

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
46-35 (COR)	James C. Moylan	AN ACT TO AMEND § 5112 AND TO ADD §5113, BOTH OF CHAPTER 51, TITLE 18, GUAM CODE ANNOTATED, AND TO ADD §30112 TO CHAPTER 30, OF TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO INCREASING THE ENFORCEMENT AND COLLECTION EFFORTS FROM LODGING FACILITIES WHO ACCOMMODATE TRANSIENT VISITORS.	2/13/19 12:34 p.m.						

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. *46*-35 (COR)

Introduced by:

James C. Moylan 

AN ACT TO *AMEND* §5112 AND TO *ADD* §5113, BOTH OF CHAPTER 51, TITLE 18, GUAM CODE ANNOTATED, AND TO *ADD* §30112 TO CHAPTER 30, OF TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO INCREASING THE ENFORCEMENT AND COLLECTION EFFORTS FROM LODGING FACILITIES WHO ACCOMMODATE TRANSIENT VISITORS.

2019 FEB 13 PM 12:34 

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guahan* finds that more efforts need to be undertaken to assure that the government receives its fair share of taxes from those unlicensed and unauthorized lodging facilities which accommodate transient visitors. Reports have indicated that both the Bed and Breakfast and Short-term Vacation Rental Unit industries have dramatically grown over the years. Residents are seeing tourists entering or leaving homes in their neighborhoods, and more online sites are arising which advertise short term rentals on island.

Recent media reports have reported that only 29 of the at least 340 bed and breakfast and short-term vacation rentals that are advertised to be on Guam are licensed with the Department of Revenue and Taxation. Previous estimates from the Guam Hotel and Restaurant Association identify that this could very well be a

1 \$23 million dollar industry, which could be generating at least around \$4 million
2 dollars a year in lost revenues. But to effectively enforce the laws associated with
3 these industries, some investments must be made, and the penalties must be more
4 stringent to assure that unlawful activity is minimized or possibly eliminated all
5 together.

6 It is vital to not only increase the penalties associated with illegal rentals,
7 both in terms of fines, as well as in assuring that one found guilty is unable to
8 conduct any business on Guam for an extensive period of time. Residents of Guam
9 also need to participate in this process to provide the Department of Revenue and
10 Taxation (DRT) the additional eyes and ears from a neighborhood perspective. By
11 creating a reward system, DRT would attain whistleblowers who could lead the
12 department to either penalize, cease or enforce visitor lodging laws. The
13 legislation is not seeking trespassers endangering themselves, but to attain
14 confidential informants.

15 It is also important to provide DRT with additional financing to effectively
16 enforce the laws associated with bed and breakfasts and short-term vacation
17 rentals, thus the legislation intends on allowing the department to retain 10% of the
18 excise taxes collected. These are monies that could increase manpower or
19 purchase necessary equipment or software to better manage the enforcement.

20 **Section 2. §5112 of Chapter 51, Title 18, Guam Code Annotated is**
21 **hereby *amended* to read as follows:**

22 **§ 5112. Civil Penalty.**

23 (a) The Department of Revenue and Taxation *shall* monitor, control, and
24 regulate the process of investigating and collecting fees from any facility
25 verbally expressing or advertising the lease or the use of property as a
26 lodging facility accommodating transient visitors that is being operated
27 without the proper licenses.

1 (b) The owner(s) of a property verbally expressing or advertising the lease or
2 the use of their property as a lodging facility and marketed or advertised for
3 transient guests without proper licenses *shall*:

4 (1) be punishable, upon determination by the Director or his duly
5 authorized designee of the Department of Revenue and Taxation, by a
6 fine of Ten Five Thousand Dollars (\$10,000) (~~\$5,000~~).

7 (A) The owner(s) shall be issued a notice to cease operations by
8 the Department of Revenue and Taxation within twenty-four (24)
9 hours of conviction.

10 (B) The owner(s) may resume operations once all fines have
11 been paid, and all licenses have been acquired and can be provided
12 upon request; and

13 (2) (A) any owner(s) of a property issued a second (2nd) notice to
14 cease operations by the Director or his duly authorized designee of the
15 Department of Revenue and Taxation within one (1) year of the first
16 (1st) notice *shall* be punishable, upon determination by the Director or
17 his duly authorized designee of the Department of Revenue and
18 Taxation, by a fine of Ten Thousand Dollars (\$10,000) for every day
19 they are found to have remained in operation.

20 (B) The owner(s) of the property *shall* not be able to apply for any
21 license to conduct business on Guam for a term of five ~~one~~ (5) ~~(1)~~
22 years.

23 (c) Any property being managed and used as a lodging facility, whether
24 verbally expressed or advertised and marketed toward transient guests by a
25 short term vacation unit emergency contact, on-site manager, or similar
26 lodging facility operator(s), other than the owner(s) of the property, and
27 operates without the proper licenses *shall*:

1 (1) (A) be punishable, upon determination by the Director or his duly
2 authorized designee of the Department of Revenue and Taxation, by a
3 fine of Ten Five Thousand Dollars (\$10,000) (~~\$5,000~~) and be issued a
4 notice to cease operations within twenty-four (24) hours of conviction
5 and until all fines have been paid, and all licenses have been acquired
6 and can be provided upon request.

