

I Mina'Trentai Kuáttro Na Liheslaturan
BILL STATUS


BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
232-34 (LS)	Dennis G. Rodriguez, Jr. Joe S. San Agustin Telená C. Nelson FRANK B. AGUON, JR. Tommy A. Morrison	AN ACT TO ADD A NEW CHAPTER 91B TO DIVISION 4 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO PROHIBITING ABORTION OF UNBORN CHILDREN CAPABLE OF FEELING PAIN; TO AMEND §3218(a) OF CHAPTER 3, DIVISION 1 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO ATTENDING PHYSICIAN ABORTION REPORTING REQUIREMENTS; AND TO CITE THE ACT AS "THE UNBORN CHILD PROTECTION ACT OF 2018."	1/24/18 4:37 p.m.						

MINA' TRENTAI KUATTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

Bill No. 232- -34 (LS)

Introduced by:

Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Telena C. Nelson
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AN ACT TO *ADD* A NEW CHAPTER 91B TO DIVISION 4 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO PROHIBITING ABORTION OF UNBORN CHILDREN CAPABLE OF FEELING PAIN; TO AMEND §3218(a) OF CHAPTER 3, DIVISION 1 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO ATTENDING PHYSICIAN ABORTION REPORTING REQUIREMENTS; AND TO CITE THE ACT AS "*THE UNBORN CHILD PROTECTION ACT OF 2018*"

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

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4 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* makes
5 the following findings:

6 (1) Medical evidence indicates that, at least by twenty weeks after
7 fertilization, an unborn child possesses the physical structures necessary to
8 experience pain;

9 (2) Medical evidence indicates that, by twenty weeks after fertilization,
10 unborn children react to and seek to evade certain stimuli in a manner which, in an
11 infant or an adult, would be interpreted as a response to pain;

12 (3) Anesthesia is routinely administered to unborn children, who have
13 developed twenty weeks or more, that undergo prenatal surgery; and

1 (4) Medical evidence also indicates that unborn children under twenty weeks
2 post-fertilization in age exhibit hormonal stress responses to painful stimuli, and that
3 such stress responses were reduced when pain medication was administered directly
4 to such unborn children.

5 It is the intent of *I Liheslaturan Guåhan* to assert a compelling governmental
6 interest in protecting the lives of unborn children from the stage of their
7 physiological development at which medical evidence indicates that they are capable
8 of experiencing pain.

9 **Section 2. Unborn Child Protection.** A new Chapter 91B is hereby *added* to
10 Division 4 of Title 4 of Title 10 of the Guam Code Annotated to read as follows:

11 “CHAPTER 91B.

12 UNBORN CHILD PROTECTION.

13 §91B101. Title.

14 §91B102. Definitions.

15 §91B103. Requirement to Determine Post Fertilization Age.

16 §91B104. Prohibition.

17 §91B105. Criminal Penalties.

18 §91B106. Civil Penalties.

19 §91B107. Anonymity Ruling.

20 §91B108. Severability.

21 **§91B101. Title.** This Chapter may be cited and referred to as "*The Unborn*
22 *Child Protection Act of 2018*".

23 **§91B102. Definitions.** For purposes of the Unborn Child Protection Act:

24 (a) *Abortion* means the use or prescription of any instrument,
25 medicine, drug, or other substance or device to terminate the pregnancy of a
26 woman known to be pregnant with an intention other than to increase the
27 probability of a live birth, to preserve the life or health of the child after live

1 birth, to act upon an ectopic pregnancy, or to remove a dead unborn child who
2 died as the result of natural causes *in utero*, accidental trauma, or a criminal
3 assault on a pregnant woman or her unborn child, and which causes the
4 premature termination of the pregnancy;

5 (b) *Attempt to perform or induce an abortion* means an act, or an
6 omission of a statutorily required act, that, under the circumstances as the
7 actor believes them to be, constitutes a substantial step in a course of conduct
8 planned to culminate in the performance or induction of an abortion in Guam
9 in violation of the Unborn Child Protection Act.

10 (c) *Fertilization* means the fusion of a human spermatozoon with a
11 human ovum;

12 (d) *Medical emergency* means a condition which, in reasonable
13 medical judgment, so complicates the medical condition of the pregnant
14 woman as to necessitate the immediate abortion of her pregnancy to avert her
15 death or for which a delay will create a serious risk of substantial and
16 irreversible physical impairment of a major bodily function. No condition
17 shall be deemed a medical emergency if based on a claim or diagnosis that the
18 woman will engage in conduct which would result in her death or in
19 substantial and irreversible physical impairment of a major bodily function;

20 (e) *Post fertilization age* means the age of the unborn child as
21 calculated from the fertilization of the human ovum;

22 (f) *Reasonable medical judgment* means a medical judgment that
23 would be made by a reasonably prudent physician, knowledgeable about the
24 case and the treatment possibilities with respect to the medical conditions
25 involved;

1 (g) *Physician* means any person licensed to practice medicine and
2 surgery or osteopathic medicine under the Physicians Practice Act (10 GCA
3 §12201 *et seq.*) or in another jurisdiction of the United States;

4 (h) *Probable post fertilization age of the unborn child* means what,
5 in reasonable medical judgment, will with reasonable probability be the post
6 fertilization age of the unborn child at the time the abortion is planned to be
7 performed;

8 (i) *Unborn child* or *fetus* each mean an individual organism of the
9 species *homo sapiens* from fertilization until live birth; and

10 (j) *Woman* means a female human being whether or not she has
11 reached the age of majority.

