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**I MINA 'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session**

Bill No 51-31 (COR)

Introduced by:

Committee on Rules, Federal,
Foreign & Micronesian Affairs and
Human & Natural Resources
By request of *I Maga'lahaen*
Guåhan in accordance with the
Organic Act of Guam

**AN ACT TO ADD A NEW CHAPTER 91B TO DIVISION 4 OF
TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE
TO PROHIBITING ABORTION OF UNBORN CHILDREN
CAPABLE OF FEELING PAIN; TO AMEND §3218(a) OF
CHAPTER 3, DIVISION 1 OF TITLE 10 OF THE GUAM
CODE ANNOTATED; AND TO CITE THE ACT AS “*THE
UNBORN CHILD PROTECTION ACT OF 2011.*”**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* makes
3 the following findings:

4 (1) Medical evidence indicates that, at least by twenty weeks after
5 fertilization, an unborn child possesses the physical structures necessary to
6 experience pain;

7 (2) Medical evidence indicates that, by twenty weeks after fertilization,
8 unborn children react to and seek to evade certain stimuli in a manner which, in an
9 infant or an adult, would be interpreted as a response to pain;

10 (3) Anesthesia is routinely administered to unborn children, who have

1 developed twenty weeks or more, that undergo prenatal surgery; and

2 (4) Medical evidence indicates that unborn children under twenty weeks
3 post-fertilization in age exhibit hormonal stress responses to painful stimuli, and
4 that such stress responses were reduced when pain medication was administered
5 directly to such unborn children.

6 It is the intent of *I Liheslaturan Guåhan* to assert a compelling governmental
7 interest in protecting the lives of unborn children from the stage of their
8 physiological development at which medical evidence indicates that they are
9 capable of experiencing pain.

10 **Section 2.** A new Chapter 91B is hereby *added* to Division 4 of Title 4 of
11 Title 10 of the Guam Code Annotated to read as follows:

12 **CHAPTER 91B.**

13 **UNBORN CHILD PROTECTION.**

14 **§91B101. Title.**

15 **§91B102. Definitions.**

16 **§91B103. Determination of Postfertilization Age.**

17 **§91B104. Prohibition.**

18 **§91B105. Criminal Penalties.**

19 **§91B106. Civil Penalties.**

20 **§91B107. Anonymity Ruling.**

1 **§91B108. Severability.**

2 **§91B101. Title.** This Chapter may be cited and referred to as “*The*
3 *Unborn Child Protection Act of 2011*”.

4 **§91B102. Definitions.** For purposes of the Unborn Child Protection Act:

5 (a) *Abortion* means the use or prescription of any instrument,
6 medicine, drug, or other substance or device to terminate the pregnancy of a
7 woman known to be pregnant with an intention other than to increase the
8 probability of a live birth, to preserve the life or health of the child after live
9 birth, to act upon an ectopic pregnancy, or to remove a dead unborn child
10 who died as the result of natural causes *in utero*, accidental trauma, or a
11 criminal assault on a pregnant woman or her unborn child, and which causes
12 the premature termination of the pregnancy;

13 (b) *Attempt to perform or induce an abortion* means an act, or an
14 omission of a statutorily required act, that, under the circumstances as the
15 actor believes them to be, constitutes a substantial step in a course of
16 conduct planned to culminate in the performance or induction of an abortion
17 in Guam in violation of the Unborn Child Protection Act.

18 (c) *Fertilization* means the fusion of a human spermatozoon with a
19 human ovum;

20 (d) *Medical emergency* means a condition which, in reasonable

1 medical judgment, so complicates the medical condition of the pregnant
2 woman as to necessitate the immediate abortion of her pregnancy to avert
3 her death or for which a delay will create a serious risk of substantial and
4 irreversible physical impairment of a major bodily function. No condition
5 shall be deemed a medical emergency if based on a claim or diagnosis that
6 the woman will engage in conduct which would result in her death or in
7 substantial and irreversible physical impairment of a major bodily function;

8 (e) *Postfertilization age* means the age of the unborn child as
9 calculated from the fertilization of the human ovum;

10 (f) *Reasonable medical judgment* means a medical judgment that
11 would be made by a reasonably prudent physician, knowledgeable about the
12 case and the treatment possibilities with respect to the medical conditions
13 involved;

14 (g) *Physician* means any person licensed to practice medicine and
15 surgery or osteopathic medicine under the Physicians Practice Act (10 GCA
16 §12201 *et seq.*) or in another jurisdiction of the United States;

17 (h) *Probable postfertilization age of the unborn child* means what,
18 in reasonable medical judgment, will with reasonable probability be the
19 postfertilization age of the unborn child at the time the abortion is planned to
20 be performed;

1 (i) *Unborn child* or *fetus* each mean an individual organism of the
2 species *homo sapiens* from fertilization until live birth; and

3 (j) *Woman* means a female human being whether or not she has
4 reached the age of majority.

