

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 98(Cor)

Introduced by:

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AN ACT TO ADD A NEW CHAPTER 6 TO 22GCA
RELATIVE TO CREATING THE “EMPLOYEE SECRET
BALLOT PROTECTION ACT”.

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

2 **Section 1.** A new Chapter 6 is *added* to 22GCA to read as follows:

3

4

“Chapter 6

5

Employee Secret Ballot Protection Act.

6 **§6101. Title.** This Chapter may be cited as the Employee Secret Ballot Protection
7 Act.

8

9 **§6102. Legislative intent.** It is hereby declared to be the public policy of Guam:

10

11 (A.) That individual freedom of choice in employment-related matters be
12 guarded and maintained;

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14 (B.) That employees have the right to use a secret-ballot election when
15 selecting an exclusive bargaining representative;

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1 (C.) That a secret-ballot election upholds the sanctity of worker free choice;

2
3 (D.) That employees be given the opportunity to cast a vote in accordance
4 with their conscience in secret-ballot elections, free from coercion,
5 intimidation, threats, misinformation, or interference from outside
6 influences.

7
8 (E.) That a labor organization not be able to pressure an employer to
9 recognize the labor organization as an exclusive bargaining representative
10 based solely on a stated showing of interest by employees without a secret-
11 ballot election; and,

12
13 (F.) That an employer not bargain away its employees' rights to secret-ballot
14 elections for labor representation purposes.

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16 **§6103. Definitions.** For the purposes of this Chapter:

17
18 (A.) "Labor organization" means an employee representation committee,
19 organization, or union in which employees participate and which exists for
20 the purpose, in whole or in part, of dealing with an employer concerning
21 employee wages, rates of pay, hours of work, other forms of compensation,
22 grievances, labor disputes, or other conditions of employment.

23
24 (B.) "Employer" means any agency, as defined in this Chapter or any group
25 or association of employers which is an employer within the meaning of any
26 law of the Guam or of the United States, but does not include the United

1 States or any corporation wholly owned by the Government of the United
2 States.

3
4 (C.) “Employee” means any individual employed by an employer.

5
6 (D.) “Agency” means every branch, governmental subdivision, every public
7 and quasi-public corporation, every public agency and public service
8 corporation, whether incorporated of the Government of Guam.

9
10 (E.) “Secret ballot” means the expression by ballot or voting machine, but in
11 no event by proxy, of a choice with respect to any election or vote taken
12 upon any matter, which is cast in such a manner that the person expressing
13 such choice cannot be identified with the choice expressed.

14
15 (F.) “Exclusive bargaining representative” means any labor organization that
16 has been selected or designated pursuant to the provisions of Public Law as
17 the representative of the employees in an appropriate collective bargaining
18 unit to represent the employees in their employment relations with
19 employers.

20
21 (G.) “Labor official/agency” means the Director of the Department of Labor/
22 Department of Labor or any official/agency designated by the Director of
23 Labor to administer the provisions of this Chapter.

24
25 **§6104. Employee right to secret ballot.**

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1 (A.) All employees, when seeking to select for themselves an exclusive
2 bargaining representative, have the right to make that selection in a secret-
3 ballot election.

4
5 (B.) Any agreement, understanding, or practice, written or oral, implied or
6 expressed, between any labor organization and employer that violates the
7 rights of employees as guaranteed by provisions of this Chapter is hereby
8 declared to be unlawful, null and void, and of no legal effect. Any strike,
9 picketing, boycott, or other action by a labor organization for the sole
10 purpose of inducing or attempting to induce an employer to enter into any
11 agreement prohibited under this Chapter is hereby declared to be for an
12 illegal purpose and is a violation of the provisions of this chapter.

