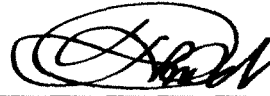


I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN  
2012 (FIFTH) Special Session

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

This is to certify that Substitute Bill No. 52-31 (COR), "AN ACT TO ADD A NEW § 3218.1 TO CHAPTER 3, ARTICLE 2, TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO WOMEN'S INFORMED CONSENT FOR ABORTION; AND TO CITE THE ACT AS "THE WOMEN'S REPRODUCTIVE HEALTH INFORMATION ACT OF 2012." was on the 24<sup>th</sup> day of October, 2012, duly and regularly passed.

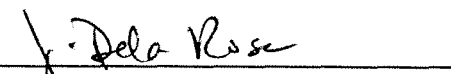


Judith T. Won Pat, Ed.D.  
Speaker

Attested: 

Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by I Maga'lahaen Guåhan this <sup>25<sup>th</sup></sup>~~24<sup>th</sup>~~ day of Oct., 2012, at <sup>11:45</sup>~~4:50~~ o'clock A.M.

  
Assistant Staff Officer  
Maga'lahaen's Office

APPROVED:

\_\_\_\_\_  
EDWARD J.B. CALVO  
I Maga'lahaen Guåhan

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

***I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN***  
**2011 (FIRST) Regular Session**

**Bill No. 52-31 (COR)**

As substituted by the Committee on Health & Human Services,  
Economic Development, Senior Citizens, and Election Reform;  
and **further substituted** by the Committee on Rules;  
and referred back to Committee after rising from the Committee of the Whole;  
and **further substituted** by Committee on Health & Human Services,  
Economic Development, Senior Citizens, and Election Reform; and amended on the floor.

Introduced by:

Committee on Rules, Federal,  
Foreign & Micronesian Affairs and  
Human & Natural Resources

by request of *I Maga'lahen Guåhan*  
in accordance with the Organic Act  
of Guam

**AN ACT TO ADD A NEW § 3218.1 TO CHAPTER 3,  
ARTICLE 2, TITLE 10 OF THE GUAM CODE  
ANNOTATED, RELATIVE TO WOMEN'S INFORMED  
CONSENT FOR ABORTION; AND TO CITE THE ACT  
AS "*THE WOMEN'S REPRODUCTIVE HEALTH  
INFORMATION ACT OF 2012.*"**

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

2           **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds  
3 that it is essential to the psychological and physical well-being of a woman  
4 considering an abortion that she receives complete and accurate information  
5 material to her decision of whether to undergo an abortion including information  
6 concerning abortion alternatives. *I Liheslaturan Guåhan* further finds that every  
7 woman submitting to an abortion should do so only after giving her voluntary and  
8 informed consent in writing to the abortion procedure.

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

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8 informed consent in writing to the abortion procedure.

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

1           “§ 3218.1. The Women's Reproductive Health Information Act of  
2 2012.

3           (a) **Definitions.** For the purposes of this § 3218.1, the following words  
4 and phrases are defined to mean:

5           (1) *Abortion* means the use or prescription of any instrument,  
6 medicine, drug, or other substance or device to terminate the pregnancy of a  
7 woman known to be pregnant with an intention other than to increase the  
8 probability of a live birth, to preserve the life or health of the child after live  
9 birth, to act upon an ectopic pregnancy, or to remove a dead unborn child  
10 who died as the result of natural causes *in utero*, accidental trauma, or a  
11 criminal assault on a pregnant woman or her unborn child, and which causes  
12 the premature termination of the pregnancy;

13           (2) *Act* means the Women's Reproductive Health Information Act  
14 of 2012 codified at Title 10 GCA § 3218.1;

15           (3) *Complication* means that condition which includes but is not  
16 limited to hemorrhage, infection, uterine perforation, cervical laceration,  
17 pelvic inflammatory disease, endometriosis, and retained products. The  
18 Department may further define the term “complication” as necessary and in  
19 a manner not inconsistent with this § 3218.1;

