

I Mina Trentai Kuattro Na Liheslaturan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
249-34 (LS)	Fernando Barcinas Esteves	AN ACT TO ADD A NEW CHAPTER 27 TO TITLE 11 OF GUAM CODE ANNOTATED RELATIVE TO ESTABLISHING A GENERAL SALES TAX.	2/28/18 12:25 p.m.						

**I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN
2018 (SECOND) Regular Session**

Bill No. 249-34 (LS)

Introduced by:

Fernando Barcinas Esteves *FBE*

**AN ACT TO *ADD* A NEW CHAPTER 27 TO TITLE 11
OF GUAM CODE ANNOTATED RELATIVE TO
ESTABLISHING A GENERAL SALES TAX.**

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

2 **Section 1.** A new Chapter 27 is *added* to Title 11, Guam Code Annotated,
3 to read:

“CHAPTER 27

GENERAL SALES TAX

- 6 § 27101. Definitions.
- 7 § 27102. Levy.
- 8 § 27103. Exemptions.
- 9 § 27104. Tax in Addition to Other Taxes.
- 10 § 27105. Tax on internet sales.
- 11 § 27106. Administration.
- 12 § 27107. Computation.
- 13 § 27108. Collections.
- 14 § 27109. Returns.
- 15 § 27110. Electronic Filing of Returns, Allowed.
- 16 § 27111. Records.

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- 1 § 27112. Penalties.
- 2 § 27113. Interest.
- 3 § 27114. Criminal Offenses.
- 4 § 27115. Punishment.
- 5 § 27116. Prohibited Advertising.
- 6 § 27117. Excessive and Erroneous Collections or Returns
- 7 § 27118. Bundled Transactions

8

9 **§ 27101. Definitions.**

10 Whenever used in this Chapter, unless otherwise required by the context:

- 11 (a) *Department* means the Department of Revenue and Taxation.
- 12 (b) *Tangible personal property* means any corporeal personal property
13 of any nature and shall include digital property regardless of
14 whether the purchaser has the right to permanently use the
15 property, or whether the purchaser's right to access or retain the
16 property is not permanent, or whether the purchaser's right of use
17 is conditioned upon continued payment.
- 18 (c) *Sales Tax* means and is inclusive of any tax levied under this
19 Chapter.
- 20 (d) *Gross Receipts* means the total amount of the sales prices of the
21 retail sales of vendors, valued in money, whether received in
22 money or otherwise.
- 23 (e) *Taxpayer* means any person liable for any tax hereunder or who is
24 required to file a return under this Chapter whether such person
25 owes a tax or not.

- 1 (f) Retail means the sale of tangible personal property, other than by a
2 wholesaler as such within the definition of this Chapter, for
3 consumption or use by the purchaser and not for resale.
- 4 (g) Sale means any transfer of title or possession, or both, conditional
5 or otherwise, in any manner or by any means whatsoever, of
6 tangible personal property and includes an exchange of properties
7 as well as an exchange of property for money. A transaction
8 whereby the possession of property is transferred but the seller
9 retains title as security for the payment of the sale price on a
10 conditional sale, shall be deemed a sale.
- 11 (h) Nexus-Vendor means a vendor who has a physical presence within
12 the Territory of Guam, such as property or retail establishments,
13 selling via the internet property to the purchaser in the Territory of
14 Guam.
- 15 (i) Retail Sale or Sale at Retail means the sale in any quantity of
16 quantities of any tangible personal property or service, including
17 any such sales effected via the internet taxable under the terms of
18 this chapter. These terms mean all sales of tangible personal
19 property to any person for any purpose other than those in which
20 the purpose of the purchaser is to resell the property so transferred
21 in the form in which the same is, or is to be, received by him, or to
22 use or incorporate the property so transferred as a material or part
23 of other tangible personal property to be produced for sale by
24 manufacturing, assembling, processing, or refining.
- 25 (j) Retailer means any person licensed to do business under the
26 provisions of 11 GCA § 72108 inclusive of persons engaged in the

1 business of making retail sales at auction of tangible personal
2 property owned by the person or others.

