

MINA' BENTE NUEBE NA LIHESLATURAN GUÅHAN
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Bill No. 374 (EC)

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AN ACT TO ADD A NEW CHAPTER 91A TO
DIVISION 4 OF TITLE 10 OF THE GUAM CODE
ANNOTATED RELATIVE TO PARTIAL-BIRTH
ABORTION, TO AMEND SECTION 3218 OF
CHAPTER 3, DIVISION 1, OR TITLE 10 OF THE
GUAM CODE ANNOTATED AND TO CITE THE
ACT AS "THE PARTIAL-BIRTH ABORTION BAN
ACT OF 2008."

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Chapter 91A is hereby added to Division 4 of Title 10 of the
3 Guam Code Annotated to read as follows:

4 "CHAPTER 91A.

5 PARTIAL BIRTH ABORTION BAN.

6 Section 91A101.

Title.

7 Section 91A102.

Legislative Findings and Intent.

8 Section 91A103.

Definitions

9 Section 91A104.

Prohibition.

10 Section 91A105.

Partial-Birth Abortions Punished.

1	Section 91A106.	Criminal Penalties.
2	Section 91A107.	Civil Penalties.
3	Section 91A108.	Review by the Guam Board of
4		Medical Examiners.
5	Section 91A109.	Prosecutorial Exclusion.
6	Section 91A110.	Construction.
7	Section 91A111.	Penalties for Ambulatory
8		Healthcare Facilities.
9	Section 2.	Amends Section 3218 of Chapter 3,
10		Division 1 of Title 10 of the Guam
11		Code Annotated pertaining to
12		Partial-Birth Abortion and Abortion
13		Report.
14	Section 3.	Paragraphs (j), (k), (l), (m), (n), (o),
15		and (p) are hereby added to Section
16		3218 of Chapter 3, Division 1 of
17		Title 10 of the Guam Code
18		Annotated.
19	Section 4.	Severability.
20	Section 5.	Effective Date.

22 **Section 91A101. Title.** This Chapter may be cited and referred to
23 as *“The Partial-Birth Abortion Ban Act of 2008.”*

24 **Section 91A102. Legislative Findings and Intent.** *I Liheslaturan*
25 *Guåhan* finds that a moral, medical, and ethical consensus exists that the
26 practice of performing a partial-birth abortion is a gruesome and
27 inhumane procedure that is never medically necessary and should be
28 prohibited. The passage by 108th Congress with the President signing
29 the federal *Partial-Birth Abortion Ban Act of 2003* into law provides a legal
30 direction for Guam to ban partial birth abortions.

31 *I Liheslaturan Guåhan* further finds that on March 18, 2007, the
32 United States Supreme Court upheld this position in *Gonzales v. Carhart*,
33 *127 S. Ct. 1610 (2007)*, ruling that the State may prohibit partial-birth

1 abortions that do not include the maternal “health” exception. The
2 language in this bill stems from and uses as its primary influence the
3 language of the federal “*Partial Birth Abortion Ban Act of 2003, 18 U.S.C.*
4 *§1531*”, upheld in *Gonzales*.

5 Partial-birth abortion poses serious risks to the long-term health of
6 women. It is not an abortion procedure that is universally embraced by
7 the mainstream medical community.

8 There exists substantial record evidence upon which *I Liheslaturan*
9 *Guåhan* has reached its conclusion that a ban on partial-birth abortion is
10 not required to contain a maternal “health” exception. That facts
11 indicate and support the very informed judgment of Guam that a
12 partial-birth abortion is never necessary to preserve the health of a
13 woman, poses serious risks to a woman’s health, and lies outside the
14 standard of medical care.

15 Partial-birth abortion poses serious risks to the health of a woman
16 undergoing the procedure. Those risks include, among other things: an
17 increase in a woman’s risk of suffering from cervical incompetence, a
18 result of cervical dilation making it difficult or impossible for a woman
19 to successfully carry a subsequent pregnancy to term; an increased risk
20 of uterine rupture, abruption, amniotic fluid embolus, and trauma to the
21 uterus as a result of converting the child to a footling breech position, a
22 procedure which, according to a leading obstetrics textbook, “there are
23 very few, if any, indications for other than for delivery of a second
24 twin”; and a risk of lacerations and secondary hemorrhaging due to the
25 doctor blindly forcing a sharp instrument into the base of the unborn
26 child’s skull while he or she is lodged in the birth canal, an act which
27 could result in severe bleeding and subsequent shock. As a result, at
28 least 31 States have enacted bans of “partial-birth” abortions as did the
29 104th, 105th, and 106th, and 108th, Congresses and the President upon
30 signing of the “*Partial-Birth Abortion Ban Act of 2003*” into law.

31 There is no credible medical evidence that partial-birth abortions
32 are safer than other abortion procedures. No controlled studies of
33 partial-birth abortions have been conducted nor have any comparative

1 studies been conducted to demonstrate its safety and efficacy compared
2 to other abortion methods. Furthermore, there have been no articles
3 published in peer-review journals that establish that partial-birth
4 abortions are superior in any way to established abortion procedures.