20           (4) *Conception* means the fusion of a human spermatozoon with a  
21 human ovum;

22           (5) *Department* means the Department of Public Health and Social  
23 Services;

24           (6) *Facility or medical facility* means any public or private hospital,  
25 clinic, center, medical school, medical training institution, health care  
26 facility, physician’s office, infirmary, dispensary, ambulatory surgical

1 treatment center, or other institution or location wherein medical care is  
2 provided to any person;

3 (7) *First trimester* means the first twelve (12) weeks of gestation;

4 (8) *Gestational age* means the time that has elapsed since the first  
5 day of the woman's last occurring menstruation;

6 (9) *Hospital* means any building, structure, institution or place,  
7 public or private, whether organized for profit or not, devoted primarily to  
8 the maintenance and operation of facilities for the diagnosis, treatment and  
9 provision of medical or surgical care for three (3) or more non-related  
10 individuals, admitted for overnight stay or longer in order to obtain medical,  
11 including obstetric, psychiatric and nursing care of illness, disease, injury or  
12 deformity, whether physical or mental and regularly making available at  
13 least clinical laboratory services and diagnostic x-ray services and treatment  
14 facilities for surgery or obstetrical care or other definitive medical treatment;

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

23 (11) *Physician* means any person licensed to practice medicine or  
24 surgery or osteopathic medicine under the Physicians Practice Act (Title 10  
25 GCA § 12201, *et seq.*) or in another jurisdiction of the United States;

26 (12) *Pregnant* or *pregnancy* means that female reproductive  
27 condition of having an unborn child in the mother's uterus;

1 (13) *Qualified person* means an agent of a physician who is a  
2 psychologist, licensed social worker, licensed professional counselor,  
3 registered nurse, or physician;

4 (14) *Records Section* means the Guam Memorial Hospital Medical  
5 Records Section;

6 (15) *Unborn child* or *fetus* each means an individual organism of the  
7 species *homo sapiens* from conception until live birth;

8 (16) *Viability* means the state of fetal development when, in the  
9 reasonable judgment of a physician based on the particular facts of the case  
10 before him or her and in light of the most advanced medical technology and  
11 information available to him or her, there is a reasonable likelihood of  
12 sustained survival of the unborn child outside the body of his or her mother,  
13 with or without artificial support; and

14 (17) *Woman* means a female human being whether or not she has  
15 reached the age of majority.

16 (b) **Informed Consent Requirement.** No abortion shall be performed or  
17 induced without the voluntary and informed consent of the woman upon whom the  
18 abortion is to be performed or induced. Except in the case of a medical  
19 emergency, consent to an abortion is voluntary and informed if and only if:

20 (1) at least twenty-four (24) hours before the abortion, the  
21 physician who is to perform the abortion or a qualified person has informed  
22 the woman in person of the following:

23 (i) the name of the physician who will perform the abortion;

24 (ii) the following medically accurate information that a  
25 reasonable person would consider material to the decision of whether  
26 or not to undergo the abortion: (a) a description of the proposed  
27 abortion method and (b) the immediate and long-term medical risks

1 associated with the proposed abortion method, including but not  
2 limited to any risks of infection, hemorrhage, cervical or uterine  
3 perforation, and any potential effect upon future capability to conceive  
4 as well as to sustain a pregnancy to full term;

5 (iii) the probable gestational age of the unborn child at the  
6 time the abortion is to be performed;

7 (iv) the probable anatomical and physiological characteristics  
8 of the unborn child at the time the abortion is to be performed;

9 (v) the medical risks associated with carrying the child to  
10 term;

11 (vi) any need for anti-Rh immune globulin therapy if she is  
12 Rh negative, the likely consequences of refusing such therapy, and the  
13 cost of the therapy;

14 (2) at least twenty-four (24) hours before the abortion, the  
15 physician who is to perform the abortion or a qualified person has informed  
16 the woman in person, that:

