



*Territory of Guam
Territorio de Guam*

OFFICE OF THE GOVERNOR
P.O. BOX 10000
AGANA, GUAM 96910

SEP 18 1991



The Honorable Joe T. San Agustin
Speaker, Twenty-First Guam Legislature
155 Hernan Cortes Avenue
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 325, which I have signed into law this date as Public Law 21-43.

Sincerely,

FRANK F. BLAS
Governor of Guam
Acting

Attachment

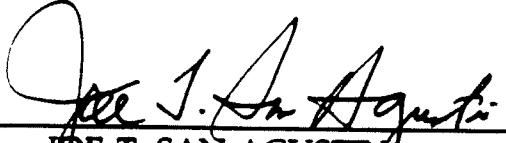


Commonwealth Now!

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

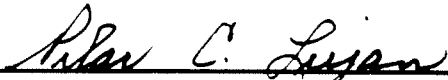
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 325 (COR), "AN ACT TO REPEAL CHAPTER XV OF TITLE X, GOVERNMENT CODE (PUBLIC LAW 13-115) AND TO ADD A NEW CHAPTER XV TO SAID TITLE X TO PROVIDE FOR PROMPT AND EFFECTIVE RESOLUTION OF MEDICAL MALPRACTICE CLAIMS," was on the 30th day of August, 1991, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



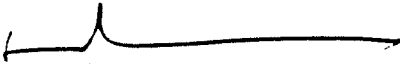
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 10th day of September
1991, at 4:45 o'clock P.m.



Theresa F. Duenas
Assistant Staff Officer
Governor's Office

APPROVED:



FRANK F. BLAS
Governor of Guam
Acting

Date: September 18, 1991

Public Law No: 21-43

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Bill No. 325 (COR)

As substituted by the Committee
on Health, Ecology and Welfare

Introduced by:

D. L. G. Shimizu
J. T. San Agustin
M. Z. Bordallo
J. P. Aguon
C. T. C. Gutierrez
M. D. A. Manibusan
H. D. Dierking
D. F. Brooks
E. M. Espaldon
E. P. Arriola
J. G. Bamba
A. C. Blaz
E. R. Duenas
P. C. Lujan
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M. J. Reidy
M. C. Ruth
F. R. Santos
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO REPEAL CHAPTER XV OF TITLE X,
GOVERNMENT CODE (PUBLIC LAW 13-115) AND TO ADD A
NEW CHAPTER XV TO SAID TITLE X TO PROVIDE FOR
PROMPT AND EFFECTIVE RESOLUTION OF MEDICAL
MALPRACTICE CLAIMS.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**
2 **Section 1.** Chapter XV of Title X of the Government Code of Guam,
3 §§9900 through 9990.14, enacted by Public Law 13-115 on December 23, 1977,

1 is hereby repealed in its entirety.

2 **Section 2.** A new Chapter XV is hereby added to Title X of the
3 Government Code of Guam to read as follows:

4 **"CHAPTER XV**

5 **Medical Malpractice**

6 **Mandatory Arbitration Act**

7 **§9990. Title.** This Chapter may be cited as the 'Medical
8 Malpractice Mandatory Arbitration Act'.

9 **§9990.1. Definitions.** As used in this chapter:

10 (a) 'Association' means the American Arbitration
11 Association or other entity organized to arbitrate disputes
12 pursuant to this Chapter.

13 (b) 'Health professional' means any person licensed
14 or certified to practice the healing arts within the territory
15 of Guam.

16 (c) 'Health care institution' means any health care
17 facility, health maintenance organization or independent
18 practice association operated primarily to provide medical
19 services.

20 (d) 'Malpractice' means any tort or breach of contract
21 based on health care or professional services rendered or
22 which should have been rendered by a health professional or
23 a health care institution to a patient.

24 (e) 'Petitioner' means the patient, his relatives, his
25 heirs-at-law or personal representative pursuing a claim in
26 arbitration, or any third party or other party pursuing a

1 claim in arbitration, against a health professional or health
2 care provider.

3 (f) 'Respondent' means the health professional or
4 health care provider defending a claim in arbitration filed by
5 a petitioner.

