Administrator shall review all applications or other documents and if not
3 complete according to instructions on the form or according to instructions on the
4 form or according to regulations, shall mark them "rejected as incomplete" and
5 return them to applicant to completion and resubmission;

6 (d) The required fee must have been paid into the treasury of Guam
7 before the Board will consider the application of any person for an alcoholic
8 beverage control license. The acceptance of the fee by the Treasury of Guam does
9 not constitute Board approval or extension of license required under provisions of
10 11 GCA §3309.

11 **§ 2102. Qualifications of Prospective Licensees.** (a) Prior to the Board
12 considering an application for an alcoholic beverage control license, a thorough
13 investigation into the applicant's background will be conducted by the Alcoholic
14 Beverage Control Administrator. The Board will carefully consider the results of
15 this investigation and may make a determination as to approval or disapproval of
16 the application upon such action.

17 (b) Where the applicant for a license is a corporation, all individuals who
18 own stock in such corporations or are otherwise involved in any way as
19 proprietors, managers, employees or agents of the business being licensed shall be
20 listed by legal name in the current application on file with the Administrator. No
21 license shall be issued or renewed unless these listings are complete and legally
22 accurate and reveal compliance with the intent of 11 GCA §§3300 and 3301, as
23 each may be applicable.

24 **§ 2103. Premises Qualifications.** (a) Prior to the Board considering

1 an application for an alcoholic beverage control license, the Alcoholic Beverage
2 Control Board will require the Administrator to conduct an inspection of the
3 premises to determine that they meet the requirements of the law. Results of this
4 inspection will be included with the application and made available to the Board
5 upon its consideration thereof.

6 (b) Licensees shall provide, at the time of application or renewal of any
7 Class 4, General On-Sale license, and maintain in a sanitary and functioning
8 manner adequate separate toilet and/or lavatory facilities with hot and cold running
9 water for men and women. Such facilities shall provide for reasonable security
10 and privacy.

11 **§ 2104. Transfer of Licenses.** (a) Where a license has been issued to or
12 in the name of a partnership, no substitution, addition, removal of other change to
13 the licensed partnership shall be made until the proposed change has first been
14 considered by the Board upon application for a transfer by the licensee in the same
15 manner and procedure as application for a transfer between two distinct business
16 entities;

17 (b) No application for transfer of a license will be considered by the
18 Board unless the applicant has met the same personal qualifications as that
19 required of an applicant for an original license nor will an application for transfer
20 be considered by the Board if the proposed premises do not meet the qualifications
21 as that required for premises in an application for an original license. This
22 procedure does not apply to transfers as defined in 11 GCA §3310(1).

23 **§ 2105. Responsibilities of the Licensee.** (a) It shall be the
24 responsibility of a licensee to notify the Administrator in writing of any and all

1 changes in licensed business ownership, management, agents or any other changes
2 which materially affect or modify the data on file and recorded as the basis for
3 granting or renewal of such license, prior to the time such change occurs. Failure
4 to do so within twenty-four (24) hours of such change shall require immediate
5 temporary suspension of the license pending investigation and review by the
6 Board. This suspension shall remain in effect until removed, modified, or other
7 action as may be deemed necessary and appropriate has been taken by the Board.

8 (b) All Class 4, On-Sale establishments shall have a duly registered
9 manager or assistant manager on the premises, in the absence of the licensee, and
10 during the hours from 7:00 p.m. daily until closing. The manager or assistant
11 manager shall be capable and competent in maintenance of order and
12 responsible for compliance with pertinent laws and regulations as pertains to the
13 licensed premises.

14 (c) A licensee proposing to transfer or in the process of transferring his
15 license to another party shall remain responsible for the conduct of the licensed
16 business and liable for compliance with all terms of the license and all laws
17 and regulations pertaining thereto until such time as the Board has approved the
18 transfer and the transferred license has been re-issued by the Administrator in the
19 new licensee's name.

20 (d) A licensee who proposes to be absent or who may be absent from
21 the Island of Guam for a period of forty-eight (48) hours or more shall, prior
22 to departure, notify the Board in writing of the name of the person or persons
23 who are designated responsible for the licensed premises during such absence.
24 The person so designated must meet all qualifications for owner or manager as

1 specified by law and/or regulations and must agree in writing that he is so
2 qualified and accepts this responsibility prior to the licensee's departure. The
3 Board may refuse to accept or approve such designation if, in the Board's
4 consideration, they decide such would not be in conformance with the law,
5 these regulations, or otherwise not in the best interest of the public.

6 (e) A licensee shall post a list of employees and their specified duty
7 hours on the premises where such list shall be at all times available for
8 inspection by duly authorized representatives of the government of Guam. These
9 specified work periods shall clearly indicate the hours when each employee is
10 considered to be on duty. The list shall be posted in advance and shall not be
11 changed except for a bona fide reason. When such changes are made to a
12 posted list, the change shall be initialed by the person making the change, the
13 date and time of such change entered thereon.

14 (f) Licensees of General On-Sale establishments shall be required to
15 register or cause to be registered with the Alcoholic Beverage Control
16 Administrator all persons employed by his establishment and engaged in the
17 mixing and/or the serving of alcoholic beverages, within seventy-two (72) hours
18 after their employment.

