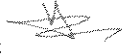



***I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN***  
**2014 (SECOND) Regular Session**

Bill No. 320 -32 (LS )

Introduced by:

V. C. Pangelinan 

**AN ACT TO *ADD* A NEW CHAPTER 53 TO DIVISION 2,  
AND TO *ADD* A NEW SECTION 70134 TO CHAPTER 70,  
DIVISION 3, TITLE 11 OF THE GUAM CODE  
ANNOTATED, RELATIVE THE CREATION OF THE  
GUAM QUALIFIED RETIREMENT PLAN AND TRUST  
ACT.**

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

2 **Section 1. Legislative Statement and Intent.** *I Liheslaturan Guåhan*  
3 finds that companies on Guam have continued to offer qualified retirement plans  
4 and/or trusts to its employees as a benefit of employment. The offering and  
5 administering of such retirement plans requires that distributions from such  
6 retirement plans to its participants require Guam Territorial Income Tax (GTIT)  
7 withholding taxes be paid as a result of such distributions from such retirement  
8 plans.

9 *I Liheslaturan Guåhan* further finds that several qualified retirement plans  
10 and/or trusts continue to pay GTIT withholding taxes to other tax jurisdictions,  
11 such as the Internal Revenue Service (IRS) and not the Department of Revenue and  
12 Taxation (DRT), thereby complicating the DRT's collection efforts of such  
13 withholding taxes. *I Liheslatura* further aims to assist the DRT in collecting GTIT  
14 withholding taxes from these qualified retirement plans and/or trusts which *may*  
15 result in an increase in realized tax revenues that *may* be overlooked as a result of  
16 qualified retirement plans and/or trusts paying to other tax jurisdictions.

1           Therefore, it is the intent of *I Liheslaturan Guåhan* to establish an  
2 administrative mechanism that will penalize qualified retirement plans and/or trusts  
3 offered, provided, and/or administered on Guam that do not file and pay GTIT  
4 withholding taxes for the participants in such retirement plans thereby  
5 incentivizing the proper procedures and requirements of paying GTIT withholding  
6 taxes to the DRT and not to other tax jurisdictions.

7           **Section 2. Guam Qualified Retirement Plan and Trust.** A new Chapter  
8 53 is hereby *added* to Division 2 of Title 11, Guam Code Annotated, to read:

9                                   **“CHAPTER 53**

10                                  **GUAM QUALIFIED RETIREMENT PLAN AND TRUST ACT**

- 11           § 53101.    Title.
- 12           § 53102.    Application.
- 13           § 53103.    Definitions.
- 14           § 53104.    Administration.
- 15           § 53105.    Qualifications for a Certificate of Qualified Retirement  
16 Plan and Trust.
- 17           § 53106.    Examinations.
- 18           § 53107.    Inspections.
- 19           § 53108.    Penalty.
- 20           § 53109.    Certificates not Transferable.
- 21           § 53110.    Suspension and Revocation of Certificate.
- 22           § 53111.    Rules.
- 23           § 53112.    Reproduction; Certified Copies and Authentication: Fees.
- 24           § 53113.    Effective Date.
- 25           § 53114.    Severability.

26           **§ 53101. Title.** This Chapter may be cited as the *Guam Qualified*  
27 *Retirement Plan and Trust Act of 2014.*

1           **§ 53102. Application.** This Act *shall only* apply to qualified  
2 retirement plans and trusts that qualify under 26 U.S.C. § 401 – Qualified  
3 pension, profit-sharing, and stock bonus plans offered, provided, and/or  
4 administered on Guam.

5           **§ 53103. Definitions.**

6           (a) *Certificate shall* mean and include a recognition of a Plan that  
7 qualifies under 26 U.S.C. § 401 – Qualified pension, profit-sharing, and  
8 stock bonus plans administered on Guam, by the Commissioner such that a  
9 penalty *shall* not be assessed for such valid and authorized certificate  
10 holders.

11           (b) *Commissioner shall* mean the Tax Commissioner pursuant to  
12 11 GCA § 26102.

13           (c) *Person shall* mean and include any individual, firm, co-  
14 partnership, joint venture, association, corporation, estate, trust, or other  
15 group or combination acting as a unit.

16           (d) *Plan shall* mean a qualified retirement plan and/or trust that  
17 qualify under 26 U.S.C. § 401, offered, provided, and/or administered on  
18 Guam.

19           **§ 53104. Administration.** The Commissioner of the Department  
20 of Revenue and Taxation (DRT) *shall* have responsibility for the  
21 administration and enforcement of this Chapter.

22           **§ 53105. Qualifications for a Certificate of Qualified**  
23 **Retirement Plan and Trust.**

24           (a) Persons that offer and provide Plans *shall* require a certificate  
25 from the Commissioner in recognition of meeting the qualifications of  
26 providing such Plans. Such certificate *shall* be granted by the Commissioner  
27 to Plans that meet the following criteria:

1 (1) pays a one-time filing fee of Five Hundred Dollars  
2 (\$500.00) to the DRT to be deposited into the Better Public Service  
3 Fund;

4 (2) maintains separate Plans *only* for Guam-based  
5 participants paying Guam Territorial Income Taxes to the DRT and  
6 does not commingle participants that pay income taxes to other tax  
7 jurisdictions other than Guam, unless such participants that pay  
8 income taxes to other tax jurisdictions also pay Guam Territorial  
9 Income Taxes to the DRT;

10 (3) makes Guam Territorial Income Tax withholding tax  
11 payments for all Guam-based participants in such Plan on the  
12 applicable due date to the DRT; and

13 (4) files quarterly and annual tax returns for such qualified  
14 retirement plan and/or trust with the DRT.

