

I Mina'trentai Sais 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
206-36 (LS) As amended by the Committee on General Government Operations, Appropriations, and Housing.	Mary Camacho Torres Telena Cruz Nelson Jose "Pedro" Terlaje Amanda L. Shelton Tina Rose Muña Barnes James C. Moylan Clynton E. Ridgell Joe S. San Agustin V. Anthony Ada Frank Blas Jr.	AN ACT TO REQUIRE THE PROMULGATION AND PUBLICATION OF INTERIM RULES FOR ALL CHILD PLACEMENT AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES; AND TO ENSURE TRANSPARENCY, PERMIT PUBLIC PARTICIPATION, AND PROVIDE A METHOD OF MAKING SUCH RULES READILY ACCESSIBLE TO THE PUBLIC; AND TO FURTHER APPROPRIATE ONE THOUSAND DOLLARS (\$1,000) FROM THE UNEXPENDED FUNDS OF THE OFFICE OF SENATOR MARY CAMACHO TORRES OF I LIHESLATURAN GUÅHAN TO THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES FOR THIS PURPOSE.	10/1/21 2:03 p.m.	10/1/21	Committee on General Government Operations, Appropriations, and Housing	10/11/21 3:30 p.m.	10/20/21 11:56 a.m. As amended by the Committee on General Government Operations, Appropriations, and Housing	Request: 10/5/21 10/11/21	
	12/6/21	AN ACT TO REQUIRE THE PROMULGATION AND PUBLICATION OF INTERIM RULES FOR ALL CHILD PLACEMENT AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES; AND TO ENSURE TRANSPARENCY, PERMIT PUBLIC PARTICIPATION, AND PROVIDE A METHOD OF MAKING SUCH RULES READILY ACCESSIBLE TO THE PUBLIC; AND TO FURTHER APPROPRIATE ONE THOUSAND DOLLARS (\$1,000) FROM THE UNEXPENDED FUNDS OF THE OFFICE OF SENATOR MARY CAMACHO TORRES OF I LIHESLATURAN GUÅHAN TO THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES FOR SUCH PURPOSES.	12/15/21	12/15/21	12/27/21	36-68	12/27/21	Received: 12/28/21 Mess and Comm. Doc. No. 36GL-21-1457	

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

December 27, 2021

HONORABLE THERESE M. TERLAJE, Speaker
I Mina'trentai Sais Na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: BILL NO. 206-36 (LS) – An Act to Require the Promulgation and Publication of Interim Rules for All Child Placement Agencies by the Department of Public Health and Social Services; and to Ensure Transparency, Permit Public Participation, and Provide a Method of Making Such Rules Readily Accessible to the Public; and to Further Appropriate One Thousand Dollars (\$1,000) from the Unexpended Funds of the Office of Senator Mary Camacho Torres of *I Liheslaturan Guahan* to the Department of Public Health and Social Services for Such Purposes

SUBSTITUTE BILL NO. 179-36 (LS) – An Act to *Add* New §§ 13510 and 13503(h) to Article 5 of Chapter 13, Title 19, Guam Code Annotated, Relative to Requiring Rules and Regulations for the Licensure of Adoption Agencies, and to Add the Definition of an Adoption Agency

Dear Madame Speaker,

Bill Nos. 206-36 and 179-36 were passed with similar goals – to enable the Department of Public Health and Social Services (“DPHSS”) to develop and implement interim and, ultimately, final rules and regulations governing the licensing of adoption agencies in Guam. Both bills contemplate the adoption of interim regulations outside of the Administrative Adjudication Law (AAL) process, with the additional safeguard of a public hearing and comment period. However, Bill No. 206-36 outlines several standards DPHSS should include in their interim rules, including rules that promote the health and welfare of children, promote safe facilities, include procedures for the report and resolution of violations of the Guam Child Protective Act, implement background checks, and provide for the proper retention of records. The DPHSS is already in the process of developing interim regulations with the assistance of its partners in the U.S. Health and Human Services Region 9 Office, which provides critical operations assistance for broad health-related programs in western, tribal and territorial jurisdictions in the U.S.

With the standards and priorities clearly articulated in Bill No. 206-36, along with the reasonable drafting and implementation period for the interim rules and the procedural safeguards allowing public participation and comment on the interim rules prior to implementation, I am confident that the DPHSS has the tools it needs to draft and implement these urgent interim regulations expeditiously and in a manner that properly accounts for the specific needs and customs of our community and, of course, the primacy of our children’s health, safety and welfare. For these reasons, I sign Bill No. 206-36 into law as ***Public Law No. 36-68***.

