



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

Refer to  
Legislative Secretary

JUN 20 1997

The Honorable Antonio R. Unpingco  
Speaker  
Twenty-Fourth Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>D. J. J.</u>
Time	<u>3:35 pm</u>
Date	<u>6-20-97</u>


Dear Speaker Unpingco:

Enclosed please find a copy of Substitute Bill No. 118 (COR), "AN ACT TO ADD A NEW §2106 TO TITLE 20 OF THE GUAM CODE ANNOTATED, RELATIVE TO PROVIDING IMMUNITY TO MEDIATORS AND CONCILIATORS.", which I have signed into law today as **Public Law No. 24-49.**

The work that the individuals involved in offering mediation and conciliation services to persons who want to resolve their disputes outside of the legal system is very commendable. These individuals offer many hours of their time to assisting people in problems that can be resolved without resort to the court system. This offers the personal touch, and reserves court time to involved legal disputes.

I am pleased to sign into law Substitute Bill No. 118 to provide the immunity that is necessary to those offering mediation and conciliation services. There is already provision in law for confidentiality of this important work.

Very truly yours,

  
Carl T. C. Gutierrez  
Governor of Guam

Attachment                    00291

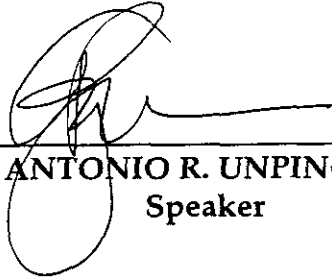
cc: The Honorable Joanne M. S. Brown  
Legislative Secretary

Office of the Speaker  
ANTONIO R. UNPINGCO  
Date: 6-20-97  
Time: 2pm  
Rec'd by: M. J. H.  
Print Name: Monique M. H.


TWENTY-FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

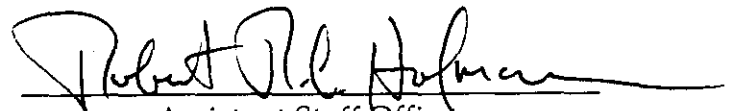
This is to certify that Substitute Bill No. 118 (COR), "AN ACT TO ADD A NEW §2106 TO TITLE 20 OF THE GUAM CODE ANNOTATED, RELATIVE TO PROVIDING IMMUNITY TO MEDIATORS AND CONCILIATORS," was on the 7th day of June, 1997, duly and regularly passed.

  
ANTONIO R. UNPINGCO  
Speaker


Attested:

  
JOANNE M.S. BROWN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 13<sup>th</sup> day of June, 1997, at  
8:10 o'clock A.M.

  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
CARL T. C. GUTIERREZ  
Governor of Guam

Date: 6-20-97

Public Law No. 24-49

**TWENTY-FOURTH GUAM LEGISLATURE**  
**1997 (FIRST) Regular Session**

**Bill No. 118 (COR)**

As substituted by the Author, and  
as amended on the Floor.

Introduced by:

V. C. Pangelinan  
J. Won Pat-Borja  
T. C. Ada  
F. B. Aguon, Jr.  
E. Barrett-Anderson  
A. C. Blaz  
J. M.S. Brown  
Felix P. Camacho  
Francisco P. Camacho  
M. C. Charfauros  
E. J. Cruz  
W. B.S.M. Flores  
Mark Forbes  
L. F. Kasperbauer  
A. C. Lamorena, V  
C. A. Leon Guerrero  
L. Leon Guerrero  
J. C. Salas  
A. L.G. Santos  
F. E. Santos  
A. R. Unpingco

**AN ACT TO ADD A NEW §2106 TO TITLE 20 OF  
THE GUAM CODE ANNOTATED, RELATIVE TO  
PROVIDING IMMUNITY TO MEDIATORS AND  
CONCILIATORS.**

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

1           **Section 1. Legislative Findings and Intent.** The Guam Legislature  
2 finds that a large number of cases filed with the Superior Court of Guam need  
3 not be brought before the court but are able to be settled by acceptable  
4 alternative dispute resolution procedures, including mediation or conciliation.  
5 At the present time, these alternative resolution programs include volunteers  
6 who are trained to act and serve as mediators or conciliators. In order to  
7 facilitate the program, some measure of protection needs to be accorded to the  
8 volunteer mediators or conciliators in the mediation process. It is the desire of  
9 the Guam Legislature to provide this protection for the invaluable service and  
10 dedication of members of our community who diligently work in tandem  
11 with our judicial system to provide such necessary services.

