


I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

Bill No. 168-33 (COR)

Introduced by:

FRANK B. AGUON, JR. 
D. G. Rodriguez, Jr.

AN ACT TO *ADD* A NEW SUBSECTION (q) TO §
3218, *AMEND* SUBSECTIONS (f) AND (g) OF §
3218.1, AND *ADD* A NEW SUBSECTION (h) TO §
3218.1, ALL OF ARTICLE 2, CHAPTER 3, TITLE
10, GUAM CODE ANNOTATED, RELATIVE TO
INCREASING THE PENALTIES FOR NON-
COMPLIANCE AND *ADDING* REPORTING
MECHANISMS TO BETTER ENSURE
ENFORCEMENT.

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BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
2 that certain abortion providers have been failing to comply with §§ 3218 and
3 3218.1 of Article 2, Chapter 3, Title 10, Guam Code Annotated. It is the hope of *I*
4 *Liheslaturan Guåhan* that this Act, which increases the penalty for violating §
5 3218.1 and adds a new reporting requirement to both §§ 3218 and 3218.1 relative
6 to events of non-compliance, will increase compliance with §§ 3218 and 3218.1.

7 **Section 2.** A new Subsection (q), as set forth below, is hereby *added* to §
8 3218 of Article 2, Chapter 3, Title 10, Guam Code Annotated:

1 “(q) Report of Non-Compliance. Within fifteen (15) days of
2 discovery by the Director of the Department of Public Health and
3 Social Services of any failure to comply with this Section or any rule
4 or regulation promulgated pursuant to this Section, the Director of the
5 Department of Public Health and Social Services shall deliver written
6 notice which details the nature of such non-compliance to the
7 Attorney General and the chairperson of the Guam Board of Medical
8 Examiners. On a quarterly basis, the Attorney General shall deliver a
9 report to the Director of the Department of Public Health and Social
10 Services and I Liheslatura which states in summary form what steps
11 the Office of the Attorney General has taken in response to the events
12 of non-compliance reported to the Attorney General in the previous
13 quarter and the status of such non-compliance.”

14 **Section 3.** Subsections (f) and (g) of § 3218.1 of Article 2, Chapter 3, Title
15 10, Guam Code Annotated, are hereby *amended* to read as follows:

16 “(f) Criminal Penalties. Any person who intentionally, knowingly,
17 or recklessly violates this Act is guilty of a ~~misdemeanor~~ felony in the
18 third degree; and, for each violation, shall be sentenced to a term of
19 imprisonment in accordance with Title 9 Guam Code Annotated
20 Chapter 80, Article 2 and pay a fine of not less than Ten Thousand

1 Dollars (\$10,000) and no more than One Hundred Thousand Dollars
2 (\$100,000).

3 (g) Civil and Administrative Claims. In addition to whatever
4 remedies are available under the common law or statutory laws of
5 Guam, failure to comply with any of the requirements of this Act
6 shall:

7 (1) ~~in the case of an intentional violation of this Act~~before
8 any civil court, arbiter, or administrative adjudicator, constitute *prima*
9 *facie* evidence of a failure to obtain informed consent. When
10 requested, the court, arbiter, or administrative adjudicator shall allow
11 a woman upon whom an abortion was performed or attempted to be
12 performed allegedly in violation of this Act to be identified in any
13 action brought pursuant to this Act using solely her initials or the
14 pseudonym "Jane Doe." Further, with or without a request, the court,
15 arbiter, or administrative adjudicator may close any proceedings in the
16 case from public attendance, and the court, arbiter, or administrative
17 adjudicator may enter other protective orders in its discretion to
18 preserve the privacy of the woman upon whom the abortion was
19 performed or attempted to be performed allegedly in violation of this
20 Act.

1 (2) Provide a basis for professional disciplinary action under
2 10 GCA § 11110.

3 (3) Provide a basis for recovery for the woman for the
4 wrongful death of her unborn child under 7 GCA § 12109 or any other
5 cause of action for wrongful death which may exist at the time,
6 whether or not the unborn child was born alive or was viable at the
7 time the abortion was performed. In an action brought pursuant to 7
8 GCA § 12109 or any other cause of action for wrongful death which
9 may exist at the time, failure to comply with the Act shall be taken as
10 conclusive evidence that the person who violated the Act breached a
11 duty of care owed to the unborn child, and that such breach constitutes
12 the actual and proximate cause of death of the unborn child; and the
13 fact that the woman elected to have the abortion shall not operate as a
14 defense or diminish the damages otherwise available.

15 (4) Provide a basis for a medical malpractice action, and
16 provide standing to any woman upon whom an abortion was
17 performed or attempted allegedly in violation of this Act to bring such
18 an action. In an action for medical malpractice, failure to comply with
19 the Act shall be taken as conclusive evidence that the physician
20 breached the standard of care owed to the woman.”

1 **Section 4.** A new Subsection (h), as set forth below, is hereby *added* to
2 § 3218.1 of Article 2, Chapter 3, Title 10, Guam Code Annotated:

3 “(h) Report of Non-Compliance. Within fifteen (15) days of
4 discovery by the Director of the Department of Public Health and
5 Social Services of any failure to comply with this Section or any rule
6 or regulation promulgated pursuant to this Section, the Director of the
7 Department of Public Health and Social Services shall deliver written
8 notice which details the nature of such non-compliance to the
9 Attorney General and the chairperson of the Guam Board of Medical
10 Examiners. On a quarterly basis, the Attorney General shall deliver a
11 report to the Director of the Department of Public Health and Social
12 Services and *I Liheslatura* which states in summary form what steps
13 the Office of the Attorney General has taken in response to the events
14 of non-compliance reported to the Attorney General in the previous
15 quarter and the status of such non-compliance.”

16 **Section 5. Severability.** Any provision of this Act held to be invalid *or*
17 unenforceable by its terms or as applied to any person or circumstance, *shall* be
18 construed so as to give it the maximum effect permitted by law unless such holding
19 shall be one of utter invalidity or unenforceability, in which event, such provision
20 *shall* be deemed severable herefrom and *shall not* affect the remainder hereof *or*

1 the application of such provision to other persons not similarly situated *or* to other
2 dissimilar circumstances.

3 **Section 6. Effective Date.** This Act *shall* be effective immediately upon
4 enactment.