

I MINA' TRENTAI DOS NA LIHESLATURAN GUÁHAN
2013 (FIRST) Regular Session

BILL NO. 153-32 COA

Introduced by:

Aline A. Yamashita, PhD *aj*
DG Rodriguez, Jr. *er*

AN ACT RELATIVE TO THE RIGHTS OF NURSING MOTHERS AND CHILDREN RELATIVE TO BREASTFEEDING TO BE KNOWN AS THE "NANA YAN PATGON ACT," BY ADDING A NEW CHAPTER 4B, DIVISION 1 OF TITLE 19, GUAM CODE ANNOTATED; BY AMENDING SECTION 22107, DIVISION 2, CHAPTER 22 OF TITLE 7, GUAM CODE ANNOTATED; BY ADDING A NEW SECTION 80.49.1 OF CHAPTER 80, ARTICLE 2 OF TITLE 9, GUAM CODE ANNOTATED; AND, BY ADDING A NEW SECTION 1036 TO CHAPTER 10 OF TITLE 1, GUAM CODE ANNOTATED.

2013 JUL 16 PM 2:42 *aj*

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

2 **Section 1.** A new Chapter 4B is added to Division 1 of Title 19, Guam Code
3 Annotated, to read:

4 **"CHAPTER 4B**

5 **NANA YAN PATGON ACT**

- 6 **§4B100. Title.**
- 7 **§4B101. Legislative Findings.**
- 8 **§4B102. Purpose and Declaration of Policy.**
- 9 **§4B103. Right to Breastfeed.**
- 10 **§4B104. Breastfeeding — Prohibition Against Discrimination.**
- 11 **§4B105. Nursing Mothers — Workplace Accommodations.**
- 12 **§4B106. Nursing Rooms — Government of Guam Agencies.**

1 §4B107. **Nursing Mothers — Educational InstitutionsAccommodations.**

2 §4B108. **Discrimination — Responsible Agencies.**

3 §4B109. **Rules and Regulations.**

4 §4B110. **Breastfeeding Promotion and Education — Department of**
5 **Public Health and Social Services.**

6 §4B111. **Breastfeeding Promotion and Education — Guam Memorial**
7 **Hospital, Maternal Health Care Providers and Maternal**
8 **Health Care Facilities.**

9 §4B112. **Effective Date.**

10

11 §4B100. **Title.**

12 This Chapter *shall* be known, and may be cited, as the “*Nana yan Patgon Act*” or
13 the “Mother and Child Act.”

14 §4B101. **Legislative Findings.**

15 *I Liheslaturan Guahan* finds that throughout the United States, laws have been
16 enacted to ensure that women have the right to breastfeed children in recognition of the
17 health and economic benefits of breastfeeding. Currently, Guam lacks any laws relative
18 to breastfeeding to address potential obstacles a woman may face when wanting to
19 breastfeed a child.

20 *I Liheslatura* finds that the Patient Protection and Affordable Care Act
21 (“Affordable Care Act”) amended Section 7 of the Fair Labor Standards Act (“FLSA”) to
22 require employers to provide reasonable break time for an employee to express breast
23 milk for her nursing child for one year after the child’s birth each time such employee has

1 need to express the milk. Employers are also required to provide a place, other than a
2 bathroom, that is shielded from view and free from intrusion from coworkers and the
3 public, which may be used by an employee to express breast milk.

4 *Liheslatura* also finds that in 2011, Surgeon General of the United States Regina
5 M. Benjamin, MD, MBA, released the “*Call to Action to Support Breastfeeding*” citing
6 health benefits and outlining steps to be taken to remove obstacles that women face when
7 wanting to breastfeed their children.

8 The Centers for Disease Control (hereafter “*CDC*”) Breastfeeding Report Card
9 for the US, 2012, showed that breastfeeding increased from 74.6 percent in 2008 births to
10 76.9 percent in 2009 births. However, the CDC also reported that of the 2008 figure only
11 23.4 percent met the recommended breastfeeding duration of twelve (12) months, and
12 only 13 percent of infants were exclusively breastfed at the end of six (6) months, which
13 indicated that women may need more support to continue breastfeeding.