7 (B) The owner(s) of the property shall be provided with a “Notice of
8 Illegal Operation” on their property within twenty-four (24) hours of
9 the lodging facility operator(s) notice to cease operations; and

10 (2) (A) after a second (2nd) notice to cease operations has been given
11 to the lodging facility operator(s) by the Director or his duly
12 authorized designee of the Department of Revenue and Taxation
13 within one (1) year of the first (1st) notice, the lodging facility
14 operator(s) shall be punishable, upon determination by the Director or
15 his duly authorized designee of the Department of Revenue and
16 Taxation, by a fine of Ten Thousand Dollars (\$10,000) for every day
17 they are found to have remained in operation.

18 (B) The lodging facility operator(s) of the business *shall* not be able to
19 apply for any license to conduct business on Guam for a term of five
20 ~~one~~ (5) (~~1~~) years.

21 (C) The owner(s) of the property shall be given a second (2nd) notice
22 of illegal operation on their property and shall be punishable, upon
23 determination by the Director or his duly authorized designee of the
24 Department of Revenue and Taxation, by a fine of Ten Five-Thousand
25 Dollars (\$10,000) (~~\$5,000~~) for every day, the lodging facility
26 operator(s) has been found to have remained in operation on the
27 property. This fine shall commence Twenty Four (24) hours after the

1 second (2nd) notice of illegal operation has been issued to the owner(s)
2 of the property, and only if the illegal activity continues to be in
3 operation.

4 **Section 3. §5113 of Chapter 51, Title 18, Guam Code Annotated is**
5 **hereby *added* to read as follows:**

6 **§ 5113. Reward Program.**

- 7 (a) Any individual who reports an illegal operation as described in §5112(b)
8 and §5112(c) of this Chapter, that leads to the conviction and fines
9 identified in §5112(b)(1) and §5112(c)(1) of this Chapter, shall receive a
10 reward of ten percent (10%) of the fine identified in this Chapter.
- 11 (b) The Department of Revenue and Taxation shall establish the Rules and
12 Regulations for this Reward Program, including, but not limited to, the
13 specific parameters of how the reporting shall be conducted, identifying
14 the timelines and process for the payout, determining how to establish
15 who made the viable complaint, identifying how this program will be
16 promoted, and establishing confidentiality policies for this program. The
17 Department shall have sixty (60) days from the enactment of this act to
18 promulgate the rules and regulations, and provide copies within five (5)
19 days to I Maga'Haga Guahan and to the Speaker of the I Liheslaturan
20 Guahan. The Rules and Regulations for this Reward Program shall be
21 effective upon the promulgation by the Director of the Department of
22 Revenue and Taxation.
- 23 (c) Any reports of illegal activity presented after the enactment of this act
24 and prior to the promulgation of these Rules and Regulations, shall be
25 considered valid if they 1). Align or closely align with the eventually
26 adopted Rules and Regulations, 2). Lead to a conviction and a fine, and
27 3). If they are submitted confidentially to the Director of the Department

1 of Revenue and Taxation. All reward payouts for such cases shall be
2 awarded after the promulgation of the Rules and Regulations.

3 (d) The awarded payout shall not be subject to any income taxes, liens, filing
4 or reporting requirements. The identities of the awardees shall be held in
5 confidentiality.

6 (e) Rewards shall only be paid after the fines have been paid, and shall be
7 dispersed from that fund.

8 **Section 5. § 30112 of Chapter 30, Title 11, Guam Code Annotated is**
9 **hereby added to read as follows:**

10 **§ 30112. Enforcement and Collections from Bed and Breakfasts and**
11 **Short-term Vacation Rental Units.**

12 (a) The Department of Revenue and Taxation, hereinafter referred to as
13 the Department in this sub-section, shall retain ten percent (10%) of
14 the total amount of excise taxes collected from Bed and Breakfasts, as
15 defined in Subsection (jj) of §61103 of Article 1, Chapter 61, of Title
16 21, Guam Code Annotated, and Short-term Vacation Rental Units, as
17 defined in Subsection (kk) of §61103 of Article 1, Chapter 61, of Title
18 21, Guam Code Annotated. The excise taxes are defined in this
19 Chapter.

20 (b) The Department shall only use the retained amount for the sole
21 purpose of enforcing the mandates associated with the Bed and
22 Breakfasts and Short-term Vacation Rental Units industries on Guam.
23 Enforcement shall include, but are not limited to, increasing revenue
24 agents or tax auditors, increasing the compensation of revenue agents
25 or tax auditors, equipment and software associated with the
26 enforcement of the licensing requirements and collection of excise
27 taxes, or purchasing resources to improve enforcement efforts. The

1 Director of the Department shall provide *I Liheslaturan Guahan* a
2 quarterly update on how the funds retained are expended.

3 (c) Any retained and unspent funds from any Fiscal Year, shall be
4 retained by the Department, and carried over to the following Fiscal
5 Year to be utilized solely for the purposes of enforcing the mandates
6 of Bed and Breakfasts and Short-term Vacation Rental Units licenses.

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

12 **Section 7. Effective Date.** The act shall become effective immediately
13 upon enactment.