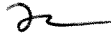


I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Session

Bill No. 130-37 (WR)

Introduced by:

T.C. Ada 

2013 MAY 31 PM 4: 21



**AN ACT TO AMEND §1106.(k) OF CHAPTER 1 TITLE 22 GUAM
CODE ANNOTATED RELATIVE TO IMPOSING FINES FOR
EMPLOYING ALIENS WITHOUT LAWFUL WORK STATUS**

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that
2 the Guam Department of Labor (DOL), pursuant to §1106.(k) of Chapter 1, Title 22,
3 Guam Code Annotated, has the power to investigate “*the condition of aliens relative to*
4 *their employment.*” However the authority to arrest and prosecute aliens who do not
5 possess lawful work status is vested with the U.S. Department of Immigration and
6 Customs Enforcement (ICE), a Division of the U.S. Department of Homeland Security
7 (USDHS).

8 *I Liheslatura* finds that, while ICE has the authority to arrest and prosecute aliens,
9 the Guam DOL, as authorized by Guam law, has regulatory authority for the enforcement
10 of Guam’s labor laws.

11 *I Liheslatura* finds that under current law, aliens without lawful work status are
12 subject to legal consequences if discovered employed on Guam. The DOL has the power
13 to investigate, but the law does not provide authority to penalize employers hiring aliens
14 who do not possess lawful work status. Thus, there is no disincentive to discourage
15 employers from hiring aliens who do not possess lawful work status.

1 *I Liheslatura therefore intends to protect the limited number of jobs on Guam for*
2 *those who are legally eligible and qualified for the jobs available.*

3 **Section 2. §1106.(k) of Chapter 1, Title 22 GCA is hereby *amended* to read:**

4 (k) May investigate the condition or status of aliens relative to their employment.

5 “(1) To facilitate the investigation, employers shall ensure that all alien
6 workers on a work site or at a place of business possess some form of valid,
7 government issued picture identification to include, but not limited to: a passport,
8 a Guam Driver’s License, or an employment authorization card; and the Director
9 or his authorized representative may request such identification documents from
10 any alien worker at a place of work in Guam. If a worker’s immigration status is
11 in question the Department may temporarily detain such individual on site so that
12 the Department can verify the worker’s status with immigration officials.

13 (2) Should an alien who does not possess lawful work status be found to
14 be employed at a place of work in Guam, the employer shall be subject to civil
15 penalties of One Thousand Dollars (\$1,000) per worker for the first offense, Two
16 Thousand Five Hundred Dollars (\$2,500) per worker for the second offense and
17 Five Thousand Dollars (\$5,000) per worker for the third offense.

18 (i) A second offense is defined as any violation of this section not
19 on the same day of the date noted on the First (1st) Notice of Violation (or
20 citation), but within 12 (twelve) months of the date noted on the First (1st)
21 Notice of Violation (or citation). A third offense is defined as any
22 violation of this section not on the same day noted on the Second (2nd)
23 Notice of Violation (citation), but within 12 (twelve) months of the date
24 noted on Second (2nd) Notice of Violation (or citation).

1 (ii) For employers who have committed a third offense, the
2 Director shall, within thirty (30) days, also refer the matter to the
3 appropriate licensing entity, including but not limited to: the Guam
4 Contractors License Board (GCLB) or the Department of Revenue &
5 Taxation who shall, within ninety (90) days, conduct an investigation to
6 determine if a suspension of the employer's contractor license, business
7 license, or operating license is justified, and if so, suspension for a period
8 of not less than one year and not more than 3 years is hereby authorized.
9 In the event of a timely appeal to the Director, referral to licensing
10 authorities shall be deferred until the completion of the appeal process.

11 (3) In the event of a violation, if the employer of an alien worker without
12 lawful work status is not readily identifiable, the prime contractor at a job site or
13 the owner of the business establishment inspected shall be liable for the assessed
14 civil penalty. In cases where work has been contracted or subcontracted and the
15 direct employer is not readily identifiable, the prime contractor or the contractor
16 named on the building permit shall be liable for any fines levied pursuant to this
17 section.

18 (4) In the event of a violation of this section, the offender shall be served
19 with a Notice of Violation, commonly referred to as a citation, which details the
20 violation and the amount of fine to be imposed. The offender shall have the right
21 to an administrative hearing conducted by the Director of Labor as the hearing
22 officer. The offender may appeal in writing within fifteen (15) calendar days from
23 the receipt of the Notice of Violation, to the Director of Labor, requesting a
24 hearing to present facts and law in defense of the offender.

1 (5) Failure to pay an assessed fine within 120 days from the issuance of a
2 Notice of Violation, or by a due date set in a DOL Administrative Order shall be a
3 felony.

4 (6) Fines generated from section §1106.(k)(2) shall be deposited into the
5 DOL Manpower Development Fund and expended in accordance with provisions
6 at 22 GCA § 7118.1(e).”

7 **Section 3. Promulgation of Rules and Regulations.** The Department of Labor
8 *may* promulgate rules and regulations consistent with the laws of the United States and
9 Guam as *may* be necessary to insure program effectiveness.

10 **Section 4. Severability.** *If* any provision of this Law or its application to any
11 person or circumstance is found to be invalid or contrary to law, such invalidity *shall not*
12 affect other provisions or applications of this Law which can be given effect without the
13 invalid provisions or application, and to this end the provisions of this Law are severable.

14 **Section 6. Effective Date.** This Act shall become effective 30 days after its
15 enactment.