


*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
111-37 (LS)	William A. Parkinson	AN ACT TO ADD A NEW CHAPTER 91B TO DIVISION 4, TITLE 10, GUAM CODE ANNOTATED RELATIVE TO EXPANDING ABORTION SERVICES IN GUAM; AND TO CITE THIS ACT THE "HEALTH PROTECTION ACT OF 2023".	5/3/23 4:12 p.m.						

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

**Bill No. 111-37 (LS)**

Introduced by:

William A. Parkinson 

**AN ACT TO *ADD* A NEW CHAPTER 91B TO  
DIVISION 4, TITLE 10, GUAM CODE  
ANNOTATED RELATIVE TO EXPANDING  
ABORTION SERVICES IN GUAM; AND TO  
CITE THIS ACT THE “HEALTH PROTECTION  
ACT OF 2023”.**

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

**Section 1.** A new Chapter 91B is *added* to Division 4 of 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.

§ 91B105. Liberal Construction

§ 91B106. Enforcement.

§ 91B107. Effective Date.

**§ 91B101. Short Title.** This Act shall be known as the “Health Protection  
Act of 2023”.

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

1        (a) I Liheslaturan Guahan finds the following:

2            (1) Many of our citizens believe that abortion services are essential  
3 health care, and access to those services is central to people's ability to  
4 participate equally in the economic and social life of the Territory. Abortion  
5 access allows people who are pregnant to make their own decisions about their  
6 pregnancies, their families, and their lives.

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

12           (3) Since 2011, States and local governments have passed nearly 500  
13 restrictions singling out health care providers who offer abortion services,  
14 interfering with their ability to provide those services and the patients' ability  
15 to obtain those services.

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

19           (5) Abortion is one of the safest medical procedures in the United  
20 States. An independent, comprehensive review of the state of science on the  
21 safety and quality of abortion services, published by the National Academies  
22 of Sciences, Engineering, and Medicine in 2018, found that abortion in the  
23 United States is safe and effective and that the biggest threats to the quality of  
24 abortion services in the United States are State regulations that create barriers  
25 to care. These abortion specific restrictions conflict with medical standards  
26 and are not supported by the recommendations and guidelines issued by  
27 leading reproductive health care professional organizations including the

1 American College of Obstetricians and Gynecologists, the Society of Family  
2 Planning, the National Abortion Federation, the World Health Organization,  
3 and others.

4 (6) Additionally, the Chapter proposed in this legislation mirrors the  
5 proposed Chapter from Bill 106-37 (COR), sponsored by Senator Thomas J.  
6 Fisher. However, *I Liheslaturan Guahan* finds that the need for legislative  
7 submission on the issue on reproductive rights is unnecessary, and so the  
8 following legislation would simply enact the Health Protection Act of 2023  
9 rather than putting the issue up for a vote from voters.

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 and  
20 any medical or non-medical services related to and provided in conjunction with an  
21 abortion (whether or not provided at the same time or on the same day as the  
22 abortion).

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

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

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

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

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

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

16 **§ 91B104. Permitted Services.**

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

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

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

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

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

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

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

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

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

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

25           (10) A limitation on a health care provider's ability to provide  
26 immediate abortion services when that health care provider believes, based on  
27 the good-faith medical judgment of the provider, that delay would pose a risk

1 to the patient's health.

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

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

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

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

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

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

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

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

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

8           (5) Whether the limitation or requirement imposes penalties that are  
9 not imposed on other health care providers for comparable conduct or failure  
10 to act, or that are more severe than penalties imposed on other health care  
11 providers for comparable conduct or failure to act.

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

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

20           **§ 91B105. Liberal Construction.**

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

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



1           **§ 91B106. Enforcement.**

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

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

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

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

23           **§ 91B107. Effective Date.** This Act shall be effective immediately upon  
24 enactment.

25           **Section 2. Severability.** If any provision of this Act or its application to any  
26 person or circumstance is found to be invalid or inorganic, such invalidity shall not  
27 affect other provisions or applications of this Act that can be given effect without

- 1 the invalid provision or application, and to this end the provisions of this Act are
- 2 severable.