

*I Mina'Trentai Kuáttro Na Liheslaturan*  
**BILL STATUS**

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
40-34 (COR)	Mary C. Torres	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.	03/13/17 10:40 a.m.						

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

Bill No. 40-34 (COR)

Introduced by:

Mary Camacho Torres *WCL*

**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 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 work force 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 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 which was dismissed, expunged, sealed or did not result in a conviction during the hiring process. The Fair Chances Hiring Act also

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1 changes the sequencing of when an employer may ask an applicant about their  
2 criminal history until after an employer makes a conditional offer of employment.  
3 An offer of conditional employment to an applicant with a criminal history may  
4 still be rescinded for a legitimate business reason, as outlined in this law. The  
5 Guam Department of Labor is authorized to provide training and enforcement of  
6 the law. Finally, in an effort to protect the interests of employers, the Fair Chances  
7 Hiring Act creates certain immunities for employers who hire those with criminal  
8 records in accordance with this law.

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

11 **“CHAPTER 6**

12 **FAIR CHANCES HIRING PROCESS ACT**

13 **ARTICLE 1**

14 **GENERAL PROVISIONS**

15 § 6101. Definitions.

16 § 6102. General Policy

17 **ARTICLE 2**

18 **GUAM DEPARTMENT OF LABOR ADMINISTRATION AND**  
19 **ENFORCEMENT ROLE**

20 § 6103. Complaint Process

21 § 6104. Administrative Responsibilities

22 § 6105. Reporting Requirements

23 **ARTICLE 3**

24 **EMPLOYER PROTECTIONS AND INCENTIVES**

25 § 6106. Negligent Hiring Immunity

26 **ARTICLE 4**

27 **MISCELLANEOUS PROVISIONS**

1 § 6107. Severability

2 § 6108. Effective Date

3 ARTICLE 1

4 GENERAL PROVISIONS

5 § 6101. **Definitions.** As used in this Chapter:

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

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

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

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

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

24 (f) *Employment* means any occupation, vocation, job, or work for pay,  
25 including temporary or seasonal work, contracted work, contingent work, and work  
26 through the services of a temporary or other employment agency; or any form of

1 vocational or educational training with pay, where the physical location of the  
2 employment is in whole or in substantial part, within Guam.

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

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

10 **§ 6102. General Policy**

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

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

19 (c) The prohibition of this section shall *not* apply:

20 (1) Where any federal or local law or regulation requires the  
21 consideration of an applicant's criminal history for the purpose of  
22 employment; or,

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

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

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

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

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

10 (3) The time which has elapsed since the occurrence of the pending  
11 criminal cases or criminal history;

12 (4) The age of the person at the time of the pending criminal cases,  
13 or criminal history;

14 (5) The frequency and severity of the pending criminal cases or  
15 criminal history; and

16 (6) Any information produced by their person, or produced on his  
17 behalf, in regard to his rehabilitation and good conduct since the occurrence  
18 of the pending criminal cases or criminal history;

19 (e) If an applicant's conditional offer is terminated or an adverse action is  
20 taken against an applicant on the basis of the open criminal cases or criminal  
21 history, the applicant *may* request that the employer provide the applicant within  
22 thirty (30) days:

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

25 (2) A written Statement of Denial, which:

26 (A) Articulates a legitimate business reason for the denial;

1 (B) Specifically demonstrates consideration of each of the  
2 factors set forth in subsection (d) of the section;

3 (C) Advises the applicant of his or her opportunity to file an  
4 administrative complaint with the Guam Department of  
5 Labor

6 (3) Failure to provide a written Statement of Denial upon request as  
7 set forth in the section shall create a rebuttable presumption that no  
8 legitimate business reason exists for denying the applicant employment of  
9 taking an adverse action against an employee on the basis of a criminal  
10 history.

11 ARTICLE 2  
12 GUAM DEPARTMENT OF LABOR ADMINISTRATION  
13 AND ENFORCEMENT ROLE

14 **§ 6103. Complaints**

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

18 (b) The administrative remedies outlined in Subsection (a) of this Section  
19 are exclusive. A person claiming to be aggrieved by a violation of this Chapter  
20 shall have no private cause of action in any court based on a violation of this part.