15 (b) Persons offering and providing Plans prior to the enactment of  
16 this Act *shall*:

17 (1) demonstrate that said person has been filing Guam  
18 Territorial Income Tax withholding taxes with the DRT for Guam-  
19 based participants in said person's Plan for the previous three (3) tax  
20 years;

21 (2) if said person offering and providing a Plan has not been  
22 properly paying Guam Territorial Income Tax withholding taxes to  
23 the DRT for Guam-based participants in said person's Plan for the  
24 previous three (3) years, but has notified the DRT of such payment to  
25 another tax jurisdiction, demonstrate that said person is working with  
26 the DRT to obtain Guam Territorial Income Tax withholding tax  
27 payments via the Section 30 process if said person has *not* been

1 paying Guam Territorial Income Tax withholding taxes directly to the  
2 DRT for Guam-based participants in said person's Plan; or

3 (3) if said person offering and providing a Plan has not been  
4 properly paying Guam Territorial Income Tax withholding taxes to  
5 the DRT for Guam-based participants in said person's Plan for the  
6 previous three (3) years, but has *not* notified the DRT of such  
7 payment to another tax jurisdiction, then said person *shall* file  
8 amended tax returns for the previous three (3) tax years and pay the  
9 DRT any past due taxes as a result of filing and paying withholding  
10 taxes to the improper tax jurisdiction.

11 **§ 53106. Examinations.** Examination of the qualifications of any  
12 Plan *shall* be the duty and responsibility of the Commissioner.

13 **§ 53107. Inspections.** It *shall* be the duty and responsibility of the  
14 Commissioner to make periodic inspections or examinations of Plans to see  
15 that they conform at all times to the required qualifications.

16 **§ 53108. Penalty.** Companies that offer and provide Plans without  
17 a certificate from the DRT in recognition of meeting the qualifications of  
18 providing such Plans *shall* be subject to a penalty of Five Hundred Dollars  
19 (\$500.00) per annum until such time a certificate is granted for such Plan.

20 **§ 53109. Certificates not Transferable.** Every certificate of Plans  
21 issued under this Chapter *shall* be deemed to be personal and *shall* be issued  
22 to the person or persons making application therefor, and *may* not in any  
23 circumstances be transferred to any other person except upon written  
24 application to and written approval by the Commissioner.

25 **§ 53110. Suspension and Revocation of Certificate.** Any person  
26 holding a certificate under the provisions of this Chapter who refuses or fails  
27 to comply with any provision of applicable regulatory statutes, rules or

1 regulation *shall* be subject to the penalty of having his certificate either  
2 suspended for a period of time or revoked by the Commissioner. The  
3 suspension or revocation of any license of a person making application for  
4 any new certificate *shall* be taken into consideration by the Commissioner  
5 for the granting of the new certificate and may, in the Commissioner's  
6 discretion, be grounds for refusal to grant a new certificate.

7       **§ 53111. Rules.** The Commissioner *may* adopt rules to implement  
8 and administer this Chapter pursuant to the Administration Adjudication  
9 Act.

10       **§ 53112. Reproduction; Certified Copies and Authentication:**  
11 **Fees.** The fee for the reproduction of copies, certified copies, and  
12 authentication for the Certificates identified in this Chapter *shall* be Twenty  
13 Five Dollars (**\$25.00**) for each request.

14       **§ 53113. Effective Date.** This Act *shall* take effect upon its  
15 enactment and apply prospectively.

16       **§ 53114. Severability.** *If* any provision of this Act or its  
17 application to any person or circumstance is held invalid, the invalidity *shall*  
18 *not* affect other provisions or applications of this Act which can be given  
19 effect without the invalid provision or application and to this end the  
20 provisions of this Act is severable.”

21       **Section 3.** A new Section 70134 is hereby *added* to Chapter 70, Division 3,  
22 Title 11 of the Guam Code Annotated to read:

23       “**§ 70134. Requirement for License Holders Transacting for**  
24 **Qualified Retirement Plans and Trusts.** Businesses holding a License *and*  
25 transacting with or on behalf of a qualified retirement plan and/or trust that  
26 qualify under 26 U.S.C. § 401, offered, provided, and/or administered on  
27 Guam, *shall* obtain a copy of the plan(s) Certificate(s) of Qualified

1 Retirement Plan and Trust pursuant to § 53105, Chapter 53, Division 2 of  
2 Title 11, Guam Code Annotated. License holders that fail to obtain a copy of  
3 said certificate(s) *shall* be subject to a penalty of Five Hundred Dollars  
4 (\$500.00) per annum, per plan until such time a copy of the certificate(s) is  
5 obtained. For the purposes of this Section, transact *shall* mean and include,  
6 but not be limited to, making contributions to qualified retirement plan  
7 and/or trust that qualify under 26 U.S.C. § 401, offered, provided, and/or  
8 administered on Guam.

9 All current businesses holding a License currently transacting with a  
10 qualified retirement plan and/or trust that qualify under 26 U.S.C. § 401,  
11 offered, provided, and/or administered on Guam before the enactment of this  
12 Act *shall* have One Hundred Eighty (180) days to obtain said certificate  
13 from the date each plan obtains its certificate.”

14 **Section 4. Effective Date.** This Act *shall* take effect upon its enactment and  
15 apply prospectively.

16 **Section 5. Severability.** *If* any provision of this Act or its application to any  
17 person or circumstance is held invalid, the invalidity *shall not* affect other  
18 provisions or applications of this Act which can be given effect without the invalid  
19 provision or application and to this end the provisions of this Act is severable.”  
20