14 Dr. Benjamin’s “Call to Action” identified ways that families, communities,
15 employers and health care professionals can improve breastfeeding rates and increase
16 support for breastfeeding. Recommendations included communities expanding and
17 improving programs that provide mother-to-mother support and peer counseling;
18 healthcare systems ensuring that maternity care practices provide education and
19 counseling on breastfeeding; hospitals becoming more “baby-friendly,” by taking steps
20 like those recommended by the UNICEF/WHO’s Baby-Friendly Hospital Initiative;
21 clinicians ensuring that they are trained to properly care for nursing mothers and babies;
22 the promotion of breastfeeding to pregnant patients and ensuring that mothers receive the
23 best advice on how to breastfeed, employers working toward establishing paid maternity

1 leave and high-quality lactation support programs, employersexpanding the use of
2 programs that allow nursing mothers to have their babies close by so they can feed them
3 during the day, providing women with break time and private space to express breast
4 milk; and, families providing mothers the support and encouragement they need to
5 breastfeed.

6 *I Liheslatura* further finds thatbreastfeeding protects babies from infections and
7 illnesses that include diarrhea, ear infections, and pneumonia. Breastfed babies are also
8 less likely to develop asthma, and those who are breastfed for six (6) months are less
9 likely to become obese. Nursing mothers also have a decreased risk of breast and ovarian
10 cancers and postpartum depression.

11 A study published in the journal *Pediatrics* estimated that the US would save \$13
12 billion per year in healthcare and other costs if 90 percent of US babies were exclusively
13 breastfed for six (60) months. Dr. Benjamin also added that, by providing
14 accommodations for nursing women, employers would be able to reduce their company's
15 healthcare costs and lower their absenteeism and turnover rates.

16 **§4B102. Purpose and Declaration of Policy.**

17 The purpose and policy of this Chapter is to ensure that women have a right to
18 breastfeed children or express breast milk in a safe and clean environment without the
19 fear of social constraints, discrimination, embarrassment or even prosecution. It is
20 nationally recommended that babies from birth to at least one (1) year of age be breastfed
21 unless medically contraindicated, in order for babies to attain an optimal healthy start in
22 life. Breastfeeding can also be considered a low-cost means of improving health for both
23 mothers and babies, and education, awareness, encouragement, promotion and

1 acceptance of breastfeeding is vital as it will provide maternal and infant health benefits
2 and economic benefits.

3 **§4B103. Right to Breastfeed.**

4 1) Notwithstanding any other provision of the law, a woman may breastfeed a baby
5 or express breast milk in any location, public or private, where the woman is
6 otherwise authorized to be.

7 2) Breastfeeding a child or expressing breast milk as part of breastfeeding shall not
8 be considered an act of public indecency and shall not be considered indecent
9 exposure, sexual conduct, lewd touching, or obscenity as prescribed in Chapter 28
10 of Title 9, Guam Code Annotated.

11 3) No entity, public or private, in Guam may enact a policy that prohibits or restricts
12 a woman breastfeeding a child or expressing breast milk in a public or private
13 location where the woman and child are otherwise authorized to be.

14 4) No person shall interfere with a woman breastfeeding a child in any location,
15 public or private, where the woman and child is otherwise authorized to be.

16 **§4B104. Breastfeeding – Prohibition Against Discrimination.**

17 It is a discriminatory practice to deny, or attempt to deny, the full and equal
18 enjoyment of the goods, services, facilities, privileges, advantages, and accommodations
19 of a place of public accommodations to a woman because she is breastfeeding a child.

20 **§4B105. Nursing Mothers – Workplace Accommodations.**

21 For the purposes of this section, "employer" is defined as a person or entity that
22 employs one or more employees.

23 (A) An employer must provide reasonable unpaid break time each day to an employee

1 who needs to express breast milk for an infant child up to the age of two (2). The
2 break time must, if possible, run concurrently with any break time already
3 provided to the employee. An employer is not required to provide break time
4 under this section if to do so would unduly disrupt the operations of the employer.