5 **§91B103. Determination of Postfertilization Age.**

6 (a) Except in the case of a medical emergency which prevents compliance
7 with this section, no abortion shall be performed or induced or be attempted to be
8 performed or induced unless the physician performing or inducing it has first made
9 a determination of the probable postfertilization age of the unborn child or relied
10 upon such a determination made by another physician. In making such a
11 determination, a physician shall make such inquiries of the woman and perform or
12 cause to be performed such medical examinations and tests as a reasonably prudent
13 physician, knowledgeable about the case and the medical conditions involved,
14 would consider necessary to perform in making an accurate diagnosis with respect
15 to postfertilization age.

16 (b) Failure by a physician to conform to any of the requirements of this
17 section constitutes unprofessional conduct pursuant to the Physicians Practice Act
18 (10 GCA § 12201 *et seq.*).

19 **§91B104. Prohibition.** No person shall perform or induce, or attempt
20 to perform or induce, an abortion upon a woman when it has been determined, by

1 the physician performing or inducing the abortion or by another physician upon
2 whose determination that physician relies, that the probable postfertilization age of
3 the woman's unborn child is twenty or more weeks unless, in reasonable medical
4 judgment (1) she has a condition which so complicates her medical condition as to
5 necessitate the abortion of her pregnancy to avert her death or to avert serious risk
6 of substantial and irreversible physical impairment of a major bodily function, or
7 (2) it is necessary to preserve the life of an unborn child. No such condition shall
8 be deemed to exist if it is based on a claim or diagnosis that the woman will engage
9 in conduct which would result in her death or in substantial and irreversible
10 physical impairment of a major bodily function. In such a case, the physician shall
11 terminate the pregnancy in a manner which, in reasonable medical judgment,
12 provides the best opportunity for the unborn child to survive unless, in reasonable
13 medical judgment, termination of the pregnancy in that manner would pose a
14 greater risk either of the death of the pregnant woman or of the substantial and
15 irreversible physical impairment of a major bodily function of the woman than
16 would another available method. No such greater risk shall be deemed to exist if it
17 is based on a claim or diagnosis that the woman will engage in conduct which
18 would result in her death or in substantial and irreversible physical impairment of a
19 major bodily function.

20 **§91B105. Criminal Penalties.** Any person who intentionally or

1 recklessly performs or attempts to perform an abortion in violation of §91B104 of
2 this Act is guilty of a third degree felony. No penalty shall be assessed against the
3 woman upon whom the abortion is performed or attempted to be performed.

4 **§91B106. Civil Penalties.**

5 (a) Any woman upon whom an abortion was performed in violation of the
6 Unborn Child Protection Act or the father of the unborn child who was the subject
7 of such an abortion may maintain an action against the person who performed the
8 abortion in an intentional or a reckless violation of the Unborn Child Protection
9 Act for actual damages. Any woman upon whom an abortion has been attempted
10 in violation of the Unborn Child Protection Act may maintain an action against the
11 person who attempted to perform the abortion in an intentional or a reckless
12 violation of the Unborn Child Protection Act for actual damages.

13 (b) A cause of action for injunctive relief against any person who has
14 intentionally violated the Unborn Child Protection Act may be maintained by the
15 woman upon whom an abortion was performed or attempted to be performed in
16 violation of the Unborn Child Protection Act, by any person who is the spouse,
17 parent, sibling, or guardian of, or a current or former health care provider [as
18 defined by 10 GCA §91102(d)] of, the woman upon whom an abortion has been
19 performed or attempted to be performed in violation of the Unborn Child
20 Protection Act, or by the Attorney General of Guam. The injunction shall prevent

1 the abortion provider from providing further abortions on Guam in violation of the
2 Unborn Child Protection Act.

3 (c) If judgment is rendered in favor of the plaintiff in an action described
4 in this section, the court shall also render judgment for reasonable attorney's fees
5 in favor of the plaintiff against the defendant.

6 (d) If judgment is rendered in favor of the defendant and the court finds
7 the plaintiff's suit was frivolous and brought in bad faith, the court shall render
8 judgment for reasonable attorney's fees in favor of the defendant against the
9 plaintiff.

10 (e) No damages or attorney's fees may be assessed against the woman
11 upon whom an abortion was performed or attempted to be performed in violation
12 of the Unborn Child Protection Act, except as provided in subsection (d) of this
13 section.