Though Bill 179 similarly speaks to the urgency of implementing interim rules and regulations for the licensure of adoption agencies, it fails to accomplish its intent. Given the length of time the

To: Speaker Terlaje
Fr: Governor of Guam
Date: December 27, 2021
Re: Bill No. 206-36 (LS) and Substitute Bill No. 179-36 (LS)

Page 2 of 2

process of developing and implementing interim rules can take, an AAL exemption would have made sense. However, the bill does **not** require adoption agencies to be licensed until **after** the AAL process is completed, which is the day the interim rules expire. Thus, despite the urgency of interim rules, the practical effect is that adoption agencies in Guam can continue to operate without a license until Public Health has permanent rules in place.

Second, due to the fact that DPHSS has already begun the process for establishing permanent rules, Bill 179 authorizes nothing that DPHSS isn't already empowered to do.

Third, the sponsor made further substitutions to the bill on the floor, resulting in odd and confusing language. Specifically, Section 2 on page 2, lines 15-17 states, in relevant part:

“each adoption agency shall be required to be licensed by DPHSS in accordance with DPHSS rules and regulations to ensure the health, safety, and welfare of its clients” [emphasis added].

The bill then goes on to define an “adoption agency” as:

“a private, public, or non-profit child placement entity licensed by the Department of Public Health and Social Services...” [emphasis added].

As a result, under the sponsor's own language, **the requirement of licensing is only for those agencies that are licensed**. This means that if there are currently no licensed adoption agencies in Guam, none of them have to be licensed, due to this new definition. On its face, the legislation yields an absurd result.

Finally, the bill's comparison of Guam to unscrupulous adoptions in Haiti is misplaced and deceiving. Following the earthquake in Haiti in 2010, the U.S. announced a Humanitarian parole policy for Haitian orphans, which expedited adoptions and bypassed usual screening requirements, and resulted in increased potential for abuse of, and trafficking in, children.

Bill 179's reference to the Haitian parole policy in this context in its Factual Findings and Intent is misleading to the public and an insult to the standards of legislative drafting. Candidly, this bill was not fit to progress in the legislative process.

While I believe Bill 179's sponsors had good intentions with this legislation, for the reasons outlined above, Bill 179's flaws render it unsuitable to become law, and it is hereby vetoed.

Senseremente,



LOURDES A. LEON GUERRERO
Maga'hāgan Guāhan
Governor of Guam

Enclosure: Bill No. 206-36 (LS) *nka P.L. No. 36-68 / VETOED* Sub. Bill No. 179-36 (LS)
cc via email: *Honorable Joshua F. Tenorio, Sigundo Maga'lāhen Guāhan*
Compiler of Laws

RICARDO J. BORDALLO GOVERNOR'S COMPLEX
513 W. Marine Corps Drive Hagåtña, Guam 96910
governor.guam.gov | (671) 472-8931

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÁHAN
2021 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'HÁGAN GUÁHAN

This is to certify that Bill No. 206- 36 (LS), "AN ACT TO REQUIRE THE PROMULGATION AND PUBLICATION OF INTERIM RULES FOR ALL CHILD PLACEMENT AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES; AND TO ENSURE TRANSPARENCY, PERMIT PUBLIC PARTICIPATION, AND PROVIDE A METHOD OF MAKING SUCH RULES READILY ACCESSIBLE TO THE PUBLIC; AND TO FURTHER APPROPRIATE ONE THOUSAND DOLLARS (\$1,000) FROM THE UNEXPENDED FUNDS OF THE OFFICE OF SENATOR MARY CAMACHO TORRES OF I LIHESLATURAN GUÁHAN TO THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES FOR SUCH PURPOSES," was on the 15th day of December 2021, duly and regularly passed.



Therese M. Terlaje
Speaker

Attested:



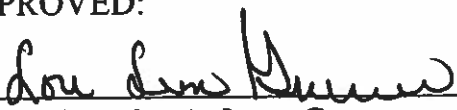
Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hágan Guáhan* this 15th day of December, 2021, at 6:50 o'clock P.M.

POI D. Cruz

Assistant Staff Officer
Maga'hága's Office

APPROVED:



Lourdes A. Leon Guerrero
I Maga'hágan Guáhan

Date: 12/27/2021

Public Law No. 36-68

2021-15261
RCVD AT CENTRAL FILES
DEC 16 '21 AM 9:30

Elaine Tajalle

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2021 (FIRST) Regular Session

Bill No. 206-36 (LS)

As amended by the Committee on General Government
Operations, Appropriations, and Housing.

Introduced by:

Mary Camacho Torres
Telena Cruz Nelson
Jose "Pedo" Terlaje
Amanda L. Shelton
Tina Rose Muña Barnes
James C. Moylan
Clynton E. Ridgell
Joe S. San Agustin
V. Anthony Ada
Frank Blas Jr.
Joanne Brown
Christopher M. Dueñas
Telo T. Taitague
Therese M. Terlaje

AN ACT TO REQUIRE THE PROMULGATION AND PUBLICATION OF INTERIM RULES FOR ALL CHILD PLACEMENT AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES; AND TO ENSURE TRANSPARENCY, PERMIT PUBLIC PARTICIPATION, AND PROVIDE A METHOD OF MAKING SUCH RULES READILY ACCESSIBLE TO THE PUBLIC; AND TO FURTHER APPROPRIATE ONE THOUSAND DOLLARS (\$1,000) FROM THE UNEXPENDED FUNDS OF THE OFFICE OF SENATOR MARY CAMACHO TORRES OF *I LIHESLATURAN GUÅHAN* TO THE DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES FOR SUCH PURPOSES.