17 (i) medical assistance benefits may be available for prenatal  
18 care, childbirth, and neonatal care and that more detailed information  
19 on the availability of such assistance is contained in the printed  
20 materials given to her and described in Subsection (c) of this §  
21 3218.1;

22 (ii) public assistance may be available to provide medical  
23 insurance and other support for her child while he or she is a  
24 dependent and that more detailed information on the availability of  
25 such assistance is contained in the printed materials given to her and  
26 described in Subsection (c) of this § 3218.1;

1 (iii) public services exist which will help to facilitate the  
2 adoption of her child and that more detailed information on the  
3 availability of such services is contained in the printed materials given  
4 to her and described in Subsection (c) of this § 3218.1;

5 (iv) the printed materials in Subsection (c) of this Section  
6 3218.1 describe the unborn child;

7 (v) the father of the unborn child is liable to assist in the  
8 support of this child, even in instances where he has offered to pay for  
9 the abortion. In the case of rape or incest, this information may be  
10 omitted; and

11 (vi) she is free to withhold or withdraw her consent to the  
12 abortion at any time without affecting her right to future care or  
13 treatment and without the loss of any locally or federally funded  
14 benefits to which she might otherwise be entitled.

15 (3) At least twenty-four (24) hours before the abortion, the  
16 physician who is to perform the abortion or a qualified person has given the  
17 woman a copy of the printed materials described in Subsection (c) of this §  
18 3218.1. If the woman is unable to read the materials, they shall be read to  
19 her. If the woman asks questions concerning any of the information or  
20 materials, answers shall be provided to her in a language she can understand.

21 (4) The information in Subsections (b)(1), (b)(2) and (b)(3) of this §  
22 3218.1 is provided to the woman individually and in a private room to  
23 protect her privacy and maintain the confidentiality of her decision and to  
24 ensure that the information focuses on her individual circumstances and that  
25 she has an adequate opportunity to ask questions.

26 (5) Prior to the abortion, the woman certifies in writing on a  
27 checklist certification provided by the Department that the information



1 required to be provided under Subsections (b)(1), (b)(2) and (b)(3) of this §  
2 3218.1 has been provided. All physicians who perform abortions shall report  
3 the total number of certifications received monthly to the Records Section.  
4 The Records Section shall make the number of certifications received  
5 available to the public on an annual basis.

6 (6) Except in the case of a medical emergency, the physician who  
7 is to perform the abortion shall receive and sign a copy of the written  
8 checklist certification prescribed in Subsection (b)(5) of this § 3218.1 prior  
9 to performing the abortion. The physician shall retain a copy of the  
10 checklist certification in the woman's medical record.

11 (7) In the event of a medical emergency requiring an immediate  
12 termination of the pregnancy, the physician who performed the abortion  
13 shall clearly certify in writing the nature of the medical emergency and the  
14 circumstances which necessitated the waiving of the informed consent  
15 requirements of this § 3218.1. This certification shall be signed by the  
16 physician who performed the emergency termination of pregnancy, and shall  
17 be permanently filed in both the patient records maintained by the physician  
18 performing the emergency procedure and the records maintained by the  
19 facility where the emergency procedure occurred.

20 (8) A physician shall not require or obtain payment from anyone  
21 for providing the information and certification required by this § 3218.1  
22 until the expiration of the twenty-four (24) hour reflection period required by  
23 this § 3218.1.

24 (c) **Publication of Materials.** The Department shall cause to be  
25 published printed materials in English and any other culturally sensitive languages  
26 which the Department deems appropriate within one hundred eighty (180) days  
27 after this Act becomes law. The printed materials shall be printed in a typeface

1 large enough to be clearly legible and shall be presented in an objective, unbiased  
2 manner designed to convey only accurate scientific information. On an annual  
3 basis, the Department shall review and update, if necessary, the following easily  
4 comprehensible printed materials:

5 (1) Printed materials that inform the woman of any entities  
6 available to assist a woman through pregnancy, upon childbirth and while  
7 her child is dependent, including but not limited to adoption services.