12           **Section 2.** A new §2106 is added to Title 20 of the Guam Code  
13 Annotated to read:

14           **"Section 2106. Immunity of Mediators and Conciliators.** In an  
15 agreement or contract between two (2) or more consenting parties to  
16 settle a dispute by means of mediation or conciliation, the mediators  
17 participating in the mediation or conciliation in furtherance of the  
18 agreement or contract of the parties, shall not be subject to civil liability  
19 or to suit with regard to the mediation or conciliation."



pr 24-49

Committee on Judiciary, Public Safety  
and Consumer Protection  
Twenty-Fourth Guam Legislature

✓

Senator  
Elizabeth Barrett-Anderson  
Chairperson

Senator  
John C. Salas  
Vice-Chairman

Senator  
Anthony C. Blaz  
Member

Senator  
Joanne M.S. Brown  
Member

Senator  
Mark Forbes  
Member

Senator  
Edwardo J. Cruz, M.D.  
Member

Senator  
Vicente C. Pangelinan  
Member

Senator  
Frank Blas Aguon, Jr.  
Member

May 29, 1997

SPEAKER ANTONIO R. UNPINGCO  
Twenty-Fourth Guam Legislature  
155 Hesler St.  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Judiciary, Public Safety and Consumer Protection, to which was referred **Bill No. 118**, wishes to report back to the Legislature with its recommendation **TO DO PASS Bill No. 118 as substituted by the Author.**

The voting record is as follows:

<u>5</u>	TO PASS
—	NOT TO PASS
—	ABSTAIN
—	TO PLACE IN INACTIVE FILE

Copies of the Committee Report and other pertinent documents are attached.

Your attention to this matter is greatly appreciated.

Sincerely,

*E. Barrett-Anderson*  
ELIZABETH BARRETT-ANDERSON  
Chairperson

Attachments

COMMITTEE ON JUDICIARY, PUBLIC SAFETY AND  
 C O N S U M E R P R O T E C T I O N  
 T W E N T Y - F O U R T H G U A M L E G I S L A T U R E

173 ASPINALL AVENUE, ADA PLAZA CENTER SUITE 108A, AGANA, GUAM 96910

SENATOR ELIZABETH BARRETT-ANDERSON  
 Chairperson

SENATOR JOHN C. SALAS  
 Vice-Chairperson

SPEAKER ANTONIO R. UNPINGCO  
 Ex-Officio Member

**VOTING SHEET**

**Bill No. 118 As Substituted by the Author:** AN ACT TO ADD A NEW  
 SUBSECTION 2106 TO TITLE 20 GUAM CODE ANNOTATED  
 RELATIVE TO PROVIDING IMMUNITY TO MEDIATORS AND  
 CONCILIATORS.

<u>COMMITTEE MEMBERS</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>TO PLACE IN</u>		<u>INITIAL</u>
			<u>ABSTAIN</u>	<u>INACTIVE FILE</u>	
1). Sen. Elizabeth Barrett-Anderson Chairperson	✓				<i>EB</i>
2). Sen. John C. Salas Vice-Chairperson	✓				<i>J. Salas</i>
3). Sen. Frank B. Aguon, Jr. Member					
4). Sen. Anthony C. Blaz Member					
5). Sen. Joanne M.S. Brown Member	✓				<i>JMB</i>
6). Sen. Edwardo J. Cruz M.D. Member	✓				<i>EJC</i>
7). Sen. Mark Forbes Member					
8). Sen. Vicente C. Pangelinan Member	✓	<del>✓</del>			<i>VCP</i>

**TWENTY FOURTH GUAM LEGISLATURE**  
**Committee on Judiciary, Public Safety and Consumer Protection**  
**ELIZABETH BARRETT-ANDERSON, CHAIRPERSON**

**Committee Report**  
on

**Bill No. 118 as substituted by the author:** AN ACT TO ADD A NEW SECTION 2106 TO TITLE 20 GUAM CODE ANNOTATED, RELATIVE TO PROVIDING IMMUNITY TO MEDIATORS AND CONCILIATORS.

**I. SUMMARY**

The Committee on Judiciary, Public Safety and Consumer Protection held a public hearing on Wednesday, May 7, 1997 at 2:00 p.m. on Bill No. 118 at the Legislative Public Hearing Room. Public Notice was announced in the April 30th and May 6th, 1997 issues of the Pacific Daily News.

Committee Members Present:

Senator Elizabeth Barrett-Anderson, Chairperson  
Senator Vicente Pangelinan  
Senator Frank Aguon

Senators Present:

Senator Lou Leon Guerrero  
Senator Tom Ada

Providing Public Testimony on the Bill:

Patrick M. Wolff, President, Ina fa' Maolek, **written** (attachment "A")  
Mr. Mick Flynn, **oral**  
Charles Troutman, Compiler of Laws, **oral /written** (attachment "B")

**Purpose:**

The purpose of the bill, as substituted by its author, is to provide immunity from civil liability for mediators and conciliators acting to further an agreement of the parties to settle a dispute.

