




I MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

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Bill No. 405 (LS)

Introduced by:

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AN ACT TO ADD A NEW SECTION 3218.1 TO CHAPTER 3 ARTICLE 2 TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE WOMAN'S INFORMED CONSENT FOR ABORTION AND TO CITE THE ACT AS "THE WOMAN'S REPRODUCTIVE HEALTH INFORMATION ACT OF 2008".

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslatura* finds that it is essential to the psychological and physical well-being of a woman considering an abortion that she receives complete and accurate information on her alternatives. It is the intent of *I Liheslatura* to ensure that every woman considering an abortion receive complete information on her alternatives and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure.

Section 2. A new Section 3218.1 is hereby added to Chapter 3 Article 2 Title 10 of the Guam Code Annotated to read as follows:

"Section 3218.1. The Woman's Reproductive Health Information Act of 2008.

(a) Definitions. For this act only:

1. **“Abortion”** means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death to the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
 - (i) save the life or preserve the health of an unborn child;
 - (ii) remove a dead unborn child caused by spontaneous abortion; or
 - (iii) remove an ectopic pregnancy.
2. **“Complication”** means that condition which includes but is not limited to hemorrhage, infection, uterine perforation, cervical laceration, pelvic inflammatory disease, endometritis, and retained products. The Department may further define “complication.”
3. **“Conception”** means the fusion of a human spermatozoon with a human ovum.
4. **“Department”** means the Guam Memorial Hospital Records Section.
5. **“Facility”** or **“medical facility”** means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location wherein medical care is provided to any person.
6. **“First trimester”** means the first twelve (12) weeks of gestation.
7. **“Gestational age”** means the time that has elapsed since the first day of the woman’s last menstrual period.
8. **“Hospital”** means an institution licensed pursuant to the provisions of the law of Guam
9. **“Medical emergency”** means that condition which, on the basis of the physician’s good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death or for which a delay will create serious

1 risk of substantial and irreversible impairment of a major
2 bodily function.

- 3 10. **“Physician”** means any person licensed to practice
4 healing arts, pursuant to the laws of Guam. The term
5 includes medical doctors and doctors of osteopathy.
6 11. **“Pregnant”** or **“pregnancy”** means that female
7 reproductive condition of having an unborn child in the
8 mother’s uterus.
9 12. **“Qualified person”** means an agent of the physician who
10 is a psychologist, licensed social worker, licensed
11 professional counselor, registered nurse, or physician.
12 13. **“Unborn child”** means the offspring of human beings
13 from conception until birth.
14 14. **“Viability”** means the state of fetal development when, in
15 the judgment of the physician based on the particular facts
16 of the case before him or her and in light of the most
17 advanced medical technology and information available to
18 him or her, there is a reasonable likelihood of sustained
19 survival of the unborn child outside the body of his or her
20 mother, with or without artificial support.

21 (b) Informed consent requirement. No abortion shall be performed or
22 induced without the voluntary and informed consent of the
23 woman upon whom the abortion is to be performed or induced.
24 Except in the case of a medical emergency, consent to an abortion
25 is voluntary and informed if and only if:

- 26 1. At least twenty-four (24) hours before the abortion, the
27 physician who is to perform the abortion or the referring
28 physician has informed the woman, orally and in person,
29 of the following:
30 (i) The name of the physician who will perform the
31 abortion;
32 (ii) Medically accurate information that a reasonable
33 patient would consider material to the decision of
34 whether or not to undergo the abortion, including
35 (a) a description of the proposed abortion
36 method; (b) the immediate and long-term
37 medical risks associated with the proposed
38 abortion method including, but not limited to, the
39 risks of infection, hemorrhage, cervical or uterine
40 perforation, danger to subsequent pregnancies,

- 1 and increased risk of breast cancer; and (c)
2 alternatives to the abortion;
- 3 (iii) The probable gestational age of the unborn child
4 at the time the abortion is to be performed;
- 5 (iv) The probable anatomical and physiological
6 characteristics of the unborn child at the time the
7 abortion is to be performed;
- 8 (v) The medical risks associated with carrying the
9 child to term; and
- 10 (vi) Any need for anti-Rh immune globulin therapy if
11 she is Rh negative, the likely consequences of
12 refusing such therapy, and the cost of the
13 therapy.
- 14 2. At least twenty-four (24) hours before the abortion, the
15 physician who is to perform the abortion, the referring
16 physician, or a qualified person has informed the woman,
17 orally and in person, that:
- 18 (i) Medical assistance benefits may be available for
19 prenatal care, childbirth, and neonatal care and
20 that more detailed information on the availability
21 of such assistance is contained in the printed
22 materials and informational video given to her
23 and described in Subsection (c).
- 24 (ii) The printed materials and informational video in
25 Subsection (c) describe the unborn child and list
26 agencies that offer alternatives to abortion.
- 27 (iii) The father of the unborn child is liable to assist in
28 the support of this child, even in instances where
29 he has offered to pay for the abortion. In the
30 case of rape or incest, this information may be
31 omitted.
- 32 (iv) She is free to withhold or withdraw her consent
33 to the abortion at any time without affecting her
34 right to future care or treatment and without the
35 loss of any state or federally funded benefits to
36 which she might otherwise be entitled.
- 37 3. The information in Subsection B(1) and (2) is provided to
38 the woman individually and in a private room to protect
39 her privacy and maintain the confidentiality of her
40 decision to ensure that the information focuses on her