6 **§9990.2. Mandatory arbitration.** Any claim that accrues or
7 is being pursued in the territory of Guam, whether in tort,
8 contract, or otherwise, shall be submitted to mandatory
9 arbitration pursuant to the terms of this Chapter if it is a
10 controversy between the patient, his relatives, his heirs-at-law or
11 personal representative or any third party or other party, and the
12 health professional or health care institution, or their employees
13 or agents, and is based on malpractice, tort, contract, strict
14 liability, or any other alleged violation of a legal duty incident to
15 the acts of the health professional or health care institution, or
16 incident to services rendered or to be rendered by the health
17 professional or health care institution.

18 **§9990.3. Initiation of arbitration.** Arbitration is initiated by
19 a petitioner or petitioners serving a written demand for
20 arbitration upon a respondent or respondents in the same manner
21 provided by law for the service of summons in the Superior Court
22 of Guam; except that the petitioner or his agent may serve the
23 demand without the necessity of it being served by a Marshal of
24 the Superior Court of Guam. The demand for arbitration shall
25 not be filed in the Superior Court of Guam, and arbitration shall
26 not be filed in the Superior Court of Guam, unless the petitioner

1 or petitioners require the appointment of a Guardian Ad Litem, as
2 provided for in §9990.13 of this Chapter. The demand for
3 arbitration shall be filed with the Association. The demand for
4 arbitration shall state the name and address of the petitioner or
5 petitioners, identify the respondent or respondents, and shall
6 outline the factual basis of the claim and the alleged acts of
7 negligence or wrongdoing of the respondent or respondents.

8 **§9990.4. Response to demand.** Within twenty (20) days
9 after service of a demand for arbitration, the respondent or
10 respondents shall file a response to the demand for arbitration
11 and serve it upon the petitioner or petitioners, or their attorney.
12 The response shall identify any defenses then known to the
13 respondent or respondents. If a respondent fails to file a
14 response, then the petitioner or petitioners may proceed in default
15 to appoint an arbitration panel pursuant to §9990.8 of this
16 Chapter.

17 **§9990.5. Applicability of statute of limitations.** A claim shall
18 be waived and forever barred as against a respondent if on the
19 date the demand is served the applicable statute of limitations
20 would bar the claim.

21 **§9990.6. Standard of care.** The prevailing standard of duty,
22 practice, or care by a reasonable physician in the same field
23 practicing medicine in the community at the time of the alleged
24 malpractice shall be the standard applied in the arbitration.

25 **§9990.7. Administration of arbitration.** The Association
26 shall administer a proceeding filed under this Chapter. The

1 administrative expense shall be as agreed to by the parties and the
2 Association, or as may be provided by the Association. The
3 administrative costs shall be equally shared by the parties subject
4 to an award of costs by the panel as provided in §9990.30 herein.

5 **§9990.8. Selection of arbitrators.** An arbitration under this
6 Chapter shall be heard by a panel of three (3) arbitrators. The
7 chairperson shall be decided by the three (3) panel members and
8 shall have jurisdiction over pre-hearing procedures. The three (3)
9 panel members shall include an attorney, a physician, preferably
10 but not necessarily from the respondent's medical specialty, and
11 the third shall be a person who is neither a doctor, lawyer, or
12 representative of a health care institution or insurance company.
13 A minimum of two (2) of the three (3) panel members shall be
14 residents of Guam.

15 (a) Except as otherwise provided in subsection (d),
16 arbitrator candidates shall be selected pursuant to the rules and
17 procedures of the Association from a pool of candidates generated
18 by the Association. The rules and procedures of the Association
19 pertaining to a selection of arbitrators under this chapter shall
20 require that the Association send simultaneously to each party an
21 identical list of five (5) arbitrator candidates in each of the three
22 (3) categories together with a brief biographical statement on
23 each candidate. A party may strike from the list any name which
24 is unacceptable and shall number the remaining names in order of
25 preference. When the lists are returned to the Association they
26 shall be compared and the first mutually agreeable candidate in

1 shall be compared and the first mutually agreeable candidate in
2 each category shall be invited to serve.

3 (b) Where no mutually agreed upon arbitrator is selected
4 for any category, a second list of that category shall be sent
5 pursuant to subsection (a).