5 In light of the overwhelming evidence, Guam has an interest in
6 prohibiting partial-birth abortions. Both *Roe v Wade* and *Planned*
7 *Parenthood v. Casey*, 505 U.S. 833 (1992) recognized a governmental
8 interest in protecting the life of a child during the delivery process. This
9 interest arises during a partial-birth abortion because labor is induced
10 and the birth process has begun. Partial-birth abortions kill a child that
11 is mere inches away from becoming a “person” under *Roe*. Thus, the
12 government has a heightened interest in protecting the life of the
13 partially-born child.

14 The public’s perception of the appropriate role of a physician
15 during the delivery process is undermined by aborting a child in the
16 manner that purposefully seeks to kill the child inches from
17 “personhood” and the resulting protections conferred upon the fully
18 born child.

19 Partial-birth abortion is disturbingly similar to the killing of a
20 newborn infant and blurs the line between infanticide and abortion.
21 This legislation reinforces the line at birth between abortion and
22 infanticide that the Supreme Court established in *Roe v. Wade*, 410 U.S.
23 113 (1973). This legislation draws a bright line that clearly distinguishes
24 abortion and infanticide that preserves the integrity of the medical
25 profession, and promotes respect for human life.

26 The vast majority of babies killed during partial-birth abortions
27 are alive up through the very end of the procedure. It is medical fact
28 that unborn infants subjected to partial-birth abortion can feel pain
29 when subjected to painful stimuli. Furthermore, an unborn child’s
30 perception of pain is even more that that of newborn infants and older
31 children.

32 *I Liheslaturan Guåhan*, for these reasons, finds that partial-birth
33 abortion is never medically indicated to preserve the health of the

1 mother, is in fact unrecognized as a valid abortion procedure by the
2 mainstream medical community; poses additional health risks to the
3 mother, blurs the line between abortion and infanticide in the killing of
4 a partially-born child just inches from birth; and confuses the role of the
5 physician in childbirth and should, therefore, be banned.

6 **Section 91A103. Definitions.** For purposes of this Chapter, the
7 following words and phrases are defined to mean:

8 (a) The term "*partial-birth abortion*" means an abortion in
9 which the person performing the abortion –

10 (1) deliberately and intentionally vaginally delivers a
11 living fetus until, in the case of a head-first presentation, the entire
12 fetal head is outside the body of the mother, or, in the case of
13 breech presentation, any part of the fetal trunk past the navel is
14 outside of the body of the mother, for the purpose of performing
15 an overt act that the person knows will kill the partially delivered
16 living fetus; and

17 (2) performs the overt act, other than completion of
18 delivery that kills the partially delivered living fetus.

19 (b) The term "**physician**" means a doctor of medicine or
20 osteopathy legally authorized to practice medicine and surgery by the
21 Guam Board of Medical Examiners in which the doctor performs such
22 activity, or any other individual legally authorized by the Guam Board
23 of Medical Examiners to perform abortions; *provided, however*, that any
24 individual who is not a physician or not otherwise legally authorized by
25 the Guam Board of Medical Examiners to perform abortions, but who
26 nevertheless directly performs a partial-birth abortion, shall be subject
27 to the provisions of this section.

28 **Section 91A104. Prohibition.** A person shall not knowingly
29 perform or attempt to perform a partial-birth abortion. Any physician
30 who knowingly performs a partial-birth abortion and thereby kills a
31 human fetus shall be fined under this title or imprisoned not more than
32 ten (10) years, or both. This subsection takes effect one (1) day after the
33 enactment.

1 **Section 91A105. Partial-Birth Abortions Punished.** Any person
2 performing a partial-birth abortion shall be guilty of a third degree
3 felony.

4 **Section 91A106. Criminal Penalties.** (a) Any person who
5 intentionally or knowingly violates this Act is guilty of a third degree
6 felony.

7 (b) Any physician who intentionally or knowingly performs a
8 partial-birth abortion and thereby kills a human fetus shall be fined not
9 less than Ten Thousand Dollars (\$10,000.00) nor more than One-
10 Hundred Thousand Dollars (\$100,000.00) under this title, or imprisoned
11 for not less than one (1) year nor more than ten (10) years, or both.

12 **Section 91A107. Civil Penalties.** (a) The father, if married to the
13 mother at the time she receives a partial-birth abortion procedure, and,
14 if the mother has not attained the age of Eighteen (18) years at the time
15 of the abortion, the maternal grandparents of the fetus may in a civil
16 action obtain appropriate relief, unless the pregnancy resulted from the
17 plaintiff's criminal conduct or the plaintiff consented to the abortion.

18 (b) Such relief shall include:

19 (1) money damages for all injuries, psychological and
20 physical, occasioned by the violation of this section; and

21 (2) statutory damages equal to three (3) times the cost of
22 partial-birth abortion.