1 individual circumstances and that she has an adequate
2 opportunity to ask questions.

- 3 4. At least twenty-four (24) hours before the abortion, the
4 woman is given a copy of the printed materials and a
5 viewing of, or a copy of, the informational video described
6 in Subsection (c). If the woman is unable to read the
7 materials, they shall be read to her. If the woman asks
8 questions concerning any of the information or materials,
9 answers shall be provided to her in a language she can
10 understand.
- 11 5. Prior to the abortion, the woman certifies in writing on a
12 checklist form provided or approved by the Department
13 that the information required to be provided under
14 Subsection (b) (1), (2), and (4) has been provided. All
15 physicians who perform abortions shall report the total
16 number of certifications received monthly to the
17 Department. The department shall make the number of
18 certifications received available to the public on an annual
19 basis.
- 20 6. Except in the case of a medical emergency, the physician
21 who is to perform the abortion shall receive and sign a
22 copy of the written certification prescribed in Subsection
23 (5) of this Section prior to performing the abortion. The
24 physician shall retain a copy of the checklist certification
25 form in the woman's medical record.
- 26 7. In the event of a medical emergency requiring an
27 immediate termination of pregnancy, the physician who
28 performed the abortion shall clearly certify in writing the
29 nature of the medical emergency and the circumstances
30 which necessitated the waiving of the informed consent
31 requirements of this section. This certification shall be
32 signed by the physician who performed the emergency
33 abortion, and shall be permanently filed in both the records
34 of the physician performing the abortion and the records of
35 the facility where the abortion takes place.
- 36 8. A physician shall not require or obtain payment for a
37 service provided to a patient who has inquired about an
38 abortion or scheduled an abortion until the expiration of
39 the twenty-four (24) hour reflection period required in
40 Subsection (b) (1), (2) and (4).

1 (c) Publication of Materials. The Guam Memorial Hospital shall
2 cause to be published printed materials and an informational video
3 in English, Chamorro, Tagalog, Marshallese, Palauan, Chuukese,
4 Korean, and Chinese within 180 days after this Act becomes law.
5 On an annual basis, the Department shall review and update, if
6 necessary, the following easily comprehensible printed materials
7 and informational video:

8 1. Geographically indexed materials that inform the woman
9 of public and private agencies and services available to
10 assist a woman through pregnancy, upon childbirth and
11 while her child is dependent, including but not limited to
12 adoption agencies.

13 2. The materials shall include a comprehensive list of the
14 agencies, a description of the services they offer, and the
15 telephone numbers and addresses of the agencies, and
16 shall inform the woman about available medical assistance
17 benefits for prenatal care, childbirth, and neonatal care.

18 The Department shall ensure that the materials described in
19 this section are comprehensive and do not directly or
20 indirectly promote, exclude, or discourage the use of any
21 agency or service described in this section. The materials
22 shall also contain a twenty-four-hour-a-day telephone
23 number which may be called to obtain information about
24 the agencies in the locality of the caller and of the services
25 they offer.

26 The materials shall state that it is unlawful for any
27 individual to coerce a woman to undergo an abortion and
28 that if a minor is denied financial support by the minor's
29 parents, guardian, or custodian due to the minor's refusal
30 to have an abortion performed, the minor shall be deemed
31 emancipated for the purposes of eligibility for public
32 assistance benefits, except that such benefits may not be
33 used to obtain an abortion. The materials shall also state
34 that any physician who performs an abortion upon a
35 woman without her informed consent may be liable to her
36 for damages in a civil action at law and that the law
37 permits adoptive parents to pay costs of prenatal care,
38 childbirth, and neonatal care. The materials shall include
39 the following statement:

1 “There are public and private agencies willing and able to
2 help you to carry your child to term, and to assist you and
3 your child after your child is born, whether you choose to
4 keep your child or to place her or him for adoption. Guam
5 strongly urges you to contact one or more of the agencies
6 before making a final decision about abortion. The law
7 required that your physician or his agent give you the
8 opportunity to call agencies like these before you undergo
9 an abortion.”