6 (c) If a complete panel is not selected by mutual agreement
7 of the parties pursuant to subsections (a) and (b) then under the
8 applicable rules and procedures of the Association, the Association
9 shall appoint the remainder of the panel on whom agreement has
10 not been reached by the parties. The appointment by the
11 Association shall be subject to challenge by any party for cause
12 which challenge may allege facts to establish that unusual
13 community or professional pressures will unreasonably influence
14 the objectivity of the panelists. A request to strike an arbitrator
15 for cause shall be determined by the regional director or
16 comparable officer of the Association.

17 (d) The parties shall not be restricted to the arbitrator
18 candidates submitted for consideration. If all parties mutually
19 agree upon a panelist within a designated category, the panelist
20 shall be invited to serve.

21 **§9990.9. Challenge for bias.** The Association shall make an
22 initial screening for bias as may be appropriate and shall require a
23 candidate for a particular case to complete a current personal
24 disclosure statement under oath. In addition to other relevant
25 information this statement shall disclose any personal
26 acquaintance with any of the parties or their counsel and the

1 nature of such acquaintance. If this statement reveals facts which
2 suggest the possibility of partiality, the Association shall
3 communicate those facts to the parties if the panelist is proposed
4 by the arbitration association.

5 (a) Any party may propound reasonable questions to an
6 arbitrator candidate if such questions are propounded within ten
7 (10) days of the receipt of the candidate's name. Such questions
8 shall be propounded through the Association and the candidate
9 shall respond to the Association promptly.

10 (b) A party shall not communicate with a candidate directly
11 or indirectly except through the Association at any time after the
12 filing of the demand for arbitration. Any candidate who is aware
13 of such communication shall immediately notify the Association.

14 **§9990.10. Rules of arbitration.** The arbitration proceeding
15 shall be subject to rules promulgated by the Association in
16 conformance with this chapter.

17 **§9990.11. Multiple petitioners and multiple respondents.** In
18 cases involving a common question of law or fact, when there are
19 multiple petitioners and/or multiple respondents, the disputes,
20 controversies, and issues shall be consolidated into a single
21 arbitration proceeding.

22 (a) A person who is not a party to the arbitration may join
23 in the arbitration at the request of any party with all the rights
24 and obligations of the original parties. Each party to an
25 arbitration under this chapter is deemed to be bound by the joinder
26 of a new party.

1 **§9990.12. Offer of reparation.** Prior to the institution of a
2 proceeding or claim by a patient, any offer of reparations and all
3 communications incidental thereto made in writing to a patient by
4 a health professional or health care institution are privileged and
5 may not be used by any party to establish the liability or measure
6 of damages attributable to the offeror.

7 (a) Such an offer shall provide that a patient has thirty (30)
8 days to accept or reject the offer, or such lesser period of time as
9 may be necessitated by the condition or health of the patient.

10 (b) After any rejection or the lapse of the applicable time,
11 any party may demand arbitration.

12 (c) Any such offer to a patient shall include a statement that
13 the patient may consult legal counsel before rejecting or accepting
14 the offer.

15 (d) In a case where a potential claim is identified by a health
16 professional or health care institution where reparations, in its
17 judgment, are not appropriate, the professional or institution
18 may, at its option, file a demand for arbitration which demand
19 shall identify the potential claim and deny liability.

20 **§9990.13. Appointment of Guardian Ad Litem.**

21 (a) When a minor, or an insane or incompetent person is a
22 petitioner, he must appear either by general guardian or a
23 Guardian Ad Litem appointed by the Superior Court of Guam. A
24 Guardian Ad Litem may be appointed in a claim for arbitration
25 under this chapter when it is deemed by a judge of the Superior
26 Court of Guam expedient to represent the minor, insane, or

1 incompetent person in the arbitration proceeding,
2 notwithstanding he may have a general guardian and may have
3 appeared by him. The general guardian or Guardian Ad Litem so
4 appearing for an infant, insane or incompetent person in any
5 arbitration proceeding shall have the power to compromise the
6 same and to agree to any settlement or decision of the arbitrators
7 to be entered therein against his ward, subject to the approval of a
8 majority of the arbitrators.