3 (k) Purchaser means any person purchasing property, but does not
4 include the government of Guam, or the United States, its wholly
5 owned agencies or instrumentalities, or the Guam Power
6 Authority, or the Guam Water Works Authority, or the Port
7 Authority of Guam, or the Guam Department of Education, or any
8 person immune from the tax imposed by this Chapter under the
9 Constitution and laws of the United States.

10 (l) Seller means any person engaged in the business of selling tangible
11 personal property, wheresoever engaged, and any person
12 authorized by a seller to collect the price, but does not include the
13 government of Guam, or the United States, its wholly owned
14 agencies or instrumentalities, or the Guam Power Authority, or the
15 Guam Water Works Authority, or the Port Authority of Guam, or
16 the Guam Department of Education, or any person immune from
17 the tax imposed by this Chapter under the Constitution and laws of
18 the United States.

19 (m) Wholesale means the sale of tangible personal property by a
20 person doing a regularly organized wholesale business, known to
21 the trade as such, and licensed to do business as such, to a person
22 for the purpose of resale.

23 (n) Retail Establishment means any premises in which the business of
24 selling tangible personal property is conducted or in or from which
25 any retail sales are made.

26 (o) Value means fair and reasonable cash value at the time of accrual
27 of the tax.

1 (p) Drug means a compound, substance or preparation, and any
2 component of a compound, substance or preparation, other than
3 food and food ingredients, dietary supplements or alcoholic
4 beverages that is:

- 5 1. recognized in the official United States Pharmacopoeia, official
6 Homeopathic Pharmacopoeia of the United States, or official
7 National Formulary, and supplement to any of them; or
- 8 2. intended for use in diagnosis, cure, mitigation, treatment, or
9 prevention of disease; or
- 10 3. intended to affect the structure of any function of the body.

11 Drug shall also include insulin and medical oxygen whether or not
12 sold on prescription.

13 (q) Prescription means an order, formula or recipe issued in any form
14 of oral, written, electronic, or other means of transmission by a
15 duly licensed practitioner authorized by the laws of Guam.

16 (r) Candy means food products with a sugar or confection base,
17 including breath fresheners, gum, mints, and health foods which
18 consist primarily of sugars.

19 (s) Baby products includes, but is not limited to:

- 20 1. Baby bottles and nipples
- 21 2. Breast pumps
- 22 3. Diapers (cloth and disposable)
- 23 4. Diaper liners
- 24 5. Infant syringes
- 25 6. Pacifiers
- 26 7. Nursing bra pads
- 27 8. Teething rings

1 9. Clothing (from Preemie to 5T)

2 (t) Food products includes, but is not limited to:

- 3 1. Cereals and cereal products;
4 2. Rice;
5 3. Flour and Flour products;
6 4. Milk and milk products; including ice cream;
7 5. Cheese and cheese products;
8 6. Oleomargarine and butter;
9 7. Meat and meat products;
10 8. Fish and fish products
11 9. Eggs and egg products;
12 10. Vegetables and vegetable products;
13 11. Fruit and fruit products;
14 12. Herbs and spices;
15 13. Salt and soy products;
16 14. Vinegar and condiments;
17 15. Sugar and sugar products; excluding candy
18 16. Coffee and coffee substitutes;
19 17. Tea;
20 18. Ice, when not used for refrigeration;
21 19. Water, when used for household consumption.

22
23 **§ 27102. Levy.**

24 There is hereby levied a sales tax on tangible personal property and
25 insurance premiums, at a rate of two percent (2%). Except as provided in § 27103
26 of this Chapter, retailers shall add the tax imposed on retail sales and sales at retail,
27 or the average equivalent thereof, to the sale price or charge, showing such tax as a

1 separate and distinct item, and when added such tax shall constitute part of such
2 price or charge and shall be a debt from the consumer or user to the retailer until
3 paid.