19 (g) Licensees shall not engage in business practices which are inimical or
20 discriminatory to public interest or that which may tend to create a monopoly.
21 Credit extended by or to any whole sale or retail licensee beyond forty-five (45)
22 days from date of sale or delivery of the alcoholic beverages shall constitute a
23 violation of provisions of 11 GCA §3429.

24 (h) Class 4, 5, 6, 7, 9, 10, 11 and 12 ABC licensees shall not hire or

1 employ any employee that does not have a valid alcohol employee license from an
2 approved alcohol server/seller training program twelve months from the effective
3 date of this act, provided, however:

4 (1) that a current ABC license shall continue to be valid until
5 expiration, but the licensee shall be required to have taken the alcohol
6 server/seller training program prior to license renewal. Further, the
7 unexpired license shall not be portable, as provided pursuant to §3212.1(b)
8 which only applies to a licensee who has passed an alcohol server/seller
9 training program.

10 **§ 2106. Employee's Responsibilities.** (a) Employees of an On-Sale
11 licensee, engaged in the mixing and/or the serving of alcoholic beverages, shall not
12 engage in dancing while on duty or scheduled for duty as per posted schedule with
13 the premises.

14 (b) Individuals of questionable reputations shall not be employed in a
15 General On-Sale establishment. The Alcoholic Beverage Control Board shall be
16 advised immediately by the Administrator when violations of this regulation
17 become evident during an inspection. The licensee shall be notified in writing
18 by the Board to remedy the situation within a specified time. If subsequent
19 investigation, after the specified time, determines the discrepancy continues to
20 exist, the Board may order a suspension of the license and require the licensee
21 to show cause as to why his license should not be revoked.

22 **§ 2107. Administrator's Responsibilities.** (a) It shall be the
23 responsibility of the Alcoholic Beverage Control Administrator to enforce the
24 provisions of these regulations and make timely reports of violations to the

1 Board.

2 (b) If it is discovered by the Administrator that an establishment has
3 acquired an unsavory reputation, this fact shall be reported to the Board
4 immediately for any action they may deem appropriate and necessary.

5 (c) The Administrator shall approve classroom alcohol server/seller
6 training programs that meet the regulations duly promulgated by the Board
7 pursuant to 11 Guam code annotated §3124.

8 **§ 2108. Responsibilities in the Employment of Minors as Entertainers.**

9 (a) Minor entertainers or minor members of a group must be
10 represented by an adult and a responsible adult shall accompany all minors after
11 the legal curfew hours.

12 (b) The individual or group must be properly licensed.

13 (c) It shall be the responsibility of the licensee to cause the minor
14 entertainers to be registered prior to employment, and it is likewise the
15 licensee's responsibility to determine that all entertainers have reached their
16 sixteenth (16th) birthday.

17 (d) The designated adult representative may be permitted to register the
18 entertainers and it shall be his responsibility to notify the Administrator of any
19 change in the position or membership of a group. Adequate proof of birth shall
20 be presented at the time of registering entertainers.

21 (e) Termination of the hours of duty of minors must coincide with the
22 sale of alcoholic beverages.

1 (f) It shall be the responsibility of the licensee to adhere to all
2 provisions of the Alcoholic Beverage Control Act and these regulations as
3 concerns minors. Further, he is to be held strictly liable for the general behavior
4 of the minors during the hours of their duty.

5 (g) All minors employed as entertainers must remain within certain
6 specified enclosures designated for entertainment. They will not be permitted to
7 visit the bar or tables where alcoholic beverages are being sold or served or
8 consumed.

9 **§ 2109. Miscellaneous Provisions.** (a) All General On-Sale
10 Licensee's shall register or cause to be registered with the Alcoholic Beverage
11 Control Administrator anyone employed as a manager or assistant manager,
12 within seventy-two (72) hours after employment and the proper Alcoholic
13 Beverage Control forms must be accomplished at the time of registering. No
14 person who is not eligible as a licensee will be employed as a manger or
15 assistant manager.

16 (b) All persons having Class 3, Wholesale Dealer's licenses shall
17 keep a copy of invoices or alcoholic beverage sales filed in the order in which
18 made so as to be readily available for examination by the Alcoholic Beverage
19 Control Administrator or members of the Alcoholic Beverage Control Board.
20 These invoices must be kept separate from invoices of sales of other
21 commodities, must show date of sale, delivery, quantity, brand and price
22 received. Wholesalers shall comply with provisions of 11 GCA §3429(k) in
23 preparing invoices for sale of alcoholic beverages.

24 (c) The business entrance doorway of any premises licensed to sell or

1 serve alcoholic beverage for consumption thereon must be kept unlocked while
2 the premises are open for business. No licensed business establishment shall be
3 used for private parties when the door is locked after expiration of authorized
4 hours for the sale of alcoholic beverages unless means are established whereby
5 it can be determined that no alcoholic beverages are being sold therein.