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14 **§6105. Procedures for the labor official/agency.**

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16 (A.) The labor official/agency shall recognize a labor organization as the
17 exclusive bargaining representative only after a majority of voting
18 employees in the collective bargaining unit have indicated their affirmative
19 approval of that recognition through the use of secret ballots in an election.
20 For Government of Guam employers, the labor official/agency shall
21 recognize a labor organization as the exclusive bargaining representative
22 only after the requisite percentage of employees, pursuant to Chapter 10 of
23 4GCA, have indicated their affirmative approval of that recognition through
24 the use of secret ballots in an election.

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26 (B.) The labor official/agency shall administer the election pursuant to a
27 manner that is not inconsistent with the provisions of Public Law.

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§6106. Denial of secret-ballot elections deemed an unfair labor practice.

(A.) It shall be an unfair labor practice by the employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it or to recognize or bargain collectively with a labor organization that has not been selected by a majority of such employees in a secret-ballot election conducted by the labor official/agency in accordance with applicable Public Law.

(B.) It shall be an unfair labor practice by the labor organization to cause or attempt to cause an employer to recognize or bargain collectively with a representative of a labor organization that has not been selected by a majority of such employees in a secret-ballot election conducted by the labor official/agency in accordance with Public Law.

(C.) Any employee may file an unfair labor practice complaint pursuant to this section with the labor official/agency in accordance with existing, applicable Guam labor law regarding unfair labor practices.

§6107. Coercion and intimidation prohibited. It shall be unlawful for any person, labor organization, or officer, agent or member thereof, or employer, or officer thereof, by any threatened or actual intimidation of an employee or prospective employee, or an employee's or prospective employee's parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to an employee's or prospective employee's property, to compel or attempt to compel

1 such employee to join, affiliate with, or financially support a labor organization or
2 to refrain from doing so, or otherwise forfeit any rights as guaranteed by provisions
3 of this chapter. It shall also be unlawful to cause or attempt to cause an employee
4 to be denied employment or discharged from employment because of support or
5 nonsupport of a labor organization by inducing or attempting to induce any other
6 person to refuse to work with such employees.

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8 **§6108. Penalties.** Any person who directly or indirectly violates any provision of
9 this Chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall
10 be subject to a fine not exceeding One Thousand Dollars (\$1,000) or imprisonment
11 for a period of not more than one (1) year, or both such fine and imprisonment.

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13 **§6109. Civil remedies.**

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15 (A.) Any employee harmed as a result of any violation or threatened
16 violation of the provisions of this chapter shall be entitled to relief, including
17 injunctive relief, in the Superior Court against any and all violators or
18 persons threatening violations and may in addition thereto recover any and
19 all damages, including costs and reasonable attorney fees, of any character
20 resulting from such violation or threatened violation. Such remedies shall be
21 independent of and in addition to the penalties and remedies prescribed in
22 other provisions of this chapter.

23
24 (B.) Any such legal action against a labor organization shall be brought in
25 the Superior Court where the alleged violation occurred or where the labor
26 organization maintains its principal office.

1 **§6110. Duty to investigate.** It shall be the duty of the Attorney General to
2 investigate complaints of violation or threatened violations of this chapter, to
3 prosecute all persons violating any of its provisions, and to take all means at their
4 command to ensure its effective enforcement.

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6 **§6111. Prospective application.** This Chapter shall not apply to collective
7 bargaining relationships in which a labor organization was lawfully recognized as
8 an exclusive bargaining representative before the date of the enactment of this
9 Chapter.

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11 **§6112. Federal preemption.** This Chapter shall apply to:

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13 (A.) Employers that are agencies; and,

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15 (B.) All other employers in Guam that are not subject to the National Labor
16 Relations Act or any other applicable federal labor laws. To the extent that
17 federal law governs employment matters, this Chapter shall be invalid.

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19 **§6113. Severability.** *If* any provision of this Chapter or its application to any
20 person or circumstance is found to be invalid or contrary to law, such invalidity
21 shall *not* affect other provisions or applications of this Chapter which can be given
22 effect without the invalid provisions or application, and to this end the provisions
23 of this Chapter are severable.