9 (b) A Guardian Ad Litem appointed by the Superior Court
10 of Guam to pursue a claim for arbitration shall be appointed
11 pursuant to §373 of the Guam Code of Civil Procedure. Any
12 petition to appoint a Guardian Ad Litem to pursue a claim for
13 arbitration shall have a copy of the demand for arbitration
14 attached thereto.

15 **§9990.14. Stay of proceedings when suit is filed.** If any suit
16 or proceeding is brought in the courts of Guam upon any issue
17 referable to arbitration under this chapter, the court in which said
18 suit is pending, upon being satisfied that the issue involved in such
19 suit or proceeding is referable to arbitration under this chapter,
20 shall upon application of one of the parties, stay all proceedings in
21 the action until such arbitration has been had in accordance with
22 the terms of this chapter.

23 **§9990.15. Failure to arbitrate under this chapter.** The party
24 aggrieved by the alleged failure, neglect, or refusal of another to
25 arbitrate under this chapter, may petition the Superior Court of
26 Guam, for an order directing that such arbitration proceed in the

1 manner provided for in this chapter. Five (5) days notice in
2 writing of such application shall be served upon the party in
3 default. Service thereof shall be made in the manner provided by
4 law for the service of summons in the Superior Court of Guam.
5 The court shall hear the parties, and the court shall then make an
6 order directing the parties to proceed to arbitration in accordance
7 with the terms of this chapter.

8 **§9990.16. Service of documents upon arbitrators; ex parte**
9 **contract.** Once the arbitration panel has been selected, each of
10 the arbitrators shall be provided with a copy of the demand for
11 arbitration and any responses thereto by the Association. Each of
12 the arbitrators shall also be provided by the Association with the
13 parties' notices to each other identifying experts, witnesses,
14 documents and arbitration briefs as authorized in this chapter.
15 Any motions or requests for additional discovery shall also be
16 served upon each of the arbitrators through the Association.

17 **§9990.17. Witnesses before arbitrators.** The panel or its
18 chairperson in the arbitration proceeding shall, upon application
19 by a party to the proceeding, and may upon its own
20 determination, issue a subpoena requiring a person to appear and
21 be examined with reference to a matter within the scope of the
22 proceeding, and to produce books, records, or papers pertinent to
23 the proceeding. In case of disobedience to the subpoena, the
24 chairperson or a majority of the arbitration panel in the
25 arbitration proceeding may petition the Superior Court of Guam
26 to require the attendance and testimony of the witness and the

1 production of books, papers, and documents. The Superior Court
2 of Guam, in case of contumacy or refusal to obey a subpoena, may
3 issue an order requiring that person to appear and to produce
4 books, records, and papers and give evidence touching the matter
5 in question. Failure to obey the order of the Court may be
6 punished by the Court as contempt. The fees for the attendance of
7 any person to attend before the arbitration panel as a witness
8 shall be the same as the fees for witnesses subpoenaed before the
9 Superior Court of Guam. The Superior Court of Guam shall
10 order a witness to pay the cost of the aggrieved party, to include
11 attorney's fees, if it is determined that the witness wrongfully
12 failed to appear before the arbitration panel.

13 **§9990.18. Evidence and testimony.** A hearing shall be
14 informal and the arbitrators shall be the sole judge of the
15 relevancy and materiality of the evidence offered.

16 (a) The arbitrators may receive and consider evidence in the
17 form of an affidavit, but shall give appropriate weight to any
18 objections made. All documents to be considered by the
19 arbitrators shall be filed at the hearing.

20 (b) Testimony shall be taken under oath and a record of the
21 proceedings shall be made by a tape recording. Any party, at the
22 party's expense, may have transcriptions or copies of the
23 recording made or may provide for a written transcript of the
24 proceedings. The costs of any transcription ordered by the panel
25 for its own use shall be deemed part of the costs of the
26 proceedings.

1 (c) Expert testimony shall not be required but where expert
2 testimony is used, it shall be admitted under the same
3 circumstances as in a civil trial and be subject to cross-
4 examination.

5 (d) The party with the burden of establishing a standard of
6 care and breach thereof shall establish such standards whether by
7 the introduction of expert testimony, or by other competent proof
8 of the standard and the breach thereof, which may include the use
9 of published works as provided in subsection (e).

10 (e) Authoritative, published works on the general and
11 specific subjects in issue may be admitted and argued from, upon
12 prior notice to all other parties.

