



Office of the Governor of Guam

P.O. Box 2950 Hagåtña, Guam 96932
TEL: (671) 472-8931 • FAX: (671) 477-4826 • EMAIL: governor@mail.gov.gu

2008 NOV 21 AM 11:48

19 NOV 2008

EDM

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Bente Nuebi Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Transmitted herewith is Bill No. 374(EC), "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 §3218 OF CHAPTER 3, DIVISION 1 OF TITLE 10 OF THE GUAM CODE ANNOTATED; AND TO CITE THE ACT AS "THE PARTIAL-BIRTH ABORTION BAN ACT OF 2008" which I signed into law on November 18, 2008 as Public Law 29-115.

Sins eru yan Magåhet,

[Handwritten signature of Felix P. Camacho]

FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

29-08-0887
11/20/08
[Handwritten initials]

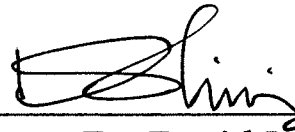
Attachment: copy of Bill

cc: The Honorable Tina Rose Muña Barnes,
Senator and Legislative Secretary

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


CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Substitute Bill No. 374 (EC)**, "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* §3218 OF CHAPTER 3, DIVISION 1 OF TITLE 10 OF THE GUAM CODE ANNOTATED; AND TO CITE THE ACT AS "*THE PARTIAL-BIRTH ABORTION BAN ACT OF 2008*," was on the 17th day of November, 2008, duly and regularly passed.

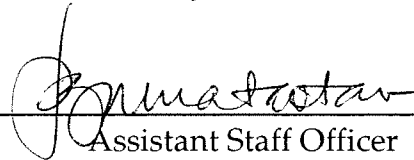


Dr. David L.G. Shimizu
Acting Speaker

Attested:


Tina Rose Muña Barnes
Senator and Secretary of the Legislature

This Act was received by *I Maga'lahren Guåhan* this 18 day of NOV, 2008, at
10:55 o'clock A.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahren Guåhan

Date: 18 NOVEMBER 2008

Public Law No. 29-115

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

Bill No. 374 (EC)

As substituted by the Author and
amended on the Floor.

Introduced by:

Edward J. B. Calvo
Frank F. Blas, Jr.
James V. Espaldon
Mark Forbes
Frank T. Ishizaki
J. A. Lujan
Ray Tenorio
Dr. David L.G. Shimizu
Tina Rose Muña Barnes
B. J.F. Cruz
Judith P. Guthertz, DPA
A. B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
J. T. Won Pat, Ed.D.

**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* §3218 OF
CHAPTER 3, DIVISION 1 OF 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.** A new Chapter 91A is hereby *added* to Division 4 of Title 10 of
3 the Guam Code Annotated to read as follows:

1 *I Liheslaturan Guåhan* further finds that on March 18, 2007, the United
2 States Supreme Court upheld this position in Gonzales v. Carhart, 127 S. Ct.
3 1610 (2007), ruling that the State may prohibit partial-birth abortions that *do*
4 *not* include the maternal “health” exception. The language in this bill stems
5 from and uses as its primary influence the language of the federal “Partial-Birth
6 Abortion Ban Act of 2003, 18 U.S.C. §1531”, upheld in *Gonzales*.

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

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

1 There is *no* credible medical evidence that partial-birth abortions are safer
2 than other abortion procedures. *No* controlled studies of partial-birth abortions
3 have been conducted *nor* have any comparative studies been conducted to
4 demonstrate its safety and efficacy compared to other abortion methods.
5 Furthermore, there have been *no* articles published in peer-review journals that
6 establish that partial-birth abortions are superior in any way to established
7 abortion procedures.

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

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

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

1 The vast majority of babies killed during partial-birth abortions are alive
2 up through the very end of the procedure. It is a medical fact that unborn
3 infants subjected to partial-birth abortion can feel pain when subjected to
4 painful stimuli. Furthermore, an unborn child's perception of pain is even
5 more than that of newborn infants and older children.

6 *I Liheslaturan Guåhan*, for these reasons, finds that partial-birth abortion
7 is in fact unrecognized as a valid abortion procedure by the mainstream
8 medical community; poses additional health risks to the mother; blurs the line
9 between abortion and infanticide in the killing of a partially-born child just
10 inches from birth; and confuses the role of the physician in childbirth and
11 should, therefore, be banned.

12 **§91A103. Definitions.** For purposes of this Chapter, the following
13 words and phrases are defined to mean:

14 (a) The term *partial-birth abortion* means an abortion in which the
15 person performing the abortion:

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

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

24 (b) The term *physician* means a doctor of medicine *or* osteopathy
25 legally authorized to practice medicine and surgery by the Guam Board of

1 Medical Examiners in which the doctor performs such activity, *or* any other
2 individual legally authorized by the Guam Board of Medical Examiners to
3 perform abortions; provided, however, that any individual who is *not* a
4 physician *or not* otherwise legally authorized by the Guam Board of Medical
5 Examiners to perform abortions, but who nevertheless directly performs a
6 partial-birth abortion, *shall* be subject to the provisions of this Section.

