

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
322-34 (COR)	Mary Camacho Torres	AN ACT TO ADD A NEW SUBSECTION (c) TO § 31.30 OF CHAPTER 30, TITLE 9, AND A NEW ARTICLE 5 TO CHAPTER 13, TITLE 19, BOTH OF GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A DEFENSE TO PROSECUTION FOR CHILD ABANDONMENT, PROTECTING NEWBORN INFANTS FROM HARM BY PROVIDING A SAFE AND ANONYMOUS MEANS FOR MOTHERS IN DISTRESS TO RELINQUISH THE BABY TO MEDICAL PROFESSIONALS; TO BE KNOWN AS THE "NEWBORN INFANT SAFE HAVEN ACT."	7/12/18 11:04 a.m. AS CORRECTED 7/23/18 5:01 p.m.						

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

Bill No. 322-34 (COR)

As corrected by the Prime Sponsor

Introduced by:

Mary Camacho Torres

AN ACT TO *ADD* A NEW SUBSECTION (c) TO § 31.30 OF CHAPTER 30, TITLE 9, AND A NEW ARTICLE 5 TO CHAPTER 13, TITLE 19, BOTH OF GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A DEFENSE TO PROSECUTION FOR CHILD ABANDONMENT, PROTECTING NEWBORN INFANTS FROM HARM BY PROVIDING A SAFE AND ANONYMOUS MEANS FOR MOTHERS IN DISTRESS TO RELINQUISH THE BABY TO MEDICAL PROFESSIONALS; TO BE KNOWN AS THE “NEWBORN INFANT SAFE HAVEN ACT.”

2018 JUL 23 PM 5:01 

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

2 **Section 1. Legislative findings and intent.** *I Liheslaturan Guåhan* finds
3 that Guam has experienced an increase in the abandonment of newborn infants
4 under unsafe circumstances and that it is in the best interest of the community to
5 protect newborn babies from such circumstances.

6 *I Liheslaturan Guåhan* finds that those who abandon their newborn infants
7 are often desperate, young mothers who are unable or unwilling to deal with the
8 responsibilities of parenthood. Their solution is abandoning the baby with the hope
9 that someone will find and care for it. However, the act of abandonment endangers
10 the baby and gives rise to criminal liability for parents who may already be under
11 severe emotional distress.

1 **NEWBORN INFANT SAFE HAVEN ACT**

2 **§ 13501. Citation.**

3 **§ 13502. General Policy.**

4 **§ 13503. Definitions.**

5 **§ 13504. Anonymity; Confidentiality; Waiver.**

6 **§ 13505. Custody.**

7 **§ 13506. Reunification.**

8 **§ 13507. Duties of Authorized Safe Haven Personnel.**

9 **§ 13508. Liability Protection.**

10 **§ 13509. Penalties for Unauthorized Disclosure.**

11 **§ 13501. Citation.**

12 This article may be cited as the ‘Newborn Infant Safe Haven Act.’

13 **§ 13502. General Policy**

14 (a) The mother of a newborn infant may relinquish custody of the
15 newborn infant to an authorized Safe Haven by voluntarily surrendering the
16 newborn infant to authorized Safe Haven personnel, provided that:

17 (1) the infant is thirty (30) days or younger as determined to a
18 reasonable degree of medical certainty by authorized Safe Haven personnel;

19 (2) the mother expresses no clear intention to return for the
20 newborn infant; and

21 (3) the infant presents no evidence of child abuse that occurred at
22 any time prior to the act of relinquishment.

23 (b) Authorized Safe Haven personnel shall receive an infant properly
24 relinquished under this Article on behalf of an affiliated authorized Safe Haven.

25 (c) Any attempt to relinquish a newborn infant under this Article shall
26 constitute implied consent for authorized Safe Haven personnel and any affiliated
27 authorized Safe Haven to perform all necessary emergency medical services. The

1 newborn infant shall be presumed eligible for coverage under Medicaid, subject to
2 federal regulations.

3 (d) Proper relinquishment under this Article shall not, in and of itself,
4 constitute abuse or neglect requiring reporting and investigation under Article 2 of
5 this Chapter.

6 **§ 13503. Definitions.**

7 As used in this Article:

8 (a) *Authorized Safe Haven personnel* mean:

9 (1) any medical professional licensed under Title 10, Chapter 12,
10 Guam Code Annotated, to practice the Healing Art, as defined by that
11 Chapter, working in conjunction with an authorized Safe Haven; or

12 (2) any emergency medical services personnel certified by the
13 Administrator of the Office of Emergency Medical Services under Title 10,
14 Chapter 84, Guam Code Annotated, working in their capacity as emergency
15 medical services personnel.

16 (b) *Authorized Safe Haven* means a hospital, a free-standing birthing
17 center, a fire station, or a community health center that employs authorized Safe
18 Haven personnel.

19 (c) *Child abuse* has the same meaning as defined under 9 GCA §
20 31.30(a).