5 (B) An employer must make reasonable efforts to provide a room or other location, in
6 close proximity to the work area, other than a toilet stall, where the employee can
7 express her milk in privacy.

8 (C) An employer may not discriminate – meaning to restrict, harass or penalize–
9 against an employee who chooses to express breast milk in the workplace.

10 **§4B106. Nursing Rooms — Government of Guam Agencies.**

11 Government of Guam agencies, departments and instrumentalities shall provide a
12 safe and clean room, in close proximity to the work area, other than a toilet stall, where a
13 nursing mother, who is an employee of the government of Guam, can express her milk in
14 privacy.

15 Additionally, the AB Won Pat Guam International Airport will identify an area,
16 other than a toilet stall, within its facilities as a “Family Room” where traveling families
17 may nurse young children in privacy and safety.

18 **§4B107. Nursing Mothers — Educational Institutions Accommodations.**

19 For the purposes of this section, “Educational Institution” is defined as any public school,
20 university or college with enrolled students.

21 (A) Educational institutions must make reasonable efforts to provide a safe and clean
22 room or other location, in close proximity to the work area, other than a toilet
23 stall, where a nursing mother can express her milk in privacy.

1 (B) Educational institutions may not discriminate – meaning to restrict, harass or
2 penalize – against a woman who chooses to express breast milk.

3 **§4B108. Discrimination — Responsible Agencies.**

4 The Guam Department of Labor Director (hereafter “GDOL”) *shall* be responsible
5 for recording data and addressing allegations of discrimination against nursing women in
6 the workplace of both government and non-government of Guam entities, and to ensure
7 that women are aware of breastfeeding rights in statute. Information may be made
8 available through informational pamphlets and/or published in the department’s website.

9 Allegations of discrimination reported to the GDOL shall undergo due process
10 pursuant to Title VII of the Civil Rights Act of 1964, Guam laws and other
11 applicable statutes and regulations and may also be forwarded to the US Department of
12 Labor, Guam Office when determined appropriate.

13 Pursuant to Chapter 4 of Title 4, Guam Code Annotated, the Civil Service
14 Commission *shall* investigate allegations of workplace discrimination and/or grievances
15 by nursing women employed by the government of Guam.

16 **§4B109. Rules and Regulations.**

17 The Directors of the Department of Labor and the Civil Service Commission shall
18 issue joint rules and regulations, pursuant to the provisions of the Administrative
19 Adjudication Act, governing the procedures whereby a person can make a claim of
20 discrimination and how the allegations will be processed and resolved.

21 The Department of Labor shall also coordinate with government of Guam agency
22 directors and private business employers’ organizations in an effort to ensure that
23 informational/educational sessions are conducted with employers and human resources

1 managers and/or administrators to increase awareness and education of breastfeeding
2 rights and statutes.

3 **§4B110. Breastfeeding Promotion and Education – Department of Public**
4 **Health.**

5 The Director of the Department of Public Health and Social Services shall develop
6 and implement a community-wide public education program promoting breastfeeding
7 and its benefits. The education campaign *shall* include a component that requires
8 mothers of newborn infants who receive any form of public assistance from the
9 Department of Public Health and Social Services to undergo prenatal educational courses
10 on the promotion and benefits of breastfeeding. The Department of Public Health and
11 Social Services may coordinate with the Guam Memorial Hospital to develop and
12 determine the curriculum and/or requirements, and other related details, to fulfill the
13 requirement of prenatal educational courses, in accordance with this Chapter.

14 Breastfeeding information may be published in pamphlets for distribution at
15 public health central offices and its satellite facilities and published on the department's
16 website. Additionally, the Department of Public Health and Social Services may produce
17 written information on breastfeeding and the health benefits to the child and mother, and
18 distribute such information to Maternal Health Care Providers and Maternal Health Care
19 Facilities as described, *infra*, upon request.

20 The Department of Public Health and Social Services may promulgate rules and
21 regulations to carry out the provisions of this section.

22 **§4B111. Breastfeeding Promotion and Education — Maternal Health Care**
23 **Providers and Maternal Health Care Facilities.**

1 For purposes of this section, "Maternal Health Care Providers" means a physician,
2 midwife, or other authorized practitioner attending a pregnant woman; and "Maternal
3 Health Care Facility" includes hospitals and freestanding birthing centers providing
4 perinatal services.

