

I Mina'trentai Siette Na Liheslaturan Guåhan  
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	FISCAL NOTES	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
106-37 (LS)	Thomas J. Fisher Tina Rose Muña Barnes	AN ACT TO PROVIDE A LEGISLATIVE SUBMISSION FOR CONSIDERATION BY GUAM VOTERS AT THE NEXT GENERAL ELECTION; AND TO PROVIDE GUAM VOTERS THE POWER TO DECIDE ON REPRODUCTIVE RIGHTS.	4/28/23 10:30 a.m.						

***I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN***  
**2023 (FIRST) Regular Session**

**Bill No. 106-37 (LS)**

Introduced by:

Thomas J. Fisher   
Tina Rose Muña Barnes 

**AN ACT TO PROVIDE A LEGISLATIVE SUBMISSION  
FOR CONSIDERATION BY GUAM VOTERS AT THE  
NEXT GENERAL ELECTION; AND TO PROVIDE  
GUAM VOTERS THE POWER TO DECIDE ON  
REPRODUCTIVE RIGHTS.**

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

**Section 1. Legislative Intent.** For many years, and at least since 1973, various Guam Legislatures have considered and sometimes legislated in regard to the question of abortion. The discussion, while ancient in nature, reached the center of American political discourse when, in January 1973, the Supreme Court of the United States held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution provides a fundamental right to privacy which protects a pregnant woman's right to an abortion. The Court also held that the right to abortion is not absolute and must be balanced against the government's interests in protecting women's health and prenatal life. Since that landmark ruling the issue has not been resolved and the discussion has grown evermore divisive.

On June 24, 2022, the Supreme Court issued a decision that overturned half a century of precedent and held that abortion is not a constitutional right as the Constitution does not mention it and the right was not "deeply rooted" in the

country's history. As a result, individual states and territories have the authority to regulate access to abortion.

By this submission, the Legislature enfranchises all of Guam's people in this discussion and in reaching Guam's resolution of the issue. Submitted to the People then is the following question;

**Section 2.** The Guam Election Commission, subject to the provisions of law, shall put to the voters the question described in section 3 *et seq., infra*, of this Act. The question shall be submitted during the 2024 general election to be held on or about November 05, 2024.

**Section 3.** The Question put to the voters shall be;

Vote for 'Yes' or 'No' only. If you do not vote for 'Yes' or 'No' or if you vote both 'Yes' and 'No', your vote will be invalid and will not be included in determining the outcome of the vote.

"Shall the Reproductive *Health Protection Act of 2023*, as recited herein and below, be enacted into Guam law?"

( ) Yes

( ) No

**Section 4.** Should a simple majority of voters who vote on the question provided in Section 3 of this measure vote "Yes," the following *shall* be enacted into law. A new Chapter 91B is *added* to Division 4, Title 10, Guam Code Annotated to hereby read as follows:

## **"CHAPTER 91B**

### **HEALTH PROTECTION ACT OF 2023**

§91B101. Short Title.

§91B102. Legislative Findings and Intent.

§91B103. Definitions.

§91B104. Permitted Services.

1       §91B105.   Liberal Construction.

2       §91B106.   Enforcement.

3       §91B107.   Effective Date.

4       **§91B101.   Short Title.**

5       This Act may be cited as the “*The Health Protection Act of 2023.*”

6       **§91B102.   Legislative Findings and Intent.**

7       (a)   *I Liheslaturan Guahan* finds the following:

8           (1)   Many of our citizens believe that abortion services are essential  
9       health care, and access to those services is central to people’s ability to  
10      participate equally in the economic and social life of the Territory. Abortion  
11      access allows people who are pregnant to make their own decisions about their  
12      pregnancies, their families, and their lives.

13          (2)   Since 1973, the Supreme Court repeatedly has recognized the  
14      constitutional right to terminate a pregnancy before fetal viability, and to  
15      terminate a pregnancy after fetal viability where it is necessary, in the good-  
16      faith medical judgment of the treating health care professional, for the  
17      preservation of the life or health of the person who is pregnant.

18          (3)   Since 2011, States and local governments have passed nearly 500  
19      restrictions singling out health care providers who offer abortion services,  
20      interfering with their ability to provide those services and the patients’ ability  
21      to obtain those services.

22          (4)   Many of these restrictions are neither evidence-based nor  
23      generally applicable to the medical profession or to other medically  
24      comparable outpatient gynecological procedures.

25          (5)   Abortion is one of the safest medical procedures in the United  
26      States. An independent, comprehensive review of the state of science on the  
27      safety and quality of abortion services, published by the National Academies



1 of Sciences, Engineering, and Medicine in 2018, found that abortion in the  
2 United States is safe and effective and that the biggest threats to the quality of  
3 abortion services in the United States are State regulations that create barriers  
4 to care. These abortion specific restrictions conflict with medical standards  
5 and are not supported by the recommendations and guidelines issued by  
6 leading reproductive health care professional organizations including the  
7 American College of Obstetricians and Gynecologists, the Society of Family  
8 Planning, the National Abortion Federation, the World Health Organization,  
9 and others.