13 (f) The panel shall accord such weight and probative worth
14 to expert evidence as it deems appropriate. The panel may call a
15 neutral expert on its own motion, which expert witness shall be
16 subject to cross-examination by the parties. The costs of the
17 expert will be deemed a cost of the proceeding.

18 **§9990.19. Identification of expert witnesses.** Within thirty
19 (30) days after the arbitrators have been selected, any petitioner
20 pursuing a claim against a respondent shall identify the expert
21 witnesses that the petitioner will call at the arbitration hearing.
22 When identifying such experts, the petitioner shall provide the
23 name of the expert, the address of the expert, and shall state the
24 subject matter on which the expert is expected to testify, and state
25 the substance of the facts and opinions to which the expert is to
26 testify and a summary of the grounds for each opinion. Within

1 thirty (30) days after the petitioner has identified his experts, the
2 respondent shall identify the expert witnesses that the respondent
3 will call to testify at the arbitration hearing. The respondent shall
4 provide the name of the expert witness, the address of the expert
5 witness, and state the subject matter on which the expert is
6 expected to testify, and state the substance of the facts and
7 opinions to which the expert is expected to testify and a summary
8 of the grounds for each opinion.

9 **§9990.20. Identification of witnesses and documents.**

10 Within thirty (30) days after the respondent has identified
11 respondent's expert witnesses, the parties shall exchange a list of
12 witnesses that they expect to call to testify at the arbitration
13 hearing along with a summary of each witnesses' proposed
14 testimony. The parties shall also provide each other with copies
15 of all documents and material that they intend to introduce as
16 evidence at the arbitration hearing.

17 **§9990.21. Additional discovery.** Additional discovery, not
18 otherwise provided for in this chapter, such as depositions,
19 interrogatories and requests to produce, shall not be permitted
20 unless:

21 (a) The parties stipulate to allow additional
22 discovery; or,

23 (b) A majority of the arbitrators at the pre-
24 arbitration conference provided for in §9990.22 of this
25 chapter authorize additional discovery for good cause
26 shown upon the application of a party to the arbitration

1 proceeding. The arbitrators shall liberally authorize
2 additional discovery if it is necessary in order for a
3 petitioner or respondent to more adequately present or
4 defend a claim.

5 **§9990.22. Time and place of arbitration hearing.** Within
6 thirty (30) days after the parties have exchanged their lists of
7 witnesses and provided each other with the documents that the
8 parties intend to introduce as evidence at the arbitration hearing,
9 the arbitrators shall meet at a place designated by the chairperson
10 and conduct a pre-arbitration conference for the purpose of
11 deciding upon a date and place for the arbitration hearing, and
12 for the purpose of deciding whether additional discovery should
13 be permitted pursuant to §9990.21 of this chapter. The arbitrators,
14 or a majority of them, shall agree upon a date and place for the
15 arbitration hearing. The arbitration hearing shall be conducted
16 within ninety (90) days after the pre-arbitration conference
17 between the arbitrators and the parties unless agreed otherwise
18 by the parties. Oral notice to the parties at the pre-arbitration
19 conference of the date, time and location of the arbitration
20 hearing shall be deemed sufficient.

21 **§9990.23. Arbitration briefs.** Any arbitration brief to be
22 filed by a petitioner must be filed at least ten (10) working days
23 before the arbitration hearing. Any arbitration brief to be filed by
24 a respondent must be filed at least five (5) working days before the
25 arbitration hearing. A petitioner may file a reply brief, which shall
26 respond only to matters discussed in the respondent's arbitration

1 brief, no later than two (2) working days before the arbitration
2 hearing.

3 (a) The panel may order submission of post-hearing briefs
4 within ten (10) calendar days after the closing of hearings. In
5 written briefs, each party may summarize the evidence in
6 testimony and may propose a comprehensive award of remedial
7 or compensatory elements.

8 **§9990.24. Representation by counsel.** Any party may be
9 represented in hearings before the arbitration panel by counsel.

10 A party may appear without counsel, and shall be advised of
11 such right and the right to retain counsel in a manner calculated to
12 inform the person of the nature and complexity of a proceeding by
13 a simple concise form to be distributed by the Association
14 administering the arbitration.