4
5 **§ 27103. Exemptions.**

- 6 (a) Food or drink, which is delivered and sold without profit by a nonprofit
7 volunteer organization to persons who are confined to their homes due to
8 age, illness, disability, or infirmity; provided that such sales shall not be
9 exempt unless such organization has received a certificate of exemption
10 from the Department as a semipublic institution.
- 11 (b) Sales of “eligible foods,” as defined in 7 CFR 271.2 pursuant to the
12 federal Food Stamp Act of 1977 (7 U.S.C. § 2011 et seq.) (“Stamp
13 Act”), and purchased with food stamps issued pursuant to the Stamp Act.
- 14 (c) Food products. The sale of food products for human consumption as
15 defined in this Chapter is exempt from the sales tax unless the food
16 products are prepared for human consumption in which case the sales tax
17 herein shall be applied at retail sale.
- 18 (d) A meal provided free of charge or at a reduced rate to an employee
19 during work hours by a food service establishment or hotel licensed by
20 the Territory of Guam for the convenience of the employer is not
21 considered transferred for consideration.
- 22 (e) Casual sales. The tax shall not apply to casual sales made by a person not
23 regularly engaged in the business of selling tangible personal property,
24 but does not apply to the sale of motor vehicles, boats, trailers, or other
25 equipment that require registration with the Department.
- 26 (f) Notwithstanding any other provision of law, the amount of the trade-in
27 allowance of a private passenger automobile when given in trade towards

1 the purchase of a new or used private passenger automobile is excluded
2 from taxation.

3 (g) Federal exemptions. Sales of tangible personal property or services which
4 the Territory of Guam is prohibited from taxing under the Constitution or
5 laws of the United States.

6 (h) Sales of tangible personal property used to develop property which the
7 Territory of Guam is under contract to purchase through a long-term
8 financing contract only if a Certificate of Exemption is provided by the
9 Department containing at a minimum the contract license of the
10 exempted, the contract or purchase order identification number. The
11 Department of Revenue and Taxation shall make available to the publicly
12 on their website all exemptions claimed under this Section.

13 (i) Sales and use of any tangible personal property to be incorporated into or
14 used or otherwise consumed in the demolition or construction relative to
15 capital improvement projects of the Territory, only if a Certificate of
16 Exemption is provided by the Department containing at a minimum the
17 contract license of the exempted contract or purchase order identification
18 number. The Department of Revenue and Taxation shall make available
19 to the publicly on their website all exemptions claimed under this
20 Section.

21 (j) Real property transactions where the sale value is assessed is under five
22 hundred thousand dollars (\$500,000).

23 (k) The sale, use or other consumption of drugs, as defined in this Chapter,
24 that are sold on prescriptions are exempt from a sales tax. In addition, the
25 sales, storage, use or other consumption of medical oxygen and insulin;
26 whether or not sold on prescription; and human blood are also exempt

1 from sales tax, but remains subject to taxation under § 27105 of this
2 Chapter.

3 (l) Syringes and needles only by prescription. Sales of and the use or other
4 consumption of materials, including materials used in packaging, which
5 become an ingredient or component part of medicine only by
6 prescription, as defined by federal or local law are exempt from sales tax,
7 but remains subject to taxation under § 27105 of this Chapter.

8 (m) Personal tangible property sold by wholesalers as defined in § 72107
9 of this Chapter, provided, that any person engaging or continuing in
10 business as a retailer and a wholesaler shall pay the tax required solely on
11 the gross proceeds of sales of the retail business, and records must be
12 kept so as to show separately the gross proceeds of sale of each business.

13 (n) Baby products. The sale, use or other consumption of baby products as
14 defined herein are not subject to taxation under § 27102 of this Chapter,
15 but remains subject to taxation under § 27105 of this Chapter.

16
17 **§ 27104. Tax in Addition to Other Taxes.**

18 The tax imposed by this Chapter shall be in addition to any other taxes
19 imposed by any other laws of Guam, except as otherwise specifically provided
20 herein; provided, that if it be finally held by any court of competent jurisdiction,
21 that the tax imposed by this Chapter may not legally be imposed in addition to any
22 other tax or taxes imposed by any other law or laws with respect to the same
23 property or the use or consumption thereof, then this Chapter shall be deemed not
24 to apply to such property and the use or consumption thereof under such specific
25 circumstances, but such other laws shall be given full effect with respect to such
26 property, use and consumption.