10 (b) Purpose. It is the purpose of this Act to allow health care providers to  
11 provide abortion services without limitations or requirements that single out abortion  
12 services for restrictions that are more burdensome than those restrictions imposed  
13 on medically comparable procedures and do not significantly advance reproductive  
14 health or the safety of abortion services and make abortion services more difficult to  
15 access.

16 **§91B103. Definitions.**

17 For purposes of this Chapter, the followings words and phrases are defined to  
18 mean:

19 (1) *Abortion Services*. The term *abortion services* means an abortion  
20 and any medical or non-medical services related to and provided in  
21 conjunction with an abortion (whether or not provided at the same time or on  
22 the same day as the abortion).

23 (2) *Government*. The term *government* includes each branch,  
24 department, agency, instrumentality, and official (and other person acting  
25 under color of law) of the Territory of Guam.

26 (3) *Health Care Provider*. The term *health care provider* means any  
27 entity or individual (including any physician, certified nurse-mid wife, nurse

1 practitioner, and physician assistant) that (A) is engaged or seeks to engage in  
2 the delivery of health care services, including abortion services, and (B) if  
3 required by law or regulation to be licensed or certified to engage in the  
4 delivery of such services is so licensed or certified, or would be so licensed  
5 or certified but for their past, present, or potential provision of abortion  
6 services permitted by Section 4.

7 (4) *Medically Comparable Procedure*. The term *medically*  
8 *comparable procedures* means medical procedures that are similar in terms of  
9 health and safety risks to the patient, complexity, or the clinical setting that is  
10 indicated.

11 (5) *Pregnancy*. The term *pregnancy* refers to the period of the human  
12 reproductive process beginning with the implantation of a fertilized egg.

13 (6) *Viability*. The term *viability* means the point in a pregnancy at  
14 which, in the good-faith medical judgment of the treating health care provider,  
15 based on the particular facts of the case before the health care provider, there  
16 is a reasonable likelihood of sustained fetal survival outside the uterus with or  
17 without artificial support.

18 **§91B104. Permitted Services.**

19 (a) General Rule. A health care provider has a statutory right under this Act  
20 to provide abortion services, and may provide abortion services, and that provider's  
21 patient has a corresponding right to receive such services, without any of the  
22 following limitations or requirements:

23 (1) A requirement that a health care provider perform specific tests  
24 or medical procedures in connection with the provision of abortion services,  
25 unless generally required for the provision of medically comparable  
26 procedures.



1           (2) A requirement that the same health care provider who provides  
2 abortion services also perform specified tests, services, or procedures prior to  
3 or subsequent to the abortion.

4           (3) A requirement that a health care provider offer or provide the  
5 patient seeking abortion services medically inaccurate information in advance  
6 of or during abortion services.

7           (4) A limitation on a health care provider's ability to prescribe or  
8 dispense drugs based on current evidence-based regimens or the provider's  
9 good-faith medical judgment, other than a limitation generally applicable to  
10 the medical profession.

11           (5) A limitation on a health care provider's ability to provide  
12 abortion services via telemedicine, other than a limitation generally applicable  
13 to the provision of medical services via telemedicine.

14           (6) A requirement or limitation concerning the physical plant,  
15 equipment, staffing, or hospital transfer arrangements of facilities where  
16 abortion services are provided, or the credentials or hospital privileges or  
17 status of personnel at such facilities, that is not imposed on facilities or the  
18 personnel of facilities where medically comparable procedures are performed.

19           (7) A requirement that, prior to obtaining an abortion, a patient make  
20 one or more medically unnecessary in-person visits to the provider of abortion  
21 services or to any individual or entity that does not provide abortion services.

22           (8) A prohibition on abortion at any point or points in time prior to  
23 fetal viability, including a prohibition or restriction on a particular abortion  
24 procedure.

25           (9) A prohibition on abortion after fetal viability when, in the good-  
26 faith medical judgment of the treating health care provider, continuation of  
27 the pregnancy would pose a risk to the pregnant patient's life or health.

1           (10) A limitation on a health care provider's ability to provide  
2 immediate abortion services when that health care provider believes, based on  
3 the good-faith medical judgment of the provider, that delay would pose a risk  
4 to the patient's health.

5           (11) A requirement that a patient seeking abortion services at any  
6 point or points in time prior to fetal viability disclose the patient's reason or  
7 reasons for seeking abortion services, or a limitation on the provision or  
8 obtaining of abortion services at any point or points in time prior to fetal  
9 viability based on any actual, perceived, or potential reason or reasons of the  
10 patient for obtaining abortion services, regardless of whether the limitation is  
11 based on a health care provider's degree of actual or constructive knowledge  
12 of such reason or reasons.