15 **§9990.25. Attendance at hearings.** Parties to the
16 arbitration and their counsel are entitled to attend all hearings.
17 Non-party witnesses may be excluded by either party upon
18 request.

19 **§9990.26. Oaths.** The arbitrators shall require all
20 witnesses at the arbitration hearing to testify under oath.

21 **§9990.27 Arbitration in the absence of a party.** The
22 arbitration may proceed in the absence of any party who, after
23 due notice, fails to be present. An award shall not be made solely
24 on the default of a party. The arbitrators shall require the
25 attending party to submit evidence.

26 **§9990.28. Adjournments.** Hearings may be adjourned by a

1 majority of the arbitrators only for good cause, and an
2 appropriate fee will be charged if the arbitrators determine that a
3 party has wrongfully caused an adjournment to take place.

4 **§9990.29. Waiver of statutory rights.** Any party who
5 proceeds with arbitration after knowledge that any provision of
6 this chapter has not been complied with and fails to state his
7 objections thereto in writing shall be deemed to have waived his
8 right to object.

9 **§9990.30. Fees and costs of arbitration.** Except for the
10 parties to the arbitration and their agents, officers, and
11 employees, all witnesses appearing pursuant to subpoena are
12 entitled to receive fees and mileage in the same amount and under
13 the same circumstances as prescribed by law for witnesses in civil
14 actions in the Superior Court of Guam. The fee and mileage of a
15 witness subpoenaed upon the application of a party to the
16 arbitration shall be paid by that party. The fee and mileage of a
17 witness subpoenaed solely upon the determination of the
18 arbitrator or the majority of a panel of arbitrators shall be paid in
19 the manner provided for the payment of the arbitrators' expenses.

20 (a) The costs of each arbitrator's fees and expenses,
21 together with any administrative fee may be assessed against any
22 party in the award or may be assessed among parties in such
23 proportions as may be determined in the arbitration award. Each
24 party shall bear its own attorney's fees in the arbitration
25 proceeding.

26 **§9990.31. Damages.** Damages shall be monetary only and

1 shall be without limitation as to nature or amount unless
2 otherwise provided by law.

3 **§9990.32. Timely award.** The award of the arbitrators
4 shall be rendered promptly by the arbitrators and, unless
5 otherwise agreed by the parties, not later than twenty (20)
6 business days from the date of the close of the hearing. However,
7 if the arbitrators fail to render an award within twenty (20)
8 business days from the date of the close of the hearing, the
9 arbitrators' award shall not be vacated on this ground unless it
10 can be proven that a party has been seriously prejudiced due to the
11 fact that the arbitrators have not rendered an award within
12 twenty (20) business days.

13 **§9990.33. Award of arbitrators.** A majority of the panel of
14 arbitrators may grant monetary damages only deemed equitable
15 and just.

16 (a) The award in the arbitration proceeding shall be in
17 writing and shall be signed by the arbitrators or a majority of the
18 panel of arbitrators. An award cannot be rendered unless it is
19 signed by a majority of the arbitrators. The award shall include a
20 determination of all the questions submitted to arbitration by each
21 party, the resolution of which is necessary to determine the
22 dispute, controversy, or issue.

23 (b) The panel shall determine the degree to which each
24 respondent party, if more than one, was at fault for the total
25 damages accruing to any other party to the arbitration,
26 considering all sources of damage involving parties to the

1 arbitration, but excluding the damages attributable to persons not
2 parties to the arbitration.

3 (c) The panel shall prepare a schedule of contributions
4 according to the relative fault of each party which schedule shall
5 be binding on those parties, but such determination shall not affect
6 a claimant's right to recover jointly and severally from all parties
7 where such right otherwise exists in the law.

8 **§9990.34. Delivery of award to parties.** The parties shall
9 accept as legal delivery of the award the placing of the award or a
10 true copy thereof in the mail by the arbitrators addressed to such
11 party at its last known address or to the party's attorney, or
12 personal service of the award on the party or the party's attorney.