5 Every hospital, that provides obstetrical care shall:

- 6 1) Provide new mothers, where appropriate as determined by the attending
7 physician, with information on breastfeeding and the benefits to the child;
8 and
- 9 2) Provide new mothers, where appropriate as determined by the attending
10 physician, with information on local breastfeeding support groups and
11 Department of Public Health and Social Services programs; or
- 12 3) Every licensed physician who provides obstetrical or gynecological
13 consultation shall, where appropriate as determined by such physician,
14 inform patients as to the prenatal preparation for and postnatal benefits of
15 breastfeeding a child.

16 **§4B112. Effective Date.**

17 This Act *shall* take effect ninety (90) days after its enactment.

18 **Section 2.** Section 22107, Division 2, Chapter 22 of Title 7, Guam Code
19 Annotated, is hereby *amended* to read:

20 **§ 22107. Exempt When.**

21 A person may claim exemption from service as a juror if he or she is:

- 22 (1) a member in the active service of the armed forces of the United States;
- 23 (2) an elected official, or a judge, of the United States or the Territory of Guam;

- 1 (3) an actively engaged member of the clergy;
- 2 (4) an actively practicing attorney, physician, dentist, or registered nurse;
- 3 (5) a member of the Fire or Police Department of an employee of a government
- 4 contractor engaged in providing internal security or fire protection for such
- 5 contractors;
- 6 (6) a person who has served as a juror, either in the Superior Court or the United
- 7 States District Court of Guam, within two (2) years preceding the time of
- 8 filling out the juror qualification form; or
- 9 (7) over sixty-five years old; or
- 10 (8) any woman who is breastfeeding, but only if the child receives nourishment
- 11 exclusively from breastfeeding and the woman is able to present a medical
- 12 attestation from a physician, a Certified Lactation Counselor (CLC), or an
- 13 International Board Certified Lactation Consultant (IBCLC) to such fact.

14 **Section 3.** A new Section 80.49.1 of Chapter 80, Article 2 of Title 9, Guam Code

15 Annotated, is *added* to read:

16 **§ 80.49.1. Nursing Mothers — Penal Institutions Accommodations.**

17 For purposes of this Section, “Penal Institutions” means:

18 (A) Prison: any confinement facility under the direct or indirect supervision or control

19 of the Department of Corrections (‘DOC’) any portion of which is designed to

20 incarcerate sentenced offenders.

21 (B) Detention Facility:

22 (1) any place used for confinement, pursuant to an order of a court, of:

23 (a) persons charged with or convicted of an offense;

1 (b) persons against whom judicial proceedings leading to
2 involuntary confinement have begun, are pending or have been
3 concluded; or

4 (c) persons against whom extradition orders are sought or have
5 been obtained.

6 (2) any place to which a person ordered to be confined to a detention
7 facility pursuant to Paragraph (1) has been or is being lawfully taken for
8 purposes of labor, court appearance, recreation, medical or hospital care,
9 transit or similar purpose.

10 The Director of the Penal Institution must make reasonable efforts to provide a
11 sanitary room, other than a toilet stall, where a nursing mother can express her milk in
12 privacy and to provide a breast pump.

13 Nursing mothers may also be allowed to breastfeed their babies during their
14 incarceration or detention as long as safeguards are in place, as determined by the
15 Director, to prevent her escape and as long as it is not a threat to the infant's and the
16 public's safety and welfare.

17 **Section 4.** A new Section 1036 is *added* to Chapter 10 of Title 1, Guam Code
18 Annotated, to read:

19 **§ 1036. Breastfeeding Awareness Month.**

20 (A) August of each year is hereby designated as "*Breastfeeding Awareness Month*," to
21 educate our community and promote the benefits of breastfeeding to infants and
22 mothers.

1 (B) *I Moga'lahen Guahan* shall issue annually a proclamation calling on all interested
2 parties to hold activities on behalf of the practice of breastfeeding and to develop
3 ways to support collective awareness of such activity.”