1 **§ 27105. Sales Tax on Internet Sales.**

2 Notwithstanding any other provision of law, tangible personal property
3 otherwise taxable under this Chapter, whereby the retail sale was transacted via the
4 internet and the use or consumption is not intended for use in business activities or
5 otherwise exempt herein are assessed a sales tax of six percent (6%) and are not
6 subject to any other taxation provided for in Title 11, GCA.

7
8 **§ 27106. Administration.**

9 The Department of Revenue and Taxation shall be responsible for the
10 administration of this Chapter.

11
12 (a) The tax year shall be the calendar year, except that a taxpayer may use
13 an annual accounting period when written permission is obtained from
14 the Tax Commissioner.

15 (b) Tax liability subject to assessment, collection and enforcement. The tax
16 liability specified in this Chapter is subject to assessment, collection and
17 enforcement by the Tax Commissioner in the manner provided in
18 Chapters 1, 15, and 32 of Title 11, GCA.

19
20 **§ 27107. Computation.**

21 When the sale price involves a fraction of a dollar, the tax computation must
22 be carried to the 3rd decimal place, then rounded down to the next whole cent
23 whenever the 3rd decimal place is one, 2, 3 or 4 and rounded up to the next whole
24 cent whenever the 3rd decimal place is 5, 6, 7, 8 or 9.

25
26 **§ 27108. Collections.**

27 Taxes collected constitute a debt to the Territory of Guam.

- 1 (a) Except as otherwise provided in this Chapter, the tax shall be collected
2 by the retailer from the purchaser.
- 3 (b) The tax shall be displayed separately from the sales price, the price
4 advertised in the premises, the marked price, or other price on the sales
5 receipt or other proof of sales.
- 6 (c) The taxes collected under this Chapter shall be deemed to be held in trust
7 by the retailer for and on account of the Territory of Guam.
- 8 (d) The taxes collected under this Chapter shall be remitted to the Treasurer
9 of Guam in accordance with provisions in § 27109(a) of this Chapter.

10
11 **§ 27109. Returns.**

- 12 (a) Monthly Returns for Sales Tax. Each taxpayer against whom a tax is
13 levied under the provisions of of this Chapter, whether such taxpayer
14 owes taxes or not, shall make and file monthly returns of taxes with the
15 Tax Commissioner. Taxpayers shall file monthly Sales Tax returns
16 summarizing the tax due. The monthly return shall be filed, and any tax
17 then due shall be paid no later than the twentieth (20th) day of the
18 following month at authorized banks, financial institutions or at
19 designated offices of the government of Guam.
- 20 (b) Annual information return. Any person subject to taxes levied and whom
21 has claimed exemptions provided in this chapter, shall be required to file
22 annually, not later than ninety (90) days following the close of such
23 person's tax year, any information return setting forth therein the nature
24 of such business, the tax exemption given by the Tax Commissioner, the
25 gross income of such business any other information required in the rules
26 and regulations promulgated by the Tax Commissioner.

1 (c) The Tax Commissioner shall compile and provide to *I Liheslatura* by
2 September 1st per annum, the aggregate of gross receipts and claimed
3 exemptions reported by any taxpayer subject to this Chapter or whom
4 would otherwise be subject without exemptions provided in § 27103 of
5 this Chapter.

6 (d) The Department of Revenue and Taxation shall create and provide a
7 standard form for filing monthly returns of Sales Tax authorized by 11
8 GCA Chapter 27 and at a minimum provide for the reporting of gross
9 receipts, taxable gross receipts, non-taxable gross receipts, and
10 exemptions within this Chapter.

11
12 **§ 27110. Electronic Filing of Returns, Allowed.**

13 The Department of Revenue and Taxation shall provide for the electronic
14 filing of monthly returns by taxpayers against whom a tax is levied by the
15 provisions of this Chapter, commencing with returns submitted after the month of
16 January 2019; provided, however, that such provision shall not prohibit taxpayers
17 under this Chapter from opting to file non-electronic returns.

18
19 **§ 27111. Records.**

20 (a) Each retailer licensed under the Department taxable under this Chapter
21 shall keep adequate and complete records of the business entity showing:

- 22 1. The gross receipts from the sales of tangible personal property,
23 including both taxable and nontaxable items;
- 24 2. All deductions allowed by law and claimed in filing returns; and
- 25 3. Total purchase price of all tangible personal property and the total
26 purchase price of all such property or services purchased for use or
27 consumption in the territory.