13 **§9990.35. Confirmation of award.** At any time within one
14 (1) year after an award is made, any party to the arbitration may
15 apply to the Superior Court of Guam for an order confirming the
16 award and thereupon the court must grant such an order unless
17 the award is vacated, modified, corrected, or appealed as
18 prescribed in §§9990.36, 9990.37 and 9990.39 of this chapter.
19 Notice of the application shall be served upon the adverse party,
20 and thereupon the court shall have jurisdiction of such party as
21 though he had appeared generally in the proceeding. If the
22 adverse party is a resident of Guam, service shall be made upon
23 the adverse party as prescribed by law for the service of a civil
24 action in the Superior Court of Guam. If the adverse party shall
25 be a non-resident, then the notice of the application shall be
26 served in like manner as other process of the Superior Court of

1 Guam served upon non-residents.

2 **§9990.36. Vacation of arbitration award.** In any of the
3 following cases, the Superior Court of Guam may make an order
4 vacating the award upon the application of any party to the
5 arbitration:

6 (a) Where the award was procured by corruption,
7 fraud or undue means;

8 (b) Where there was corruption in any of the
9 arbitrators;

10 (c) Where the arbitrators exceeded their powers
11 and the award cannot be corrected without affecting the
12 merits of the decision upon the controversy submitted; or

13 (d) Where the rights of such party were substantially
14 prejudiced by the refusal of the arbitrators to postpone the
15 hearing upon sufficient cause being shown therefore or by
16 the refusal of the arbitrators to hear evidence material to
17 the controversy or by other conduct of the arbitrators
18 contrary to the provisions of this chapter. Where an award
19 is vacated, the court shall direct a re-hearing by the
20 arbitrators, or if the court deems it appropriate, shall direct
21 the parties to select new arbitrators for another arbitration
22 proceeding.

23 **§9990.37. Modification of award.** In any of the following
24 cases, the Superior Court of Guam may make an order modifying
25 or correcting the award upon the application of any party to the
26 arbitration:

1 (a) Where there was an evident material
2 miscalculation of figures or an evident material mistake in
3 the description of any person, thing, or property referred to
4 in the award.

5 (b) Where the arbitrators have awarded upon a
6 matter not submitted to them, unless it is a matter not
7 effecting the merits of the decision upon the matter
8 submitted.

9 (c) Where the award is imperfect in matter or form
10 not effecting the merits of the controversy. The court may
11 modify and correct the award so as to effect the intent
12 thereof and promote justice between the parties.

13 **§9990.38. Notice of motion to vacate or modify.** Notice of
14 a motion to vacate, modify, or correct an award must be served
15 upon the adverse party or his attorney within thirty (30) days after
16 the award is served upon the party seeking to vacate, modify or
17 correct the award.

18 **§9990.39. Notice of appeal and request for trial de novo.**

19 (a) Within thirty (30) days after the award is served upon
20 the parties, any party may file with the clerk of the Superior Court
21 of Guam and serve on the other parties and the Association a
22 written Notice of Appeal and Request for Trial De Novo of the
23 action.

24 (b) After the filing and service of the written Notice of
25 Appeal and Request for Trial De Novo, the case shall be set for
26 trial pursuant to applicable court rules.

1 (c) If the action is triable by right to a jury, and a jury was
2 not originally demanded but is demanded within ten (10) days of
3 service of the Notice of Appeal and Request for Trial De Novo by
4 a party having the right of trial by jury, the trial de novo shall
5 include a jury, and a jury trial fee shall be paid as provided by law.

6 **§9990.40. Procedures at trial de novo.**

7 (a) The clerk shall seal any arbitration award if a trial de
8 novo is requested. The jury will not be informed of the arbitration
9 proceeding, the award, or about any other aspect of the
10 arbitration proceedings. The sealed arbitration award shall not
11 be opened until after the verdict is received and filed in a jury trial,
12 or until after the judge has rendered a decision in a court trial.

13 (b) All discovery permitted during the course of the
14 arbitration proceedings shall be admissible in the trial de novo
15 subject to all applicable rules of civil procedure and evidence. The
16 court in the trial de novo shall insure that any reference to the
17 arbitration proceeding is omitted from any discovery taken
18 therein and sought to be introduced at the trial de novo.

19 (c) No statements or testimony made in the course of the
20 arbitration hearing shall be admissible in evidence for any
21 purpose in the trial de novo.