- 10 3. Materials that include information on the support
11 obligations of the father of a child who is born alive,
12 including but not limited to the father’s legal duty to
13 support his child, which may include child support
14 payments and health insurance, and the fact that paternity
15 may be established by the father’s signature on a birth
16 certificate or statement of paternity, or by court action.
17 The printed material shall also state that more information
18 concerning paternity establishment and child support
19 services and enforcement may be obtained by calling the
20 Department of Public Health and Social Services Public
21 Assistance Branch.
- 22 4. Materials that inform the pregnant woman of the probable
23 anatomical and physiological characteristics of an unborn
24 child at two (2)-week gestational increments from
25 fertilization to full term, including color photographs of
26 the developing unborn child at two (2)-week gestational
27 increments. The descriptions shall include information
28 about brain and heart functions, the presence of external
29 members and internal organs during the applicable stages
30 of development, and any relevant information on the
31 possibility of the child’s survival. If a photograph is not
32 available, a picture must contain the dimensions of the
33 unborn child and must be realistic. The materials shall be
34 objective, nonjudgmental, and designed to convey only
35 accurate scientific information about the unborn child at
36 the various gestational ages.
- 37 5. Materials which contain objective information describing
38 the various surgical and drug-induced methods of
39 abortion, as well as the immediate and long-term medical
40 risks commonly associated with each abortion method

1 including, but not limited to, the risks of infection,
2 hemorrhage, cervical or uterine perforation or rupture,
3 danger to subsequent pregnancies, increased risk of breast
4 cancer, the possible adverse psychological effects
5 associated with an abortion, and the medical risks
6 associated with carrying a child to term.

7 6. A checklist certification form to be used by the physician
8 or a qualified person under Subsection (b) (5) of this Act,
9 which will list all the items of information which are to be
10 given to the woman by a physician or the agent under this
11 Act.

12 7. The materials shall be printed in a typeface large enough
13 to be clearly legible.

14 8. The Department shall produce a standardized video that
15 may be used island wide, presenting the information
16 described in subsection (c) (1), (2), (3), and (4), in
17 accordance with the requirements of those Subsections. In
18 preparing the video, the Department may summarize and
19 make reference to the printed comprehensive list of
20 geographically indexed names and services described in
21 Subsection (c) (1). The video shall in addition to the
22 information described in Subsection(c) (1), (2), (3), and
23 (4), show an ultrasound of the heartbeat of an unborn child
24 at four (4) to five (5) weeks gestational age to six (6) to
25 eight (8)-weeks gestational age, and each month
26 thereafter, until viability. That information shall be
27 presented in an objective, unbiased manner designed to
28 convey only accurate scientific information.

29 9. The materials required under this section and the video
30 described in Subsection(c) (8) shall be available at no cost
31 from the Department upon request and in appropriate
32 number to any person, facility, or hospital.

33 (d) Emergencies. When a medical emergency compels the
34 performance of an abortion, the physician shall inform the
35 woman, before the abortion if possible, of the medical indications
36 supporting the physician's judgment that an immediate
37 abortion is necessary to avert her death or that a twenty-four (24)
38 hour delay will cause substantial and irreversible impairment
39 of a major bodily function.

- 1 (e) Criminal Penalties. Any person who intentionally, knowingly, or
2 recklessly violates this Act is guilty of a misdemeanor.
- 3 (f) In addition to whatever remedies are available under the
4 common or statutory laws of Guam, failure to comply with the
5 requirements of this Act shall:
- 6 1. Provide a basis for a civil malpractice action. Any
7 intentional violation of this Act shall be admissible in a
8 civil suit as prima facie evidence of a failure to obtain
9 informed consent. When requested, the court shall allow a
10 woman to proceed using solely her initials or a pseudonym
11 and may close any proceedings in the case and enter other
12 protective orders to preserve the privacy of the woman
13 upon who the abortion was performed.
 - 14 2. Provide a basis for professional disciplinary action under
15 Section 11110 of Chapter 11 of Title 10 Guam Code
16 Annotated.
 - 17 3. Provide a basis for recovery for the woman for the
18 wrongful death of her unborn child under Section 12109 of
19 Chapter 12 of Title 7 Guam Code Annotated, whether or
20 not the unborn child was born alive or was viable at the
21 time the abortion was performed.”

22 **Section 3. Severability.** *If any provision of this Act held to be*
23 *invalid or unenforceable by its terms, or as applied to any person or*
24 *circumstance, shall be construed so as give it the maximum effect permitted*
25 *by law unless such holding shall be one of utter invalidity or*
26 *unenforceability, in which even such provision shall be deemed severable*
27 *herefrom and shall not affect the remainder hereof or the application of such*
28 *provision to other persons not similarly situated or to other, dissimilar*
29 *circumstances.*

30 **Section 4. Effective Date.** This Act *shall* take effect 180 days after
31 enactment.