

10/11/05

**MINA' BENTE OCHO NA LIHESLATURAN GUĒ HAN
2005 (FIRST) Regular Session**

Bill No. 91 (EC)

Introduced by:

Edward J.B. Calvo *EW*

**AN ACT TO ADD A NEW SECTION 31.20.01 TO
CHAPTER 31 OF TITLE 9 OF THE GUAM CODE
ANNOTATED RELATIVE TO PROHIBITING PARTIAL
BIRTH ABORTIONS AND TO AMEND SECTION 31.22
OF CHAPTER 31 OF TITLE 9 OF THE GUAM CODE
ANNOTATED CRIMINALIZING PARTIAL BIRTH
ABORTION PROCEDURES FOR REASONS OTHER
THAN TO SAVE THE LIFE OR PROTECT THE
HEALTH OF THE MOTHER AS A THIRD DEGREE
FELONY.**

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

2 **Section 1. Legislative Intent and Findings.** I Liheslaturan Guåhan
3 finds that the passage by 108th Congress with the President signing the
4 “*Partial Birth Abortion Ban Act of 2003*” into law provides a legal direction
5 for Guam to ban partial birth abortions.

6 I Liheslaturan Guåhan further finds that a moral, medical, and ethical
7 consensus exists that the practice of performing a partial-birth abortion is a
8 gruesome and inhumane procedure that is never medically necessary and
9 should be prohibited. Partial birth abortion is an abortion in which a
10 physician delivers an unborn child's body until only the head remains inside

1 the womb, punctures the back of the fetuses' skull with a sharp instrument,
2 and vacuums the fetuses' brains before completing delivery of the dead
3 infant.

4 Rather than being an abortion procedure that is embraced by the
5 medical community, particularly among physicians who routinely perform
6 other abortion procedures, partial-birth abortion remains a disfavored
7 procedure that is not only unnecessary to preserve the health of the mother,
8 but in fact poses serious risks to the long-term health of women and in some
9 circumstances, their lives. As a result, at least 27 States banned the
10 procedure as did the 104th, 105th, and 106th, and 108th Congresses and the
11 President upon signing the "*Partial Birth Abortion Ban Act of 2003*" into
12 law.

13 Partial-birth abortion poses serious risks to the health of a woman
14 undergoing the procedure. There is no credible medical evidence that
15 partial-birth abortions are safe or are safer than other abortion procedures.
16 Unlike other more commonly used abortion procedures, there are currently
17 no medical schools that provide instruction in partial-birth abortions in their
18 curriculum.

19 Partial-birth abortion also confuses the medical, legal, and ethical
20 duties of physicians to preserve and promote life, as the physician acts

1 directly against the physical life of a child, whom he or she had just
2 delivered, all but the head, out of the womb, in order to end that life. Partial-
3 birth abortion thus appropriates the terminology and techniques used by
4 obstetricians in the delivery of living children such as obstetricians who
5 preserve and protect the life of the mother and the child but instead uses
6 those techniques to end the life of the partially-born child.

7 Thus, by aborting a fetus in the manner that purposefully seeks to kill
8 the child after he or she has begun the process of birth, partial-birth abortion
9 undermines the public's perception of the appropriate role of a physician
10 during the delivery process, and perverts a process during which life is
11 brought into the world, in order to destroy a partially-born child.

12 The gruesome and inhumane nature of the partial-birth abortion
13 procedure and its disturbing similarity to the killing of a newborn infant
14 promotes a complete disregard for infant human life that can only be
15 countered by a prohibition of the procedure.

16 The vast majority of unborn babies killed during partial-birth
17 abortions are alive until the end of the procedure. It is a medical fact,
18 however, that unborn infants at this stage can feel pain when subjected to
19 painful stimuli and that their perception of this pain is even more intense
20 than that of newborn infants and older children when subjected to the same

1 stimuli. Thus, during a partial-birth abortion procedure, the fetus will fully
2 experience the pain associated with piercing his or her skull and the
3 vacuuming of his or her brain.

4 Implicitly approving such a brutal and inhumane procedure by
5 choosing not to prohibit it will further coarsen society to the humanity of
6 not only newborns, but all vulnerable and innocent human life, making it
7 increasingly difficult to protect such life. Thus, *I Liheslaturan Guåhan* has a
8 compelling interest in acting to prohibit this inhumane procedure.

9 For these reasons, *I Liheslaturan Guåhan* finds that partial-birth
10 abortion is never medically indicated to preserve the health of the mother; is
11 in fact unrecognized as a valid abortion procedure by the mainstream
12 medical community; poses additional health risks to the mother; blurs the
13 line between abortion and infanticide in the killing of a partially-born child
14 just inches from birth; and confuses the role of the physician in childbirth
15 and should, therefore, be banned.