13       (b) Other Limitations or Requirements. A health care provider has a  
14 statutory right to provide abortion services, and may provide abortion services, and  
15 that provider's patient has a corresponding right to receive such services, without a  
16 limitation or requirement that

17           (1) is the same as or similar to one or more of the limitations or  
18 requirements described in subsection (a); or

19           (2) both (A) expressly, effectively, implicitly, or as implemented  
20 singles out the provision of abortion services, health care providers who  
21 provide abortion services, or facilities in which abortion services are provided;  
22 and (B) impedes access to abortion services.

23       (c) Factors For Consideration. Factors a court may consider in determining  
24 whether a limitation or requirement impedes access to abortion services for purposes  
25 of subsection (b)(2)(B) include the following:



1           (1) Whether the limitation or requirement, in a provider's good-faith  
2 medical judgment, interferes with a health care provider's ability to provide  
3 care and render services, or poses a risk to the patient's health or safety.

4           (2) Whether the limitation or requirement is reasonably likely to  
5 delay or deter some patients in accessing abortion services.

6           (3) Whether the limitation or requirement is reasonably likely to  
7 directly or indirectly increase the cost of providing abortion services or the  
8 cost for obtaining abortion services (including costs associated with travel,  
9 childcare, or time off work).

10          (4) Whether the limitation or requirement is reasonably likely to  
11 have the effect of necessitating a trip to the offices of a health care provider  
12 that would not otherwise be required.

13          (5) Whether the limitation or requirement imposes penalties that  
14 are not imposed on other health care providers for comparable conduct or  
15 failure to act, or that are more severe than penalties imposed on other health  
16 care providers for comparable conduct or failure to act.

17          (6) The cumulative impact of the limitation or requirement  
18 combined with other new or existing limitations or requirements.

19          (d) Exception. To defend against a claim that a limitation or requirement  
20 violates a health care provider's or patient's statutory rights under subsection (b), a  
21 party must establish, by clear and convincing evidence, that (1) the limitation or  
22 requirement significantly advances the safety of abortion services or the health of  
23 patients; and (2) the safety of abortion services or the health of patients cannot be  
24 advanced by a less restrictive alternative measure or action.

25          **§91B105. Liberal Construction.**

26          (a) Liberal Construction. In interpreting the provisions of this Act, a court  
27 shall liberally construe such 20 provisions to effectuate the purposes of the Act. 21

1 (b) Rule Of Construction. Nothing in this Act shall be construed to  
2 authorize any government to interfere with a person's ability to terminate a  
3 pregnancy, to diminish or in any way negatively affect a person's constitutional right  
4 to terminate a pregnancy, or to displace any other remedy for violations of the  
5 constitutional right to terminate a pregnancy.

6 **§91B106. Enforcement.**

7 (a) Attorney General. The Attorney General may commence a civil action  
8 for prospective injunctive relief on behalf of Guam against any government official  
9 that is charged with implementing or enforcing any limitation or requirement that is  
10 challenged as a violation of a statutory right under this Act. The court shall hold  
11 unlawful and set aside the limitation or requirement if it is in violation of this Act.

12 (b) Private Right Of Action. (1) In General. Any individual or entity,  
13 including any health care provider, aggrieved by an alleged violation of this Act may  
14 commence a civil action for prospective injunctive relief against the government  
15 official that is charged with implementing or enforcing the limitation or requirement  
16 that is challenged as a violation of a statutory right under this Act. The court shall  
17 hold unlawful and set aside the limitation or requirement if it is in violation of this  
18 Act. (2) Health Care Provider. A health care provider may commence an action for  
19 prospective injunctive relief on its own behalf and/or on behalf of the provider's  
20 patients who are or may be adversely affected by an alleged violation of this Act. 3

21 (c) Equitable Relief. In any action under this section, the court may award  
22 appropriate equitable relief, including temporary, preliminary, or permanent  
23 injunctive relief.

24 (d) Costs. In any action under this section, the court shall award costs of  
25 litigation, as well as reasonable attorney fees, to any prevailing plaintiff. A plaintiff  
26 shall not be liable to a defendant for costs in any non-frivolous action under this  
27 section.

1           **§91B107. Effective Date.** This Act shall take effect immediately upon the  
2 approval of Guam's voters. This Act shall apply to all restrictions on the provision  
3 of, or access to, abortion services whether the restrictions are enacted or imposed  
4 prior to or after the date of enactment of this Act, except as otherwise provided in  
5 this Act."

6           **Section 5. Severability.** If any provision of this Act or its application to any  
7 person or circumstance is found to be invalid or inorganic, such invalidity *shall not*  
8 affect other provisions or applications of this Act that can be given effect without  
9 the invalid provision or application, and to this end the provisions of this Act are  
10 severable.