21 (d) *Mother* means the biological mother, a woman who has conceived
22 rather than adopted or acquired custody of a newborn infant by other means.

23 (e) *Newborn infant* means a human child thirty (30) days or younger.

24 (f) *Physician* means a person licensed to practice medicine by the Guam
25 Board of Medical Examiners under Title 10, Chapter 12, Article 2, Guam Code
26 Annotated.

1 (g) *Safe Haven facilitator* means any agent or employee of the
2 government of Guam that, in the course of their duties as an agent or employee of
3 the government of Guam, assists a mother in relinquishing her newborn infant
4 under this Article, to include employees of Child Protective Services and the Guam
5 Police Department.

6 **§ 13504. Anonymity; Confidentiality; Waiver.**

7 (a) Anonymity. A mother who relinquishes her newborn infant under this
8 Article:

9 (1) has the right to remain anonymous and shall not be required to
10 provide any personally identifying information; and

11 (2) has the right to leave the authorized Safe Haven at any time
12 without being pursued, followed or tracked in any way.

13 (b) Confidentiality. Notwithstanding any other provision of law, any
14 personally identifying information that pertains to a mother who relinquishes a
15 newborn infant under this Article is confidential, exempt from disclosure under the
16 Sunshine Reform Act of 1999, and shall not be disclosed by any authorized Safe
17 Haven personnel or any Safe Haven facilitator for any purpose, whether obtained
18 as a result of the Medical Information Questionnaire described in § 13507 of this
19 Article or in any other manner.

20 (c) Waiver. The rights of anonymity and confidentiality under
21 subsections (a) and (b) of this Section are waived where the infant presents
22 evidence of child abuse that occurred at any time prior to relinquishment, as
23 determined to a reasonable degree of medical certainty by authorized Safe Haven
24 personnel.

25 **§ 13505. Custody.**

26 (a) Notwithstanding any other provision of law, an authorized Safe Haven
27 shall assume emergency protective custody of a relinquished newborn infant

1 immediately upon surrender by the mother to authorized Safe Haven personnel
2 affiliated with the authorized Safe Haven, or upon transfer of physical custody by
3 authorized Safe Haven personnel of another authorized Safe Haven that cannot
4 provide necessary emergency medical services, and shall maintain custody until
5 custody is assumed by Child Protective Services.

6 (b) Child Protective Services shall assume temporary protective custody
7 of the relinquished newborn infant immediately upon receipt of notice under §
8 13507(a)(8) and shall take any action authorized under Guam law to achieve safety
9 and permanency for the newborn infant subject to the limitations of this Article.

10 (c) Notwithstanding any other provision of law, an authorized Safe Haven
11 shall transfer physical custody of the relinquished newborn infant to Child
12 Protective Services as early as possible considering the newborn infant's medical
13 condition as determined to a reasonable degree of medical certainty by a physician.

14 (d) Notwithstanding any other provision of law, no court of Guam shall
15 enter an order pertaining to custody of the relinquished newborn infant and Child
16 Protective Services shall not relinquish temporary protective custody or place the
17 infant into foster custody until:

18 (1) Forty-eight (48) hours have elapsed from the time of
19 relinquishment by the mother; and

20 (2) Child Protective Services has reported all identifying
21 information known to the agency concerning the infant, except personally
22 identifying information pertaining to the relinquishing mother, to the Guam
23 Police Department for a determination that the infant, based on all available
24 information, has not been reported as a missing person.

25 (e) Rebuttable Presumption. Relinquishment of a newborn infant creates
26 a rebuttable presumption effective forty-eight (48) hours after time of
27 relinquishment that the mother who relinquishes in accordance with this Article

1 intends to permanently relinquish custody of the newborn infant and consents to
2 termination of parental rights.

3 **§ 13506. Reunification.**

4 (a) Notwithstanding any other provision of law, a mother who has
5 voluntarily relinquished her newborn infant pursuant to this Article shall have the
6 child returned upon making a request for reunification to Child Protective Services
7 no later than forty-eight (48) hours after relinquishment, provided that Child
8 Protective Services discovers no evidence of child abuse that occurred at any time
9 prior to relinquishment, as determined by agents of Child Protective Services.

10 (1) A mother requesting reunification waives her rights to
11 anonymity and confidentiality provided under § 13503 of this Article.

12 (2) In response to a request for reunification, Child Protective
13 Services may conduct an investigation for the limited purpose of
14 determining whether any evidence exists of child abuse that occurred prior
15 to relinquishment. Such an investigation may include identifying and
16 contacting the mother.

17 (b) If notice is not provided to Child Protective Services under §
18 13507(a)(8) prior to a request for reunification, Child Protective Services shall
19 determine the authorized Safe Haven location of the newborn infant based upon
20 information provided by the mother and facilitate reunification, if appropriate, as
21 directed under this Section.

22 (c) Relinquishment of a newborn infant under this Article does not, in and
23 of itself, constitute child abuse and is not, in and of itself, a sufficient basis to deny
24 reunification.