23 (3) **Attorney's Fees.** If judgment is rendered in favor of
24 the plaintiff in an action described in this section, the court shall
25 also render judgment for a reasonable attorney's fee in favor of the
26 plaintiff against the defendant. If the judgment is rendered in
27 favor of the defendant and the court finds that the plaintiff's suit
28 was frivolous and brought in bad faith, the court shall also render
29 judgment for a reasonable attorney's fee in favor of the defendant
30 against the plaintiff.

31 **Section 91A108. Review by the Guam Board of Medical**
32 **Examiners.**

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

7 (b) The findings on the issue are admissible at the civil and/or
8 criminal trial(s) of the defendant. Upon a motion of the defendant, the
9 court shall delay the beginning of the trial(s) for not more than thirty
10 (30) days to permit such a hearing to take place.

11 **Section 91A109. Prosecutorial Exclusion.** A woman upon
12 whom a partial-birth abortion is performed may not be prosecuted
13 under this section for a conspiracy to violate section 3 of this bill.

14 **Section 91A110. Construction.** (a) Nothing in this Act shall
15 be construed as creating or recognizing a right to abortion.

16 (b) It is not the intention of this Chapter to make lawful an
17 abortion that is currently unlawful.

18 **Section 91A111. Penalties for Ambulatory Healthcare Facilities.**

19 (a) An ambulatory healthcare facility licensed pursuant to Chapter 15,
20 Title 18 of the Guam Code Annotated in which the partial-birth abortion
21 is performed in shall be in violation of this act and shall be subject to
22 immediate revocation of its license(s) by the Guam Board of Medical
23 Examiners, pursuant to Part 1, Article 2, §12209, Chapter 12, Title 10 of
24 the Guam Code Annotated.

25 (b) An ambulatory healthcare facility license pursuant to
26 Chapter 15, Title 18 of the Guam Code Annotated in which the partial-
27 birth abortion is performed in, shall be in violation of this act and shall
28 loose all local funding for two (2) years and will be required to
29 reimburse the government for funds from the calendar/fiscal year in
30 which the partial-birth abortion was performed."

31 **Section 2.** Section 3218 of Chapter 3, Division 1 of Title 10 of the Guam
32 Code Annotated is hereby amended to read as follows:

33 **"§3218. Partial-Birth Abortion and Abortion Report."**

1 **Section 3.** Paragraphs (j), (k), (l), (m), (n), (o), and (p) are hereby added
2 to Section 3218 of Chapter 3, Division 1 of Title 10 of the Guam Code
3 Annotated to read as follows:

4 “(j) If a physician determined in accordance with the provisions
5 of section 4 that a partial-birth abortion is necessary and performs a
6 partial-birth abortion on the woman, the physician shall report such
7 determination and the reasons for such determination in writing to the
8 medical care facility in which the abortion is performed for inclusion in
9 the report of the medical care facility to the Guam Memorial Hospital
10 Records Section and to the Guam Board of Medical Examiners, or if the
11 abortion is not performed in a medical care facility, the physician shall
12 report the reasons for such determination in writing to the Guam
13 Memorial Hospital Records Section and to the Guam Board of Medical
14 Examiners as part of the written report made by the physician to the
15 Guam Memorial Hospital Records Section and to the Guam Board of
16 Medical Examiners. The physician shall retain a copy of the written
17 reports required under this section for not less than five (4) years.

18 (k) Failure to report under this section does not subject
19 physician to criminal or civil penalties under sections.

20 (l) Subsection (k) does not preclude sanctions or disciplinary
21 action or any other appropriate action by the Guam Board of Medical
22 Examiners.

23 (m) The Guam Memorial Hospital Records Section shall compile
24 and retain all partial-birth abortion reports it receives under this Section
25 and collate and evaluate all data gathered there from, and shall annually
26 publish a statistical report based on such data from partial-birth
27 abortions performed in the previous calendar year no later than January
28 31st of the following calendar year.

29 (n) The Guam Memorial Hospital Records Section shall make
30 available to physicians performing partial-birth abortions in Guam and
31 the Guam Board of Medical Examiners forms for partial-birth abortions.

32 (o) All information in partial-birth abortion reports the Guam
33 Memorial Hospital Records Section receives shall be confidential.

1 Information and reports may be disclosed only in communications
2 between qualified professional persons in the provisions of services or
3 in statistical form for research purposes.

4 (p) Any person who releases confidential information in
5 violation of subsection (l) of this section shall be guilty of a
6 misdemeanor.”

7 **Section 4. Severability.** *If any provision of this Act held to be*
8 *invalid or unenforceable by its terms, or as applied to any person or*
9 *circumstance, shall be construed so as give it the maximum effect*
10 *permitted by law unless such holding shall be one of utter invalidity or*
11 *unenforceability, in which event such provision shall be deemed*
12 *severable here from and shall not affect the remainder hereof or the*
13 *application of such provision to other persons not similarly situated or*
14 *to other, dissimilar circumstances.*

15 **Section 5. Effective Date.** *This Act shall take effect upon*
16 *enactment and shall not affect, in the interim, any other improvements*
17 *necessary to be done in carrying out the purpose of this Act.*