12 **§91B103. Requirement to Determine Post Fertilization Age Prior to**
13 **Abortion and Failure to do so Constituting Unprofessional Conduct.**

14 (a) Except in the case of a medical emergency which prevents compliance
15 with this section, no abortion shall be performed or induced or be attempted to be
16 performed or induced unless the physician performing or inducing it has first made
17 a determination of the probable post fertilization age of the unborn child or relied
18 upon such a determination made by another physician. In making such a
19 determination, a physician shall make such inquiries of the woman and perform or
20 cause to be performed such medical examinations and tests as a reasonably prudent
21 physician, knowledgeable about the case and the medical conditions involved, would
22 consider necessary to perform in making an accurate diagnosis with respect to post
23 fertilization age.

24 (b) Failure by a physician to conform to any of the requirements of this section
25 constitutes unprofessional conduct pursuant to the Physicians Practice Act (10 GCA
26 § 12201 *et seq.*).

1 **§91B104. Prohibition on Abortion for Fetus Age of Twenty Weeks or**
2 **More.** No person shall perform or induce, or attempt to perform or induce, an
3 abortion upon a woman when it has been determined, by the physician performing
4 or inducing the abortion or by another physician upon whose determination that
5 physician relies, that the probable post fertilization age of the woman's unborn child
6 is twenty (20) or more weeks unless, in reasonable medical judgment:

7 (1) She has a condition which so complicates her medical condition as to
8 necessitate the abortion of her pregnancy to avert her death or to avert serious risk
9 of substantial and irreversible physical impairment of a major bodily function, or

10 (2) It is necessary to preserve the life of an unborn child.

11 No such condition shall be deemed to exist if it is based on a claim or
12 diagnosis that the woman will engage in conduct which would result in her death or
13 in substantial and irreversible physical impairment of a major bodily function. In
14 such a case, the physician shall terminate the pregnancy in a manner which, in
15 reasonable medical judgment, provides the best opportunity for the unborn child to
16 survive unless, in reasonable medical judgment, termination of the pregnancy in that
17 manner would pose a greater risk either of the death of the pregnant woman or of the
18 substantial and irreversible physical impairment of a major bodily function of the
19 woman than would another available method. No such greater risk shall be deemed
20 to exist if it is based on a claim or diagnosis that the woman will engage in conduct
21 which would result in her death or in substantial and irreversible physical
22 impairment of a major bodily function.

23 **§91B105. Criminal Penalties.** Any person who intentionally or recklessly
24 performs or attempts to perform an abortion in violation of §91B104 of this Chapter
25 is guilty of a third degree felony. No penalty shall be assessed against the woman
26 upon whom the abortion is performed or attempted to be performed.

27 **§91B106. Civil Penalties.**

1 (a) Any woman upon whom an abortion was performed in violation of the
2 Unborn Child Protection Act, or the father of the unborn child who was the subject
3 of such an abortion, may maintain an action against the person who performed the
4 abortion in an intentional or a reckless violation of the Unborn Child Protection Act
5 for actual damages. Any woman upon whom an abortion has been attempted in
6 violation of the Unborn Child Protection Act may maintain an action against the
7 person who attempted to perform the abortion in an intentional or a reckless violation
8 of the Unborn Child Protection Act for actual damages.

9 (b) A cause of action for injunctive relief against any person who has
10 intentionally violated the Unborn Child Protection Act may be maintained by the
11 woman upon whom an abortion was performed or attempted to be performed in
12 violation of the Unborn Child Protection Act, by any person who is the spouse,
13 parent, sibling, or guardian of, or a current or former health care provider [as defined
14 by 10 GCA §91102(d)] of, the woman upon whom an abortion has been performed
15 or attempted to be performed in violation of the Unborn Child Protection Act, or by
16 the Attorney General of Guam. The injunction shall prevent the abortion provider
17 from providing further abortions on Guam in violation of the Unborn Child
18 Protection Act.

19 (c) If judgment is rendered in favor of the plaintiff in an action described in
20 this section, the court shall also render judgment for reasonable attorney's fees in
21 favor of the plaintiff against the defendant.

22 (d) If judgment is rendered in favor of the defendant and the court finds the
23 plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment
24 for reasonable attorney's fees in favor of the defendant against the plaintiff.

25 (e) No damages or attorney's fees may be assessed against the woman upon
26 whom an abortion was performed or attempted to be performed in violation of the
27 Unborn Child Protection Act, except as provided in subsection (d) of this section.