7 **§91A104. Prohibition.** A person *shall* not knowingly perform *or*
8 attempt to perform a partial-birth abortion. Any physician who knowingly
9 performs a partial-birth abortion and thereby kills a human fetus *shall* be fined
10 under this Title *or* imprisoned *not more than* ten (10) years, *or* both. This
11 Subsection takes effect one (1) day after the enactment. This Subsection does
12 *not* apply to a partial-birth abortion that is necessary to save the life of a
13 mother whose life is endangered by a physical disorder, physical illness, *or*
14 physical injury, including a life-endangering physical condition caused by *or*
15 arising from the pregnancy itself.

16 **§91A105. Partial-Birth Abortions Punished.** Any person
17 performing a partial-birth abortion *shall* be guilty of a third degree felony.

18 **§91A106. Criminal Penalties.** (a) Any person who
19 intentionally *or* knowingly violates this Act is guilty of a third degree felony.

20 (b) Any physician who intentionally *or* knowingly performs a partial-
21 birth abortion and thereby kills a human fetus *shall* be fined *not less than* Ten
22 Thousand Dollars (\$10,000.00) *nor more than* One-Hundred Thousand Dollars
23 (\$100,000.00) under this Title, *or* imprisoned for *not less than* one (1) year *nor*
24 *more than* ten (10) years, *or* both.

1 **§91A107. Civil Penalties.** (a) The father, *if* married to the mother at
2 the time she receives a partial-birth abortion procedure, and, *if* the mother has
3 *not* attained the age of eighteen (18) years at the time of the abortion, the
4 maternal grandparents of the fetus *may* in a civil action obtain appropriate
5 relief, *unless* the pregnancy resulted from the plaintiff's criminal conduct *or* the
6 plaintiff consented to the abortion.

7 (b) Such relief *shall* include:

8 (1) money damages for all injuries, psychological and physical,
9 occasioned by the violation of this Section; and

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

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

19 **§91A108. Review by the Guam Board of Medical Examiners.** (a)
20 A defendant accused of an offense under this Section may seek a hearing
21 before the Guam Board of Medical Examiners as to whether the physician's
22 conduct was necessary to save the life of the mother whose life is endangered
23 by a physical disorder, physical illness, *or* physical injury, including a life-
24 endangering physical condition caused by *or* arising from the pregnancy itself.

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

5 (c) A defendant convicted of an offense under this Act *shall* have his
6 medical license revoked by the Guam Board of Medical Examiners.

7 **§91A109. Prosecutorial Exclusion.** A woman upon whom a partial-
8 birth abortion is performed may *not* be prosecuted under this Section for a
9 conspiracy to violate Section 3 of this bill.

10 **§91A110. Construction.** (a) Nothing in this Act *shall* be
11 construed as creating *or* recognizing a right to abortion.

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

14 **§ 91A111. Penalties for Ambulatory Healthcare Facilities.** (a) An
15 ambulatory healthcare facility licensed pursuant to Chapter 15, Title 18 of the
16 Guam Code Annotated in which the partial-birth abortion is performed in *shall*
17 be in violation of this Act and *shall* be subject to immediate revocation of its
18 license(s) by the Guam Board of Medical Examiners, pursuant to Part 1, Article
19 2, §12209, Chapter 12, Title 10 of the Guam Code Annotated.

20 (b) An ambulatory healthcare facility license pursuant to Chapter 15,
21 Title 18 of the Guam Code Annotated in which the partial-birth abortion is
22 performed in, *shall* be in violation of this Act and *shall* lose all local funding
23 for two (2) years and will be required to reimburse the government for funds
24 from the calendar/fiscal year in which the partial-birth abortion was
25 performed.”

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

3 **“§3218. Partial-Birth Abortion and Abortion Report.”**

4 **Section 3.** Paragraphs (j), (k), (l), (m), (n), (o), and (p) are hereby *added* to
5 §3218 of Chapter 3, Division 1 of Title 10 of the Guam Code Annotated, to read as
6 follows:

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

19 (k) Failure to report under this Section will subject physicians to a
20 fine of *no less than* Ten Thousand Dollars (\$10,000), but *no more than* One
21 Hundred Thousand Dollars (\$100,000) per offense.

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

24 (m) The Guam Memorial Hospital Records Section *shall* compile and
25 retain all partial-birth abortion reports it receives under this Section and collate

1 and evaluate all data gathered therefrom, and *shall* annually publish a statistical
2 report based on such data from partial-birth abortions performed in the
3 previous calendar year *no later than* January 31st of the following calendar
4 year.

5 (n) The Guam Memorial Hospital Records Section *shall* make
6 available to physicians performing partial-birth abortions in Guam and the
7 Guam Board of Medical Examiners forms for partial-birth abortion reports.

8 (o) All information in partial-birth abortion reports the Guam
9 Memorial Hospital Records Section receives *shall* be confidential. Information
10 and reports may be disclosed only in communications between qualified
11 professional persons in the provisions of services *or* in statistical form for
12 research purposes.

13 (p) Any person who releases confidential information in violation of
14 subsection (o) of this Section *shall* be guilty of a misdemeanor.”

15 **Section 4. Severability.** *If any provision of this Act held to be invalid or*
16 *unenforceable by its terms, or as applied to any person or circumstance, shall be*
17 *construed so as give it the maximum effect permitted by law unless such holding*
18 *shall be one of utter invalidity or unenforceability, in which event such provision*
19 *shall be deemed severable herefrom and shall not affect the remainder hereof or the*
20 *application of such provision to other persons not similarly situated or to other,*
21 *dissimilar circumstances.*

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