

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
414-35 (COR)	Tina Rose Muña Barnes	AN ACT TO AMEND §§ 19104, 19202(a), AND 19804(b) AND TO ADD §§ 19403(b)(6) AND (7), ALL OF CHAPTER 19, OF DIVISION 1 OF TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING LIMITED LIABILITY TO ESSENTIAL BUSINESSES, AND PRIVATE AND PUBLIC SECTOR ENTITIES UNDER THE EMERGENCY HEALTH POWERS ACT DURING A PUBLIC HEALTH EMERGENCY.	9/28/20 8:00 a.m.						

**'I MINA' TRENTAI SINGKO NA LIHESLATURAN GUAHAN
2020 (SECOND) Regular Session**

Bill No. 414-35 (COR)

Introduced by:

Tina Rose Muña Barnes 

AN ACT TO AMEND §§ 19104, 19202(a), AND 19804(b) AND TO ADD §§ 19403(b)(6) AND (7), ALL OF CHAPTER 19, OF DIVISION 1 OF TITLE 10 GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING LIMITED LIABILITY TO ESSENTIAL BUSINESSES, AND PRIVATE AND PUBLIC SECTOR ENTITIES UNDER THE EMERGENCY HEALTH POWERS ACT DURING A PUBLIC HEALTH EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that our island's private and public sector entities require continued and unrestricted access to sites, facilities, and equipment that are located in areas with confirmed or suspected cases of COVID-19. *I Liheslaturan Guåhan* finds that many of these entities risk the possibility of legal action against them due to their increased exposure to COVID-19. *I Liheslaturan Guåhan* finds that nine (9) States in the United States have introduced limited liability legislation to protect their public and private sector entities from civil litigation during the Coronavirus pandemic since June 2020. *I Liheslaturan Guåhan* further finds that the threat of legal action places an undue legal burden on the private and public sector entities that have been in compliance with public health directives. This may in turn, dissuade private businesses and government agencies from conducting their daily operations and can result in fewer services at a higher cost to our community.

1 Therefore, in order to ensure that our private and public sector entities
2 continue to provide their vital services to our island residents, it is the intent of *I*
3 *Liheslaturan Guåhan* to provide reasonable protection against the threat of legal
4 liability during a declared public health emergency.

5 **Section 2.** § 19104 of Chapter 19, of Division 1, Title 10, Guam Code
6 Annotated is amended to read:

7 **“§ 19104. Definitions.**

8 (a) ‘Bioterrorism’ is the intentional use of any micro-organism, virus,
9 infectious substance or biological product that may be engineered as a result of
10 biotechnology, or any naturally occurring or bioengineered component of any such
11 microorganism, virus, infectious substance or biological product, to cause death,
12 disease or other biological malfunction in a human, an animal, a plant or another
13 living organism in order to influence the conduct of government or to intimidate or
14 coerce a civilian population.

15 (b) ‘Chain of Custody’ is the methodology of tracking specimens for the
16 purpose of maintaining control and accountability from initial collection to final
17 disposition of the specimens, and providing for accountability at each stage of
18 collecting, handling, testing, storing and transporting the specimens and reporting
19 test results.

20 (c) ‘Contagious Disease’ is an infectious disease that can be transmitted from
21 person to person.

22 (d) ‘Health Care Facility’ means any non-Federal institution, building, or
23 agency, or portion thereof, whether public or private (for-profit or nonprofit) that is
24 used, operated or designed to provide health services, medical treatment or nursing,
25 rehabilitative, or preventive care to any person or persons. This includes, but is not
26 limited to: ambulatory surgical facilities, home health agencies, hospices, hospitals,
27 infirmaries, intermediate care facilities, kidney treatment centers, long term care

1 facilities, medical assistance facilities, mental health centers, outpatient facilities,
2 public health centers, rehabilitation facilities, residential treatments facilities, skilled
3 nursing facilities, and adult day-care centers. This also includes, but is not limited
4 to, the following related property when used for, or in connection with, the
5 foregoing: laboratories; research facilities; pharmacies; laundry facilities; health
6 personnel training and lodging facilities; patient, guest and health personnel food
7 service facilities; and offices and office buildings for persons engaged in health care
8 professions or services.