**Relationship to Existing Law:**

The bill adds a new section to that part of Guam Code Annotated where statutes relating to general damages and other provisions on immunities are located.

**II. Summary of Testimony**

**MR. MICK FLYNN**  
**MEMBER , Ina fa' Maolek**

Mr. Flynn testified in support of the bill on behalf of Ina fa' Maolek, a Guam non-profit organization whose members are volunteer mediators dedicated to conflict resolution. His testimony was in accord with the position on the bill stated by Patrick Wolff in his written testimony dated May 5, 1997.

**CHARLES TROUTMAN,**  
**COMPILER OF LAWS**

Mr. Troutman testified in support of the intent of the bill, but pointed out that an existing statute, 6 GCA sec. 505, provides for confidentiality of the mediation process, and the Superior Court in at least one case affirmed the intent of the statute. He recommended that the provision in the bill relating to immunity for mediators and conciliators be amended and placed as a new section 2106 of Guam Code Annotated.

**III. Findings and recommendations**

Further action of the Committee included a statement by the bill's principal sponsor, Senator V.C. Pangelinan, that the testimony presented was well taken and that he would be amending the bill as recommended by the witnesses for further action by the Committee.

The Committee on Judiciary, Public Safety and Consumer Protection finds support for the passage of Bill No. 118 as substituted by the author and presents its report with its recommendation **TO DO PASS** .



DEPARTMENT OF LAW

CARL T.C. BUTIERREZ  
Maga'láhi  
Governor



CALVIN E. HOLLOWAY, SR.  
Hinirát Abugao  
Attorney General

MADELEINE Z. BORDALLO  
Tinñente Gubetnadora  
Lieutenant Governor

Uñsinan Hinirát Abugao  
Tiritorian Guáhan

CHARLES H. TROUTMAN  
Rikohidot i Lai Guáhan Siha  
Compiler of Laws

OFFICE OF THE ATTORNEY GENERAL  
Territory of Guam

---

May 7, 1997

Honorable Elizabeth Barrett-Anderson  
Chairperson  
Committee on Judiciary, Public Safety & Consumer Protection  
Suite 108-A, Ada Plaza Center  
173 Aspinall Avenue  
Agana, Guam 96910

e: Bill No. 118

Dear Senator Barrett-Anderson,

I strongly support the intent of this Bill, as I have been involved with In'afa Maolek since its beginnings. However, this Bill is flawed, because it does not recognize laws which have been padded already dealing with this subject. While the references to P.L. 19-5:129 are correct at this time, the amendments should be located elsewhere in the Codes.

Several years ago, the Legislature did provide for confidentiality of the mediation process. It added 6 GCA sec. 505, which reads:

**§505. Confidentiality of the mediation process.** Except where mediation or conciliation is a part of an ongoing action already filed in either the Superior or District Courts of Guam, all memoranda, work products, or case files of a mediator or conciliator are privileged and not subject to disclosure in any judicial or administrative proceedings. Any communications relating to the subject matter of the resolution process by any participant, mediator, or other person present at the dispute resolution shall be privileged communication.

I know of one Superior Court case which has affirmed the strong intent of this section. I believe that this section is broader, and provides better protection, than does the addition proposed in Bill No. 118. That addition provides so many conditions and exception that it will invite more litigation than the process is designed to avoid.



Commonwealth Now!

Compiler of Laws Division (Dibision Fanrikohiyán i Lai Guáhan Siha)  
238 Archbishop Flores Street, Suite 701 • Agaña, Guam 96910-5185 USA  
Phone: (671)-475-3252 • Fax: (671)-472-6992 • E-mail: troutman@ns.gu

However, we do need the second amendment proposed, the giving of immunity to mediators who engage in the process. However, here, the proposal is too narrow. Mediation on Guam, as opposed to arbitration, is not a process by which the third person renders a decision. Likewise, it takes place not only at the direction or referral of the courts, but by private agreement of the parties, hopefully before any court actions is commenced. Thus, there should be no difference between the two processes. Indeed, mediation before an action commences should be encouraged.

Also, this section, representing its general nature, should be placed in 20 GCA as a new sec. 2106. It is in this first Article in a chapter relating to general damages that other immunities are placed. Therefore, I recommend the following addition:

**§2106. Immunity of Mediators and Conciliators.** In an agreement or contract between two or more consenting parties to settle a dispute by means of mediation or conciliation, the mediators participating in the mediation or conciliation in furtherance of the agreement or contract of the parties, shall not be subject to civil liability or to suit with regard to the mediation or conciliation.