1 §91B107. Anonymity Ruling. In every civil or criminal proceeding or action
2 brought under the Unborn Child Protection Act, the court shall rule whether the
3 anonymity of any woman upon whom an abortion has been performed or attempted
4 shall be preserved from public disclosure if she does not give her consent to such
5 disclosure. The court, upon motion or *sua sponte*, shall make such a ruling and, upon
6 determining that her anonymity should be preserved, shall issue orders to the parties,
7 witnesses, and counsel accordingly, and shall direct the sealing of the record and
8 exclusion of individuals from courtrooms or hearing rooms to the extent necessary
9 to safeguard her identity from public disclosure. Each such order shall be
10 accompanied by specific written findings explaining why the anonymity of the
11 woman should be preserved from public disclosure, why the order is essential to that
12 end, how the order is narrowly tailored to serve that interest, and why no reasonable
13 less restrictive alternative exists. In the absence of written consent of the woman
14 upon whom an abortion has been performed or attempted, anyone other than a public
15 official who brings an action under §91B106 of this Act shall do so using her initials
16 or under the pseudonym "Jane Doe". This section shall not be construed to conceal
17 the identity of the plaintiff or of witnesses from the defendant or from attorneys for
18 the defendant.

19 §91B108. Severability. If any one or more provisions, sections, subsections,
20 sentences, clauses, phrases, or words of the Unborn Child Protection Act or the
21 application thereof to any person or circumstance is found to be unconstitutional or
22 in direct violation of the Organic Act of Guam (48 U.S.C. § 1421 *et seq.*, as
23 amended), the same is hereby declared to be severable and the balance of the Unborn
24 Child Protection Act shall remain effective notwithstanding such unconstitutionality
25 or direct violation of the Organic Act of Guam (48 U.S.C. § 1421 *et seq.*, as amended).
26 *I Liheslaturan Guåhan* hereby declares that it would have passed the Unborn Child
27 Protection Act, and each provision, section, subsection, sentence, clause, phrase, or

1 word thereof, irrespective of the fact that any one or more provisions, sections,
2 subsections, sentences, clauses, phrases, or words of the Unborn Child Protection
3 Act, or the application of the Unborn Child Protection Act would be declared
4 unconstitutional or in direct violation of the Organic Act of Guam (48 U.S.C. § 1421
5 et seq., as amended).”

6 **Section 3. Physician Reporting of Abortions.** Subsection (a) of §3218 of
7 Chapter 3 of Division 1 of Title 10 of the Guam Code Annotated is hereby *amended*
8 to read:

9 **“§ 3218. Partial-Birth Abortion and Abortion Report.**

10 (a) An individual abortion report for each abortion shall be completed by the
11 mother's attending physician. The report shall be confidential and it shall not contain
12 the name of the mother involved. This report shall include:

- 13 (1) Patient number;
- 14 (2) Name and address of the abortion facility or hospital;
- 15 (3) Date of the abortion;
- 16 ~~(4) Zip code or other residential identification of the pregnant woman;~~
- 17 (4 5) Age of the pregnant woman;
- 18 (5 6) Ethnic origin of the pregnant woman;
- 19 (6 7) Marital status of the pregnant woman;
- 20 (7 8) Number of previous pregnancies;
- 21 (8 9) Number of years of education of the pregnant woman;
- 22 (9 10) Number of living children;
- 23 (10 11) Number of previous induced abortions;
- 24 (11 12) Date of the last induced abortion;
- 25 (12 13) Date of the last live birth;
- 26 (13 14) Method of contraception used, if any, at the time of conception;
- 27 (14 15) Date of the beginning of the last menstrual period;

1 (15 16) Medical condition of the pregnant woman at the time of
2 abortion;

3 (16 17) RH type of the pregnant woman;

4 (17 18) Type of abortion procedure used;

5 (18 19) Complications, if any;

6 (19 20) Type of procedure done after the abortion;

7 (20 21) Type of family planning recommended;

8 (21 22) Type of additional counseling given, if any;

9 (22 23) Signature of attending physician; and

10 (23 24) Certification provided for in this section;

11 (24 25) ~~gestational age, as measured in weeks, of the unborn child~~
12 ~~terminated by the abortion. If a determination of post fertilization age was~~
13 ~~made, the probable post fertilization age determined and the method and basis~~
14 ~~of the determination;~~

15 (25) If a determination of post fertilization age was not made, the basis
16 of the determination that a medical emergency existed;

17 (26) If the probable post fertilization age was determined to be twenty
18 (20) or more weeks, the basis of the determination that the pregnant woman
19 had a condition which so complicated her medical condition as to necessitate
20 the abortion of her pregnancy to avert her death or to avert serious risk of
21 substantial and irreversible physical impairment of a major bodily function,
22 or the basis of the determination that it was necessary to preserve the life of
23 an unborn child; and

24 (27) If the abortion was performed when the probable post fertilization
25 age was determined to be twenty or more weeks, whether the method or type
26 of abortion used was one that, in reasonable medical judgment, provided the
27 best opportunity for the unborn child to survive or, if such a method or type

1 was not used, the basis of the determination that termination of the pregnancy
2 in that manner would pose a greater risk either of the death of the pregnant
3 woman or of the substantial and irreversible physical impairment of a major
4 bodily function of the woman than would other available methods or types.”