9 (e) 'Health Care Provider' is any person or entity who provides health care
10 services, including, but not limited to, hospitals, medical clinics and offices, special
11 care facilities, medical laboratories, physicians, pharmacists, dentists, physician
12 assistants, nurse practitioners, registered and other nurses, paramedics, emergency
13 medical or laboratory technicians, and ambulance and emergency medical workers.

14 (f) 'Infectious Disease' is a disease caused by a living organism or other
15 pathogen, including a fungus, bacteria, parasite, protozoan or virus. An infectious
16 disease may, or may not, be transmissible from person to person, animal to person,
17 or insect to person.

18 (g) 'Infectious Waste' is:

19 (i) 'biological waste,' which includes blood and blood products,
20 excretions, exudates, secretions, suctioning and other body fluids, and waste
21 materials saturated with blood or body fluids;

22 (ii) 'cultures and stocks,' which includes etiologic agents and
23 associated biologicals, including specimen cultures and dishes and devices
24 used to transfer, inoculate and mix cultures, wastes from production of
25 biologicals and serums, and discarded live and attenuated vaccines;

26 (iii) 'pathological waste,' which includes biopsy materials and all
27 human tissues, anatomical parts that emanate from surgery, obstetrical

1 procedures, necropsy or autopsy and laboratory procedures, and animal
2 carcasses exposed to pathogens in research and the bedding and other waste
3 from such animals, but does not include teeth or formaldehyde, or other
4 preservative agents; and

5 (iv) ‘sharps,’ which includes needles, I.V. tubing with needles attached,
6 scalpel blades, lancets, breakable glass tubes, and syringes that have been
7 removed from their original sterile containers.

8 (h) ‘Isolation’ is the physical separation and confinement of an individual or
9 groups of individuals who are infected or reasonably believed to be infected with a
10 contagious or possibly contagious disease from non- isolated individuals, to prevent
11 or limit the transmission of the disease to non-isolated individuals.

12 (i) ‘Mental Health Support Personnel’ includes, but is not limited to,
13 psychiatrists, psychologists, social workers and volunteer crisis counseling groups.

14 (j) ‘Organized Militia’ includes the Department of Military Affairs and the
15 Guam National Guard or any other military force organized under the laws of Guam
16 or through empowerment of the Organic Act of Guam.

17 (k) ‘Protected health information’ is any information, whether oral, written,
18 electronic, visual or any other form, that relates to an individual’s past, present, or
19 future physical or mental health status, condition, treatment, service, products
20 purchased, or provision of care, and that reveals the identity of the individual whose
21 health care is the subject of the information, or where there is a reasonable basis to
22 believe such information could be utilized, either alone or with other information
23 that is, or should reasonably be known to be, available to predictable recipients of
24 such information, to reveal the identity of that individual.

25 (l) ‘Public health authority’ is the Department of Public Health and Social
26 Services; or any local government agency that acts principally to protect or preserve
27 the public’s health; or any person directly authorized to act on behalf of the

1 Department of Public Health and Social Services or local public health agency. The
2 determination of the ‘Public health authority’ shall be determined by *I Maga’ lãhen*
3 *Guãhan*, based upon the circumstances of the public health emergency. The ‘public
4 health authority’ shall be appointed by *I Maga’ lãhen Guãhan* by an Executive Order
5 declaring a public health emergency.

6 (m) A ‘public health emergency’ is an occurrence or imminent threat of an
7 illness or health condition that:

8 (1) is believed to be caused by any of the following:

9 (i) bioterrorism;

10 (ii) the appearance of a novel or previously controlled or
11 eradicated infectious agent or biological toxin;

12 (iii) a natural disaster relative to an act of God caused by a
13 typhoon, earthquake, tsunami, flood or intra-terrestrial collision;

14 (iv) a chemical attack or accidental release; or (v) a nuclear attack
15 or accident; and

16 (2) poses a high probability of any of the following harms:

17 (i) a large number of deaths in the affected population;

18 (ii) a large number of serious or long-term disabilities in the
19 affected population; or

20 (iii) widespread exposure to an infectious or toxic agent that
21 poses a significant risk of substantial future harm to a large number of
22 people in the affected population.