There are several changes. First, this section recognizes that mediation often involves three persons as mediators, not just one. Also, there are often more than two parties, such as disputes between neighbors. Third, the scope of the immunity follows that found in 7 GCA §7106 giving immunity to judges. The Comments following §7106 are instructing and relevant here:

1985 Comment: The former phrase "in good faith" does not give complete immunity required of judges, and permitted by the Supreme Court of the U.S. The phrase "in good faith" has permitted, in other places, suits against judges if allegations of malice or improper interest are found in the complaint. This phrase, therefore, does not give the protection against actions which must be defended and is deleted here. The American Bar Association recommends the section as it is written here.

We must remember that, in mediation, the mediator(s) do not make binding decisions, but can only persuade the parties to agree. If the parties do agree and reconcile with each other, then the mediation is successful. Because it is the essence of mediation that the parties, themselves, arrive at the solution to their problems, the considerations involving arbitrators are not relevant.

With the above changes, I would recommend the Bill. As proposed, I would prefer only the existing law to that proposed here.

Sincerely yours,

*Charles H. Troutman*  
CHARLES H. TROUTMAN  
Compiler of Laws

**Ina fa' Maolek**  
P.O. Box CE  
Agana, Guam 96932  
Tel: (671) 649-7502 / 632-3939  
Fax: (671) 649-7502

Committee on Judiciary, Public Safety, and Consumer Protection  
Attn: Senator Elizabeth Barrett-Anderson, Chairperson  
Guam Legislature  
Fax: 472-3433  
E-mail: ebanderson@kuentos.guam.net

May 5, 1997

Subject: Written Testimony on Bill No. 118

Dear Chairperson and Committe Members:

I write on behalf of Ina fa' Maolek, Guam's only non-profit organization dedicated exclusively to peacemaking services including mediating disputes and training our people in conflict resolution skills. We are grateful to Senator "Ben" Pangelinan for sponsoring this Bill (No. 118) "to ensure the confidentiality of information in mediation cases and to provide immunity to mediators designated by the courts to settle cases by means of mediations."

An enactment ensuring immunity for mediators is indeed important but we would prefer to separate it from the issue of confidentiality and other mediation issues which might more fittingly be aired in a separate public hearing. Moreover, Guam already has in its statutes a provision on confidentiality which has been upheld by the court.

I will therefore restrict any comments now to the immunity provision the need for which we had by letter to all 21 senators near the beginning of this term of office. Unfortunately, Bill 118 will not protect our mediators for approximately 50% of the mediation casework we do because the "cases" (disputes) are referred to us by non-court sources. Furthermore, we have been doing this volunteer mediation work since 1982 without compensation and only in 1994 began getting court referrals. Bill 118, to have utility, must cover mediators regardless of the source of the referral...whether from DYA or DOE or the legislature. Given our long history of mediating conflicts without incident, and our reputation for training our mediators in accordance with stateside mediator standards I submit that it is hardly necessary or practical for us to be supervised by the court or anyone else.

It is one thing to ask people to volunteer their time and energy without compensation; it is hard enough then to get sufficient mediators. But when presented as well with the very real risk of being sued by some disgruntled disputant looking for a scapegoat recruitment of mediator volunteers becomes extremely difficult. This you can correct by enacting a broad-based mediator immunity provision.

I regret I cannot appear at the public hearing on Wednesday as I am directing the new Performing Arts Scholars Awards Program for which audition of candidates is taking place at the same time at the Sandcastle. I will ask a couple of Ina fa' Maolek's mediator volunteers to appear at that public hearing in my stead.

Sincerely,

Patrick M. Wolff  
President

# TWENTY-FOURTH GUAM LEGISLATURE

## PUBLIC HEARING

**SENATOR ELIZABETH BARRETT-ANDERSON**

**Chairperson, Committee on Judiciary, Public Safety and Consumer Protection**

## **WITNESS SIGN-IN SHEET**

Committee Hearing Room, 173 Aspinall Ave., Ada Plaza Center, Suite 108A, Agana, Guam 96910

**Wednesday, May 7, 1997**

**Public Hearing on Bill No. 118**

	NAME(Please print)	ORGANIZATION	My Testimony is: ORAL/WITTEN	I am For BILL _____	I am Against BILL _____
1	<u>Mick FLYNN</u>	<u>NAFA/MADet</u>	<u>ORAL</u>	<u>✓</u>	
2	<u>Charles Irouhnan</u>	<u>Self</u>	<u>Written</u>	<u>✓</u>	
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