16 **Section 2. Illegal Abortions Third Degree Felony.** Section 31.21 of
17 Chapter 31 of Title 9 of the Guam Code Annotated is hereby amended to read:

18 **“§31.21 Illegal Abortions Punished.** Any person performing an
19 abortion as provided in §31.20.01 and in circumstances other

1 than permitted by §31.20 shall be guilty of a third degree
2 felony.”

3 **Section 3. Partial Birth Abortions Prohibited.** A new Section 31.20.01 is
4 hereby added to Chapter 31 of Title 9 of the Guam Code Annotated is hereby
5 added to read:

6 **“§31.20.01. Partial-birth abortions prohibited.**

7 (a) It shall be illegal for any physician or person to intentionally
8 or knowingly participate or perform a partial-birth abortion resulting in
9 the death of a human fetus. This Section does not apply to a partial-
10 birth abortion that is necessary to save the life of a mother whose life is
11 endangered by a physical disorder, physical illness, or physical injury,
12 including a life-endangering physical condition caused by or arising
13 from the pregnancy itself.

14 (b) As used in this Section:

15 (1) the term “partial-birth abortion” means an abortion in
16 which:

17 (A) the person performing the abortion deliberately and
18 intentionally vaginally delivers a living fetus until, in the

1 case of a head-first presentation, the entire fetal head is
2 outside the body of the mother, or, in the case of breech
3 presentation, any part of the fetal trunk past the navel is
4 outside the body of the mother for the purpose of
5 performing an overt act that the person knows will kill the
6 partially delivered living fetus; and

7 (B) performs the overt act, other than completion of
8 delivery, that kills the partially delivered living fetus; and

9 (2) the term “physician” means a doctor of medicine or
10 osteopathy legally authorized to practice medicine and surgery
11 on Guam in which the doctor performs such activity, or any other
12 individual legally authorized by the Guam Board of Medical
13 Examiners to perform abortions: Provided, however, that any
14 individual who is not a physician or not otherwise legally
15 authorized on Guam to perform abortions, but who nevertheless
16 directly performs a partial-birth abortion, shall be subject to the
17 provisions of this section.

18 (c)(1) The father, if married to the mother at the time she receives
19 a partial-birth abortion procedure; and, if the mother has not attained

1 the age of 18 years at the time of the abortion, the maternal
2 grandparents of the fetus, may in a civil action obtain appropriate relief,
3 unless the pregnancy resulted from the plaintiff's criminal conduct or
4 the plaintiff consented to the abortion.

5 (2) Such relief shall include

6 (A) money damages for all injuries, psychological and
7 physical, occasioned by the violation of this section; and

8 (B) statutory damages equal to three times the cost of the
9 partial-birth abortion.

10 (3) **Attorney's Fees.** If judgment is rendered in favor of the
11 plaintiff in an action described in this section, the court shall also
12 render judgment for a reasonable attorney's fee in favor of the
13 plaintiff against the defendant. If the judgment is rendered in
14 favor of the defendant and the court finds that the plaintiff's suit
15 was frivolous and brought in bad faith, the court shall also render
16 judgment for a reasonable attorney's fee in favor of the defendant
17 against the plaintiff.

1 (d)(1) A defendant accused of an offense under this section may
2 seek a hearing before the Guam Board of Medical Examiners on
3 whether the physician's conduct was necessary to save the life of the
4 mother whose life was endangered by a physical disorder, physical
5 illness, or physical injury, including a life-endangering physical
6 condition caused by or arising from the pregnancy itself.

7 (2) The findings of the Guam Board of Medical Examiners are
8 admissible at the trial of the defendant. Upon a motion of the
9 defendant, the court shall delay the beginning of the trial for not
10 more than 30 days to permit such a hearing to take place.

11 (e) A woman upon whom a partial-birth abortion is performed
12 may not be prosecuted under this section, for a conspiracy to violate
13 this section, for an offense under §31.20, §31.21, and §31.22 or any
14 provision thereof.”

15 **Section 4. Severability.** (a) If any provision, word, phrase, or clause of
16 this Act or the application thereof to any person or circumstance is found to be
17 unconstitutional, the same is hereby declared to be inseverable.

18 (b) If any provision, section, subsection, sentence, clause, phrase, or word of
19 this Act, or the application thereof to any person or circumstance is found to be

- 1 inorganic or unconstitutional, the same is hereby declared to be severable and the
- 2 balance of the Act shall remain effective notwithstanding such unconstitutionality.