23 (n) Essential Business. – Any private or public sector entity identified by an
24 executive order or directive from the public health authority to remain open during
25 a declared public health emergency.

1 ~~(n)~~ (o) ‘Private sector entity’ means any entity that is not a unit of the
2 Government of Guam, including but not limited to a firm, corporation, or employees
3 and agents of such a firm, or corporation.

4 ~~(e)~~ (p) ‘Public sector entity’ means any political subdivision of the
5 Government of Guam or an agency, board, commission or department of the territory
6 of Guam that is not considered a Private entity.

7 ~~(p)~~ (q) ‘Public safety authority’ means the Guam Police Department; or any
8 local government agency that acts principally to protect or preserve the public safety,
9 or any person directly authorized to act on behalf of the Guam Police Department or
10 local agency.

11 ~~(e)~~ (r) ‘Quarantine’ is the physical separation and confinement of an
12 individual or groups of individuals who are, or may have been, exposed to a
13 contagious, or possibly contagious, disease, and who do not show signs or symptoms
14 of a contagious disease, from non-quarantined individuals, to prevent or limit the
15 transmission of the disease to non-quarantined individuals.

16 ~~(p)~~ (s) ‘Specimens’ include, but are not limited to, blood, sputum, urine, stool,
17 other bodily fluids, wastes, tissues and cultures necessary to perform required tests.

18 ~~(r)~~ (t) ‘Tests’ include, but are not limited to, any diagnostic or investigative
19 analyses necessary to prevent the spread of disease or protect the public’s health,
20 safety and welfare.

21 ~~(s)~~ (u) ‘Superior Court of Guam’ is the court designated by the Public Health
22 Emergency Plan under Article 2 of this Chapter when a public health emergency has
23 been declared.

24 **Section 3.** § 19202(a) of Article 2 of Chapter 19 of Division 1, Title 10, Guam
25 Code Annotated is amended to read:

1 (a) Content. The Commission shall, within six (6) months of its appointment,
2 deliver to *I Maga' lãhen Guåhan* [The Governor] a plan for responding to a public
3 health emergency, that includes provisions or guidelines on the following:

4 (1) notifying and communicating with the population during a state of
5 public health emergency in compliance with this Chapter;

6 (2) Identifying Essential Businesses in the private and public sectors
7 that are applicable to the type of health emergency claim at issue.

8 ~~(2)~~ (3) central coordination of resources, manpower and services,
9 including coordination of responses by the government of Guam, military and
10 Federal agencies;

11 ~~(3)~~ (4) the location, procurement, storage, transportation, maintenance,
12 and distribution of essential materials, including but not limited to medical
13 supplies, drugs, vaccines, food, shelter, clothing and beds;

14 (4) (5) compliance with the reporting requirements in § 19301;

15 ~~(5)~~ (6) the continued, effective operation of the Judicial System
16 including, if deemed necessary, the identification and training of personnel to
17 serve as emergency judges regarding matters of isolation and quarantine as
18 described in this Chapter;

19 ~~(6)~~ (7) the method of evacuating populations, and housing and feeding
20 the evacuated populations;

21 ~~(7)~~ (8) the identification and training of health care providers to
22 diagnose and treat persons with infectious diseases;

23 ~~(8)~~ (9) the vaccination of persons, in compliance with the provisions of
24 this Chapter;

25 ~~(9)~~ (10) the treatment of persons who have been exposed to or who are
26 infected with diseases or health conditions that may be the cause of a public
27 health emergency;

1 ~~(10)~~ (11) the safe disposal of infectious wastes and human remains in
2 compliance with the provisions of this Chapter;

3 ~~(11)~~ (12) the safe and effective control of persons isolated, quarantined,
4 vaccinated, tested or treated during a state of public health emergency;