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

24 **§ 6104. Administrative Responsibilities.**

25 (a) The Guam Department of Labor *shall* develop administrative rules  
26 and regulations in accordance with outlining the procedures by which it will  
27 accept, investigate, adjudicate complaints of Fair Chances Hiring Process Act

1 violations and enforce provisions in the act. All rules and regulations will comply  
2 with the Administrative Adjudication Law, as required in Chapter 9 of Title 5,  
3 Guam Code Annotated.

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

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

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

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

18 (1) For employers that employ 15-30 employees a fine up to, but  
19 not more than, \$1000.00 per violation

20 (2) For employers that employ 31-99 employees, a fine of up to,  
21 but not more than, \$2000.00 per violation

22 (3) For employers that employ 100 or more employees, or for any  
23 Government of Guam agency, a fine up to, but not more than, \$4000.00 per  
24 violation

25 (c) The Guam Department of Labor may develop a training program  
26 and/or a plan for providing training resources for employers and their  
27 representatives, such as hiring authorities or human resource officers. The program



1 may include a mandatory posting in each employer's premises, developed by the  
2 Department which notifies employees of the Act and other labor laws.

3 (d) Any penalty funds collected for violations *shall* be collected by the  
4 Department of Labor. Fines collected by the Department under the provisions of  
5 this section shall be deposited in the Manpower Development Fund to be employed  
6 exclusively for the training programs and enforcement operations within the Fair  
7 Employment Practice Office. The Director of Labor shall complete an annual  
8 report of all expenditures and activities under this subsection to the Legislature.

9 (e) An employer may request an Advisory Opinion from the Fair  
10 Employment Practice Office with regards to a specific situation related to the Act,  
11 however, the Director *may* decline to entertain such requests at his or her  
12 discretion.

### 13 **§ 6105. Reporting Requirements**

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

19 (b) In the event that an employer is found to have more than one violation  
20 of this Act, the Guam Department of Labor Compliance Office *shall* post the name  
21 of employer on the Guam Department of Labor official website. Employers found  
22 to be in violation of this Act *shall not* be posted for their first violation, but *shall* be  
23 posted for all subsequent violations. Names of applicants impacted by employee  
24 violation *shall not* be named. This posting shall be made on the Guam Department  
25 of Labor official website and shall include the date of the violation. Violating  
26 employers will be listed on the official period for a period seven (7) years after  
27 their founded violation and removed after that time period.

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

5 ARTICLE 3

6 EMPLOYER PROTECTIONS AND INCENTIVES

7 **§ 6106. Negligent Hiring Immunity.**

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

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

13 (1) the employer knew or should have known of the criminal  
14 history; and

15 (2) the employee was convicted of an offense that was committed  
16 while performing duties substantially similar to those reasonably expected to be  
17 performed in the employment, or under conditions substantially similar to those  
18 reasonably expected to be encountered in the employment, taking into  
19 consideration the factors listed above in § 6102(d);

20 (c) The protections provided to an employer under this Section do not  
21 apply in a suit concerning the misuse of funds or property of a person other than  
22 the employer by an employee if, on the date the employee was hired, the employee  
23 had been convicted of a crime that includes fraud or the misuse of funds or  
24 property as an element of the offense, and it was foreseeable that the position for  
25 which the employee was hired would involve discharging a fiduciary responsibility  
26 in the management of funds or property.

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

3           ARTICLE 4

4           MISCELLANEOUS PROVISIONS

5           **§ 6107. Severability.**

6           If any provision of this Act or the application of any such provision to any  
7 person or circumstance should be held invalid by a court of competent jurisdiction,  
8 the remainder of this Act or the application of its provisions to persons or  
9 circumstances other than those to which it is held invalid *shall not* be affected  
10 thereby.

11           **§ 6108. Effective Date.**

12           This act *shall* be effective 210 days after enactment.