22 **§9990.41. Scheduling of the trial de novo.** Every case
23 transferred to the court shall maintain the approximate position
24 on the civil trial docket as if the case had not been so transferred,
25 unless at the discretion of the court, the docket position is
26 modified.

1 **§9990.42. The prevailing party in the trial de novo; costs.**

2 (a) The 'Prevailing Party' in a trial de novo is the party who
3 has (1) appealed and improved upon the arbitration award by
4 forty percent (40%) or more, or (2) has not appealed and the
5 opposing party has appealed and failed to improve upon the
6 arbitration award by forty percent (40%) or more. For the
7 purpose of this rule, 'improve' or 'improved' means to increase
8 the award for a plaintiff or to decrease the award for the
9 defendant.

10 (b) The 'Prevailing Party' under these rules, as defined
11 above, is deemed the prevailing party under any statute or rule of
12 court, and as such is entitled to costs of trial and all other
13 remedies as provided by law.

14 **§9990.43. Sanction for failing to prevail in the trial de novo.**

15 (a) After the verdict is received and filed, or the court's
16 decision rendered in a trial de novo, the trial court shall impose
17 sanctions, as set forth below, against the non-prevailing party
18 whose appeal resulted in the trial de novo.

19 (b) The sanctions to be imposed by the court are as follows:

20 (1) Reasonable costs and fees (other than attorneys'
21 fees) actually incurred by the party but not otherwise taxable
22 under the law;

23 (2) Costs of jurors;

24 (3) Reasonable attorneys' fees actually incurred by the
25 prevailing party.

26 (c) Sanctions imposed against a plaintiff will be deducted

1 from any award rendered. Sanctions imposed against a
2 defendant will be added to any award rendered.

3 **§9990.44. Applicability to government of Guam and its**
4 **agencies.** Claims against the government of Guam and its
5 agencies are governed by the Government Claims Act. Thus, this
6 chapter does not apply to claims against the Guam Memorial
7 Hospital Authority or other health care institutions established by
8 the government of Guam.

9 **§9990.45. Effective date of chapter.** This chapter shall not
10 apply to any claim that accrues before the date that the chapter
11 becomes law.

12 **§9990.46. Controlling statute.** The provisions of Title 5,
13 Chapter 32, Guam Code Annotated, entitled, "Deceptive Trade
14 Practices — Consumer Protection Act," shall not be applicable to
15 this chapter and to the extent any of the provisions of this chapter
16 are inconsistent or conflict with the provisions of the Deceptive
17 Trade Practices — Consumer Protection Act or any other
18 provision of law, the terms of this chapter shall prevail and
19 control.

20 **§9990.47. Severability clause.** If any section or sentence of
21 this chapter is deemed unconstitutional, then that section or
22 sentence shall be severed from the chapter and the remainder of
23 the chapter shall remain and be of full force and effect."

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TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Date: 8/30/91

VOTING SHEET

Bill No. 325
Resolution No. _____
Question: _____

	AYE	NO	NOT VOTING	ABSENT/ OUT DURING ROLL CALL
<u>AGUON, John P.</u>	✓			
<u>ARRIOLA, Elizabeth P.</u>	✓			
<u>BAMBA, J. George</u>	✓			
<u>BLAZ, Anthony C.</u>	✓			
<u>BORDALLO, Madeleine Z.</u>	✓			
<u>BROOKS, Doris F.</u>	✓			
<u>DIERKING, Herminia D.</u>	✓			
<u>DUENAS, Edward R.</u>	✓			
<u>ESPALDON, Ernesto M.</u>	✓			
<u>GUTIERREZ, Carl T.C.</u>	✓			
<u>LUJAN, Pilar C.</u>	✓			
<u>MAILLOUX, Gordon</u>	✓			
<u>MANIBUSAN, Marilyn D.A.</u>	✓			
<u>PARKINSON, Don</u>	✓			
<u>REIDY, Michael J.</u>	✓			
<u>RUTH, Martha C.</u>	✓			
<u>SAN AGUSTIN, Joe T.</u>	✓			
<u>SANTOS, Francisco R.</u>	✓			
<u>SHIMIZU, David L.G.</u>	✓			
<u>TANAKA, Thomas V.C.</u>	✓			
<u>UNPINGCO, Antonio R.</u>	✓			