5 ~~(12)~~ (13) tracking the source and outcomes of infected persons;

6 ~~(13)~~ (14) ensuring that each municipality within Guam identifies the
7 following:

8 (i) sites where persons can be isolated or quarantined in
9 compliance with the conditions and principles for isolation or
10 quarantine of this Chapter;

11 (ii) sites where medical supplies, food, and other essentials can
12 be distributed to the population;

13 (iii) sites where public health and emergency workers can be
14 housed and fed; and

15 (iv) routes and means of transportation of people and materials;

16 ~~(14)~~ (15) cultural norms, values, religious principles and traditions that
17 may be relevant; and

18 ~~(15)~~ (16) other measures necessary to carry out the purposes of this
19 Chapter.

20 (b) Distribution. The Commission shall distribute this plan to those who will
21 be responsible for its implementation, health care providers, other interested persons,
22 and the public, and seek their review and comments.

23 (c) Review. The Commission shall annually review its plan for responding to
24 a public health emergency.

25 **Section 4.** A new § 19403(b)(6). is added to Article 4 of Chapter 19 of
26 Division 1, Title 10 Guam Code Annotated to read:

1 “(6) Identifying Essential Businesses and personnel in the private and
2 public sectors.”

3 **Section 5.** A new § 19403(b)(7). is added to Article 4, Chapter 19 of Division
4 1, Title 10 Guam Code Annotated

5 “(7) The public Health authority shall issue guidance provided in any
6 proclamation, order, or rule by the Governor or the Guam or Public Health
7 Authority that is applicable to the type of covered entity and to the health
8 emergency claim at issue.”

9 **Section 6.** § 19804(b) of Article 8 of Chapter 19, Title 10 Guam Code
10 Annotated is amended to read:

11 “(b) Private Liability.

12 (1) During a state of public health emergency, any person owning or
13 controlling real estate or other premises who voluntarily and without compensation
14 grants a license or privilege, or otherwise permits the designation or use of the whole
15 or any part or parts of such real estate or premises for the purpose of sheltering
16 persons, together with that person’s successors in interest, if any, shall not be civilly
17 liable for negligently causing the death of, or injury to, any person on or about such
18 real estate or premises under such license, privilege or other permission, or for
19 negligently causing loss of, or damage to, the property of such person.

20 (2) During a state of public health emergency, any private person, firm or
21 corporation and employees and agents of such person, firm or corporation in the
22 performance of a contract with, and under the direction of, the government of Guam
23 or its political subdivisions under the provisions of this Chapter shall not be civilly
24 liable for causing the death of, or injury to, any person or damage to any property,
25 except in the event of gross negligence or willful misconduct.

26 (3) During a state of public health emergency, any private person, firm or
27 corporation, and employees and agents of such person, firm or corporation, who

1 renders assistance or advice at the request of the government of Guam or its political
2 subdivisions under the provisions of this Chapter shall not be civilly liable for
3 causing the death of, or injury to, any person or damage to any property, except in
4 the event of gross negligence or willful misconduct.

5 (4) During a state of public health emergency, any essential business, private
6 sector entity, public sector entity, or personnel identified by executive order or
7 directive from the public health authority shall not be held civilly liable for causing
8 the death of, or injury to, any person or damage to any property, except in the event
9 of gross negligence or willful misconduct.

10 (4)-(5) The immunities provided in this Subsection shall not apply to any
11 essential business, private sector entity, public sector entity, or personnel identified
12 by executive order or directive from the public health authority that is not in
13 compliance with the most recent laws, policies, procedures, and health guidance.

14 (5)(6) The immunities provided in this Subsection shall not apply to any
15 private person, firm, or corporation or employees and agents of such person, firm,
16 or corporation whose act or omission caused in whole or in part the public health
17 emergency, and who would otherwise be liable therefor.

18 **Section 6. Date of Enactment.** Due to the ongoing COVID-19 public health
19 emergency this act shall be applied retroactively to March 14, 2020.

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