1 (b) The records, but not limited to, shall include the normal books of
2 accounts ordinarily maintained by the average prudent business person
3 engaged in the activity in question, together with all bills, receipts,
4 invoices, cash register tapes, all data collected or stored by means of
5 electronic or magnetic media, or other documents of original entry
6 supporting the entries in the books of account as well as all schedules or
7 working papers used in connection with the preparation of tax returns.

8 (c) Magnetic and electronic media records, used as reproductions of general
9 books of account, such as cash books, journals, voucher registers,
10 ledgers, sale invoices, purchase invoices, credit memoranda, and other
11 like methods of recording, are acceptable in lieu of original records.

12 (d) Records based on any of the above media shall be maintained for a
13 period of at least three (3) years.

14 (e) Failure to maintain such records will be considered evidence of
15 negligence or intent to evade taxation, and will result in the imposition of
16 appropriate penalties as provided by statute.

17 **§ 27112. Penalties.**

18 The following penalties are hereby levied and shall be assessed and
19 collected by the Tax Commissioner:

20 (a) Late payment. In case of failure to pay the amount shown as tax on any
21 return required under this Chapter on or before the date prescribed for
22 payment of such tax, unless it is shown that such failure is due to
23 reasonable cause and not due to willful neglect, there shall be imposed in
24 addition to other penalties provided herein, a specific penalty to be added
25 to the tax in the amount of five percent (5%) of the amount of such tax if
26 the failure is not more than thirty (30) days, with the additional five
27 percent (5%) for each additional thirty (30) days, or fraction thereof, not

1 to exceed twentyfive percent (25%) in the aggregate. Provided, that the
2 minimum penalty shall be the lesser of the amount of tax due or Twenty-
3 five Dollars (\$25.00).

4 (b) False and fraudulent returns. If any part of any deficiency is due to fraud
5 with intent to evade the tax, or any portion thereof, fifty percent (50%) of
6 the total amount of such deficiency, in addition to the penalties provided
7 in subsection (a) above, shall be assessed and added to the deficiency
8 assessment.

9 (c) Failure to Supply Identifying Number. Every person required to file
10 returns or pay taxes, as prescribed under this Chapter, shall include his
11 taxpayer identification on such return, statement or other document. If
12 any person fails to comply with such requirement, such person shall,
13 unless it is shown that such failure is due to reasonable cause and not to
14 willful neglect, pay a penalty of Fifty Dollars (\$50.00) for each failure.

15
16 **§ 27113. Interest.**

17 If any tax or penalty imposed by this Chapter is not paid on or before the
18 date prescribed for such payment, in addition to such tax and penalties, interest on
19 the unpaid balance of the tax and penalties at an annual rate established under this
20 Section, shall be collected for the period from its due date until the date it is paid.

21 (a) Determination of Rate of Interest. The annual rate established under this
22 Section shall be such adjusted rate as established by the Tax
23 Commissioner.

24 (b) Establishment of Adjusted Rate. If the adjusted prime rate charged by
25 banks, rounded to the nearest full percent, during the six-month period
26 ending September 30 of any calendar year, or during the six-month
27 period ending on March 31 of any calendar year, differs from the interest

1 rate in effect under this Section on either such date, respectively, then the
2 Tax Commissioner shall establish, within fifteen (15) days after the close
3 of the applicable six-month period, an adjusted rate of interest equal to
4 such adjusted prime rate.

5 (c) Effective date of Adjustment. Any adjusted rate of interest established
6 under Subsection (b) of this Section shall be effective on January 1 of the
7 succeeding year in the case of an adjustment attributable to the six-month
8 period ending on September 30 and on July 1 of the same year in the case
9 of an adjustment attributable to the six-month period ending on March
10 31.

11 (d) Definition of Prime Rate. For purposes of this Section, the term adjusted
12 prime rate charged by banks means the average predominant prime rate
13 quoted by commercial banks to large business, as determined by the
14 Board of Governors of the Federal Reserve System.