6 (d) Requests for changing the "trade name" of the premises, licensed
7 to sell or serve alcoholic beverages, must be filed with the Board through the
8 Alcoholic Beverage Control Administrator. The reason for the change must be
9 included. If the Board approves the change, the license and allied records
10 retained by the Administrator will be amended to include the new name. The
11 application for a name change will be coordinated with the License

12 (e) If the portion of the licensed premises, open to the customers, is
13 equipped with a bar, the preparation of all drinks shall be made on the top
14 surface of the bar in such a manner as to permit any interested customer to
15 have a clear and unobstructed view of the bartender's operation.

16 (f) Whenever a suspension is effected by the Administrator or the
17 Board, the Administrator shall cause a "Notice of Suspension" to be posted in a
18 conspicuous place on the exterior of the licensed premises. The notice will
19 contain the following wording: "Government of Guam, Notice of Suspension,
20 Alcoholic Beverage Control Licenses Issued for these Premises have been
21 Suspended. By Order of: The Alcoholic Beverage Control Administrator or the
22 Alcoholic Beverage Control Board under 11 GCA §3614. This poster shall not
23 be removed except by authorized persons."

24 ~~§ 2110. Cancellation of Rules and Regulations.~~ These regulations cancel any

1 ~~rules and/or regulations previously promulgated by any previous Alcoholic~~
2 ~~Beverage Control Board.~~

3 **§ 2110. RESPONSIBILITIES OF ALCOHOL SERVER/SELLER**
4 **TRAINING PROGRAMS.**

5 (a) No alcohol server/seller training program shall offer or conduct
6 alcohol server/seller training classes until they have received written approval from
7 the Administrator.

8 (b) All alcohol server/seller training programs shall apply for approval
9 from the Administrator by submitting their complete program, including instructor
10 manuals, student manuals, videos and any other materials that are used for the
11 program.

12 (c) The curriculum of an alcohol server/seller training program shall
13 include, at a minimum, all of the following topics:

- 14 (1) The ethics and responsibilities of serving alcoholic beverages;
- 15 (2) Basic alcohol content among different types of drinks containing
16 alcohol;
- 17 (3) The clinical effects of alcohol, including the identification of
18 progressive stages of intoxication and the visible signs associated with
19 each stage;
- 20 (4) Variables associated with visible intoxication, including the rate of
21 drinking, tolerance, weight, food consumption, gender, and use of other
22 drugs;
- 23 (5) Procedures for monitoring consumption, personal skills to prevent
24 intoxication and intervention procedures;
- 25 (6) Acceptable forms of personal identification, techniques for

1 determining the validity of identification, and procedures for dealing with
2 fraudulent identification;

3 (7) Personal skills to assess the need to ask for identification based on
4 appearance and company policy;

5 (8) The identification of potential third-party sales and furnishing of
6 alcoholic beverages to minors by persons 21 years of age or over;

7 (9) The understanding of possible legal, civil, and administrative
8 consequences of violations of this Act, the rules of the Board, and other
9 pertinent laws;

10 (10) How to identify at place of employment spirits and other alcoholic
11 beverage products not intended for resale or commercial distribution
12 outside of military bases, and procedures for reporting these violations to
13 the Board;

14 (11) The understanding of Guam laws pertaining to minors attempting to
15 purchase, minors in possession, and third-party sales or furnishing of
16 alcoholic beverages by adults to minors;

17 (12) Knowledge of the legal hours of alcohol service and occupancy;

18 (13) Identification of signs of prohibited activities, such as gambling,
19 solicitation for prostitution, and drug sales; and

20 (14) Any other pertinent laws as determined by the Board or
21 Administrator to be appropriate and in keeping with applicable law and
22 these regulations.

23 (d) The alcohol server/seller training program shall administer a
24 comprehensive examination to participants of the program, including individuals
25 seeking certification as instructors within the program. The examination shall

1 thoroughly test the individual's knowledge and competency in the curriculum
2 topics required by the Board. The minimum passing grade for the examination
3 participants of the program shall be not less than 75%. For instructor
4 certification, the passing grade shall be not less than 85%. All tests shall be
5 approved by the Administrator.

6 (e) The alcohol server/seller training program shall issue an alcohol
7 employee license to the student who successfully completes the program.
8 Certification shall be valid for a term of three years.

9 (f) The alcohol server/seller training program shall issue an instructor
10 certification card to all instructors that have been certified by the program that
11 shall be valid for a term of three years, and shall notify the Board or
12 Administrator. The alcohol server/seller training program shall immediately
13 notify the Board or Administrator when an instructor is no longer certified by
14 the program.

15 (g) The alcohol server/seller training program shall make available all
16 records of students, instructors and certifications to the Board and the
17 Administrator.

18 (h) The Administrator shall rescind approval of any alcohol
19 server/seller training program that fails to continue to meet these requirements
20 or fails to pay the yearly fee set by the Board.

21 (i) The Administrator shall not approve online alcohol server/seller
22 training programs.

23 **§ 2111. Cancellation of Rules and Regulations.** These regulations cancel

- 1 any rules and/or regulations previously promulgated by any previous Alcoholic
- 2 Beverage Control Board.”