14 **§91B107. Anonymity Ruling.** In every civil or criminal proceeding or
15 action brought under the Unborn Child Protection Act, the court shall rule whether
16 the anonymity of any woman upon whom an abortion has been performed or
17 attempted shall be preserved from public disclosure if she does not give her
18 consent to such disclosure. The court, upon motion or *sua sponte*, shall make such
19 a ruling and, upon determining that her anonymity should be preserved, shall issue
20 orders to the parties, witnesses, and counsel accordingly, and shall direct the

1 sealing of the record and exclusion of individuals from courtrooms or hearing
2 rooms to the extent necessary to safeguard her identity from public disclosure.
3 Each such order shall be accompanied by specific written findings explaining why
4 the anonymity of the woman should be preserved from public disclosure, why the
5 order is essential to that end, how the order is narrowly tailored to serve that
6 interest, and why no reasonable less restrictive alternative exists. In the absence of
7 written consent of the woman upon whom an abortion has been performed or
8 attempted, anyone other than a public official who brings an action under §91B106
9 of this Act shall do so using her initials or under the pseudonym “Jane Doe”. This
10 section shall not be construed to conceal the identity of the plaintiff or of witnesses
11 from the defendant or from attorneys for the defendant.

12 **§91B108. Severability.** If any one or more provisions, sections,
13 subsections, sentences, clauses, phrases, or words of the Unborn Child Protection
14 Act or the application thereof to any person or circumstance is found to be
15 unconstitutional or in direct violation of the Organic Act of Guam (48 U.S.C.
16 §1421 *et seq.*, as amended), the same is hereby declared to be severable and the
17 balance of the Unborn Child Protection Act shall remain effective notwithstanding
18 such unconstitutionality or direct violation of the Organic Act of Guam (48 U.S.C.
19 §1421 *et seq.*, as amended). *I Liheslaturan Guåhan* hereby declares that it would
20 have passed the Unborn Child Protection Act, and each provision, section,

1 subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that
2 any one or more provisions, sections, subsections, sentences, clauses, phrases, or
3 words of the Unborn Child Protection Act, or the application of the Unborn Child
4 Protection Act would be declared unconstitutional or in direct violation of the
5 Organic Act of Guam (48 U.S.C. §1421 *et seq.*, as amended).

6 **Section 3.** Subsection (a) of §3218 of Chapter 3 of Title 10 of the Guam
7 Code Annotated is hereby *amended* to read as follows:

8 **§ 3218. Partial-Birth Abortion and Abortion Report.**

9 (a) An individual abortion report for each abortion shall be completed by
10 the mother's attending physician. The report shall be confidential and it shall not
11 contain the name of the mother involved. This report shall include:

12 (1) Patient number;

13 (2) Name and address of the abortion facility or hospital;

14 (3) Date of the abortion;

15 (4) Zip code or other residential identification of the pregnant
16 woman;

17 (5) Age of the pregnant woman;

18 (6) Ethnic origin of the pregnant woman;

19 (7) Marital status of the pregnant woman;

20 (8) Number of previous pregnancies;

- 1 (9) Number of years of education of the pregnant woman;
- 2 (10) Number of living children;
- 3 (11) Number of previous induced abortions;
- 4 (12) Date of the last induced abortion;
- 5 (13) Date of the last live birth;
- 6 (14) Method of contraception used, if any, at the time of
- 7 conception;
- 8 (15) Date of the beginning of the last menstrual period;
- 9 (16) Medical condition of the pregnant woman at the time of
- 10 abortion;
- 11 (17) RH type of the pregnant woman;
- 12 (18) Type of abortion procedure used;
- 13 (19) Complications, if any;
- 14 (20) Type of procedure done after the abortion;
- 15 (21) Type of family planning recommended;
- 16 (22) Type of additional counseling given, if any;
- 17 (23) Signature of attending physician; ~~and~~
- 18 (24) Certification provided for in this section;
- 19 (25) If a determination of postfertilization age was made, the
- 20 probable postfertilization age determined and the method and basis of the

1 determination;

2 (26) If a determination of postfertilization age was not made, the
3 basis of the determination that a medical emergency existed;

4 (27) If the probable postfertilization age was determined to be
5 twenty or more weeks, the basis of the determination that the pregnant
6 woman had a condition which so complicated her medical condition as to
7 necessitate the abortion of her pregnancy to avert her death or to avert
8 serious risk of substantial and irreversible physical impairment of a major
9 bodily function, or the basis of the determination that it was necessary to
10 preserve the life of an unborn child; and

11 (28) If the abortion was performed when the probable
12 postfertilization age was determined to be twenty or more weeks, whether
13 the method or type of abortion used was one that, in reasonable medical
14 judgment, provided the best opportunity for the unborn child to survive or,
15 if such a method or type was not used, the basis of the determination that
16 termination of the pregnancy in that manner would pose a greater risk
17 either of the death of the pregnant woman or of the substantial and
18 irreversible physical impairment of a major bodily function of the woman
19 than would other available methods or types.