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that Child Protective Services (CPS) of the Department of Public Health and Social
4 Services has expressed a growing demand for more foster homes and families on
5 Guam. As of September 2021, CPS indicates that there are five hundred (500)
6 children in Guam’s foster care system. This figure indicates a substantial rise when
7 compared to the two hundred seventy (270) children in the system in May of 2019.

8 Given the high rate of children entering Guam’s foster care system, *I*
9 *Liheslaturan Guåhan* finds that it is in the best interests of child welfare and safety
10 that any individual or entity that places or assists in the placement of any unrelated
11 minor is held to a minimum standard, whether it is in a foster home, a therapeutic
12 foster home, or an adoptive home.

13 *I Liheslaturan Guåhan* further finds that the Department of Public Health and
14 Social Services is currently imbued with the power to make regulations that
15 implement any law enforced, or administered by it, under Guam’s Administrative
16 Adjudication Law, 5 GCA Chapter 9.

17 *I Liheslaturan Guåhan* further declares, given the significant impact of agency
18 rules and regulations on child welfare and safety, it is imperative that if a waiver of
19 the Administrative Adjudication Law is made, the general public is not marginalized
20 from the rule-making process.

21 *I Liheslaturan Guåhan* further finds that if it is to create an exemption to the
22 Administrative Adjudication Law, while balancing the need for transparency, it must
23 also clearly define the method by which the preparation, promulgation, and
24 publication of such rules shall be funded.

25 It is, therefore, the intent of *I Liheslaturan Guåhan* to require the promulgation
26 and publication of interim rules for all child placement agencies, and appropriate
27 funds for a public hearing of such interim rules produced by the Department of

1 Public Health and Social Services in order to ensure transparency, permit public
2 participation therein, and provide a method of making rules readily accessible to the
3 public.

4 **Section 2. Rule-Making Procedure for Child Placement Agencies**
5 **Requiring Licensure.**

6 (a) Notwithstanding any other provision of law, or rule or regulation, any
7 child placement agency operating in Guam requires a license issued by the Guam
8 Department of Public Health and Social Services (Department) following the
9 Department's promulgation of interim rules pursuant to this Act. Child placement
10 agencies shall mean any person that is not licensed to practice law in Guam,
11 corporation, partnership, voluntary association, or other entity or identifiable group
12 of entities, whether established for profit or otherwise, aside from Child Protective
13 Services, that places, plans for, or assists in the placement of any unrelated minor
14 for care in a foster home, a therapeutic foster home, or an adoptive home.

15 (b) Within one hundred eighty (180) days from the date of enactment of
16 this Act, the Department shall promulgate and publish interim rules setting the
17 minimum standards governing the granting, revocation, refusal, and suspension of
18 licenses for a child placement agency and the operation of a child placement agency.

19 (c) Such minimum standards shall include, but not be limited to, rules that:

20 (1) promote the health, safety, and welfare of children in the care of
21 a child placement agency;

22 (2) promote safe and healthy physical facilities;

23 (3) include procedures for the receipt, recordation, and disposition
24 of complaints regarding allegations of violations of the Guam Child Protective
25 Act;

1 (4) ensure that federal and local criminal record checks are
2 completed on owners, operators, employees, volunteers, foster parents,
3 adoptive parents, and other persons in the homes; and

4 (5) govern the retention of licensing records maintained by the
5 Department.

6 (d) The Department's interim rules shall be exempt from the provisions of
7 the Administrative Adjudication Law; provided, that such rules shall receive at least
8 one (1) public hearing by the legislative committee with subject matter jurisdiction
9 in *I Liheslaturan Guåhan*, pursuant to the Open Government Law, to ensure
10 transparency, permit public participation therein, and provide a method of making
11 rules readily accessible to the public. No rule shall be effective until after *I*
12 *Liheslaturan Guåhan*, by the passage of a bill that is enacted into law, approves,
13 disapproves, or amends any rule.

14 (e) The Department's interim rules shall remain in effect for one (1) year
15 or until the promulgation of rules pursuant to the Administrative Adjudication Law,
16 whichever is sooner.

17 **Section 3. Appropriation.** The sum of One Thousand Dollars (\$1,000) is
18 hereby appropriated from the unexpended funds of the Office of Senator Mary
19 Camacho Torres of *I Liheslaturan Guåhan* to the Department of Public Health and
20 Social Services for the sole purpose of preparing, promulgating, and publishing rules
21 and regulations pursuant to this Act.

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