15
16 **§ 27114. Criminal Offenses.**

17 It shall be unlawful for any person:

18 (a) To refuse or fail to make any return provided to be made in this Chapter;

19 (b) To make any false or fraudulent return or false statement in any return,
20 with intent to defraud the government of Guam or to evade the payment
21 of any tax, or any portion thereof, imposed by this Chapter;

22 (c) To aid or abet another in any attempt to evade the payment of any tax, or
23 any portion thereof, imposed by this Chapter.

24 **§ 27115. Punishment.**

25 Any person violating any of the provisions of this Chapter shall be guilty of
26 a misdemeanor. On conviction thereof by a court of competent jurisdiction, any
27 license issued for the operation of such business shall be suspended upon such

1 conviction for at least the period of any imprisonment imposed therefor plus six (6)
2 months, and if no imprisonment is ordered, for a period of at least six (6) months.

3
4 **§ 27116. Prohibited Advertising.**

5 It shall be unlawful for any taxpayer under this Chapter to advertise, or hold
6 out to the public in any manner, directly or indirectly, that any tax levied herein is
7 not considered as an element of the purchase price. Any person found guilty by a
8 court of competent jurisdiction of violating this Section shall be guilty of a
9 violation punishable by fine of not more than Fifty Dollars (\$50.00) for each
10 separate offense.

11
12 **§ 27117. Excessive and Erroneous Collections or Returns.**

13 (a) If any return is erroneous in any respect, the Tax Commissioner shall
14 assess the proper amount and so notify the taxpayer in writing. If such
15 corrected assessment is less than the tax remitted by the taxpayer, the
16 tax Commissioner shall direct the Treasurer of Guam to make such
17 refund. If the corrected assessment is more than that computed by the
18 taxpayer in his return, the taxpayer shall have thirty (30) days from
19 receipt of the Tax Commissioner's notice, or until the expiration of
20 the time granted by the law levying such tax, whichever is greater, in
21 which to pay such additional assessment before it becomes delinquent.

22 (b) Whenever the tax collected by a retailer for any period exceeds that
23 provided by law, whether the excess is attributable to the collection of
24 tax on exempt or nontaxable transactions or erroneous computation,
25 the total amount collected, excluding only that portion of the excess
26 that has been returned or credited to the purchaser from whom it was
27 collected, constitutes a tax liability of the retailer that must be reported

1 and paid at the time and in the manner provided by § 27108 of this
2 Chapter.

3 (c) Any such amount refunded to a purchaser which has been paid by or
4 collected from a retailer shall be refunded by the Tax Commissioner
5 to the retailer only upon submission of proof to the satisfaction of the
6 Tax Commissioner that the amount has been returned or credited to
7 the purchaser from whom it was originally collected. In such cases,
8 interest shall be paid by the Tax Commissioner only upon proof that
9 interest was included in the repayment by the retailer to that person or
10 persons.

11
12 **§ 27118. Bundled Transactions.**

13 If an establishment has taxable and nontaxable sales, it must comply with the
14 recordkeeping requirements in § 27111 of this Chapter. If a vendor's records do
15 not substantiate nontaxable sales, all sales will be considered taxable.

16 (a) For the purposes of this section “bundled transaction” means the retail
17 sale of two (2) or more products, except real property where;

- 18 1. The products are otherwise distinct of identifiable; and
19 2. The products are sold for one (1) nonitemized price;

20 (b) “Distinct and identifiable products” do not include:

- 21 1. Packaging such as containers, boxes, sacks, bags, bottles, wrapping
22 material, labels, tags, or instruction guides that accompany the retail
23 sale of products and are incidental or immaterial to the retail sale
24 thereof.
25 2. A product provided free of charge with the required purchase of
26 another product

1 (c) When several purchases are made together and at the same time, the tax
2 may be computed on each item individually or on the total amount of the
3 several items, as the retailer may elect, except that the purchases taxed,
4 and tax exempt must be separately totaled.”

5 **Section 2. Approval of Voters Not Required.** In compliance with 48
6 U.S.C. 1423a, the imposition of the taxation authorized by this Act *shall not* be
7 subject to the approval of, or placed before, the voters of Guam.

8 **Section 3. Effective Date.** This Act *shall* be effective no later than thirty
9 (30) days upon enactment.

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