25 **§ 13507. Duties of Authorized Safe Haven Personnel.**

26 (a) Upon receiving a relinquished newborn under this Article, authorized
27 Safe Haven personnel shall:

- 1 (1) perform a preliminary medical screening examination;
- 2 (2) provide necessary stabilizing treatment to the extent he or she is
3 trained to provide those services;
- 4 (3) arrange for the immediate transportation of the newborn infant
5 to the nearest hospital with an emergency department;
- 6 (4) assign the newborn infant a unique, confidential identification
7 number;
- 8 (5) provide, or make a good faith effort to provide, to the mother a
9 copy of the confidential identification number in order to facilitate
10 reunification with the newborn infant pursuant to § 13506 of this Article;
- 11 (6) provide, or make a good faith effort to provide, to the mother a
12 Custody and Parental Rights Notice as described under § 13507(b), which
13 may be declined by the mother;
- 14 (7) provide, or make a good faith effort to provide, to the mother a
15 Medical Information Questionnaire as described under § 13507(c), which
16 may be declined by the mother or voluntarily filled out at the time the child
17 is relinquished;
- 18 (8) notify Child Protective Services of acceptance of emergency
19 protective custody of the relinquished newborn infant on behalf of the
20 authorized Safe Haven as soon as possible, but in no event later than twenty-
21 four (24) hours after accepting custody of the newborn infant; and
- 22 (9) provide to Child Protective Services any medical information
23 pertinent to the infant’s health, including but not limited to information
24 obtained pursuant to the Medical Information Questionnaire described in §
25 13507(c), that has been received by or is in the possession of the authorized
26 Safe Haven, not to include any personally identifying information pertaining
27 to the relinquishing mother.

1 (b) Custody and Parental Rights Notice. Every notice provided pursuant
2 to § 13507(a)(6) shall contain the following notice in no less than 12-point type:

3 NOTICE: YOU HAVE FORTY-EIGHT (48) HOURS TO REQUEST
4 RETURN OF YOUR CHILD. TO DO SO, YOU MUST SUBMIT A REQUEST
5 FOR REUNIFICATION TO CHILD PROTECTIVE SERVICES. IF YOU
6 SUBMIT A REQUEST FOR REUNIFICATION, YOU WILL WAIVE YOUR
7 RIGHT TO ANONYMITY AND CONFIDENTIALITY, MEANING CHILD
8 PROTECTIVE SERVICES COULD IDENTIFY YOU AND CONTACT YOU.
9 AFTER FORTY-EIGHT (48) HOURS, YOU WILL HAVE TO PETITION THE
10 SUPERIOR COURT OF GUAM TO PREVENT FINAL TERMINATION OF
11 YOUR PARENTAL RIGHTS.

12 (c) Medical Information Questionnaire. The Medical Information
13 Questionnaire described under § 13507(a)(7) shall not require any personally
14 identifying information about the newborn infant or the mother relinquishing the
15 newborn infant, other than the identification code assigned to the infant. Every
16 questionnaire provided under § 13507(a)(7) shall begin with the following notice
17 in no less than 12-point type:

18 NOTICE: THE INFANT YOU HAVE BROUGHT IN TODAY MAY
19 HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE THAT WE DON'T
20 KNOW ABOUT TODAY. SOME ILLNESSES, INCLUDING CANCER, ARE
21 BEST TREATED WHEN WE KNOW ABOUT FAMILY MEDICAL
22 HISTORIES. IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR
23 LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY WILL HAVE
24 A HEALTHY FUTURE, YOUR ASSISTANCE IN FULLY COMPLETING THIS
25 QUESTIONNAIRE IS ESSENTIAL. THANK YOU.

26 **§ 13508. Liability Protection.**

27 An authorized Safe Haven or any authorized Safe Haven personnel that
28 accept(s) custody of a relinquished newborn infant under this Article shall not be
29 subject to civil, criminal, or administrative liability for accepting the newborn

1 infant and caring for the newborn infant in a good faith belief that the action is
2 required or authorized by this Article, including, but not limited to, instances where
3 the infant is older than thirty (30) days or the individual surrendering the newborn
4 infant is not the mother. Nothing in this Article shall be construed as conferring
5 immunity from liability for personal injury or wrongful death, including, but not
6 limited to, injury resulting from malpractice.

7 **§ 13509. Penalties for Unauthorized Disclosure.**

8 Any authorized Safe Haven personnel or Safe Haven facilitator who violates
9 a mother's right to anonymity or confidentiality under § 13504 is guilty of a
10 misdemeanor and is punishable by confinement for a term not to exceed six
11 months, by a fine of not more than \$1,000 or by both. A second or subsequent
12 conviction shall be a felony in the third degree. Fines imposed for violations of this
13 Chapter shall be deposited in the Victims Compensation Fund."

14 **Section 4. Effective Date.** This Act *shall* become effective immediately
15 upon enactment.