8 The printed materials shall include a list of the entities, a description  
9 of the services they offer, and the telephone numbers of the entities, and  
10 shall inform the woman about available medical assistance benefits for  
11 prenatal care, childbirth, and neonatal care. The Department shall ensure  
12 that the materials described in this § 3218.1 are comprehensive and do not  
13 directly or indirectly promote, exclude, or discourage the use of any entity  
14 described in this § 3218.1.

15 These printed materials shall state that it is unlawful for any  
16 individual to coerce a woman to undergo an abortion. The printed materials  
17 shall also state that any physician who performs an abortion upon a woman  
18 without her informed consent may be liable to her for damages in a civil  
19 action and that the law permits adoptive parents to pay costs of prenatal care,  
20 childbirth, and neonatal care. The printed materials shall include the  
21 following statement:

22 “The Territory of Guam strongly urges you to contact the resources  
23 provided in this booklet before making a final decision about abortion. The  
24 law requires that your physician or his or her agent give you the opportunity  
25 to call agencies and service providers like these before you undergo an  
26 abortion.”

1           (2) Printed materials that include information on the support  
2 obligations of the father of a child who is born alive, including but not  
3 limited to the father's legal duty to support his child, which may include  
4 child support payments and health insurance, and the fact that paternity may  
5 be established by written declaration of paternity or by court action. The  
6 printed material shall also state that more information concerning paternity  
7 establishment and child support services and enforcement may be obtained  
8 by calling the Office of the Attorney General of Guam, Child Support  
9 Enforcement Division.

10           (3) Printed materials that inform the pregnant woman of the  
11 probable anatomical and physiological characteristics of an unborn child at  
12 two (2)-week gestational increments from fertilization to full term, including  
13 color photographs of the developing unborn child at two (2)-week  
14 gestational increments. The descriptions shall include information about  
15 brain and heart functions, the presence of external members and internal  
16 organs during the applicable stages of development, and any relevant  
17 information on the possibility of the child's survival at several and  
18 equidistant increments throughout a full term pregnancy. If a photograph is  
19 not available, a picture must contain the dimensions of the unborn child and  
20 must be anatomically accurate and realistic. The materials shall be  
21 objective, nonjudgmental, and designed to convey only accurate scientific  
22 information about the unborn child at the various gestational ages.

23           (4) Printed materials which contain objective information  
24 describing the various surgical and drug-induced methods of abortion, as  
25 well as the immediate and long-term medical risks commonly associated  
26 with each abortion method including but not limited to the risks of infection,  
27 hemorrhage, cervical or uterine perforation or rupture, any potential effect

1 upon future capability to conceive as well as to sustain a pregnancy to full  
2 term, the possible adverse psychological effects associated with an abortion,  
3 and the medical risks associated with carrying a child to term.

4 (5) A checklist certification to be used by the physician or a  
5 qualified person under Subsection (b)(5) of this § 3218.1, which will list all  
6 the items of information which are to be given to the woman by the  
7 physician or a qualified person under this § 3218.1.

8 **(d) Cost of Materials.** The Department shall make available the  
9 materials enumerated in Subsection (c) of this § 3218.1 for purchase by the  
10 physician or qualified person who is required to provide these materials to women  
11 pursuant to Subsection (b)(3) of this § 3218.1 at such cost as reasonably  
12 determined by the Department. No claim of inability to pay the cost charged by  
13 the Department for these materials will excuse any party from complying with the  
14 requirements set forth in this § 3218.1.

15 **(e) Emergencies.** When a medical emergency compels the performance  
16 of an abortion or termination of pregnancy, the physician shall inform the woman,  
17 before the abortion if possible, of the medical indications supporting the  
18 physician's judgment that an immediate abortion or termination of pregnancy is  
19 necessary to avert her death or that a twenty-four (24) hour delay would cause  
20 substantial and irreversible impairment of a major bodily function.

21 **(f) Criminal Penalties.** Any person who intentionally, knowingly, or  
22 recklessly violates this Act is guilty of a misdemeanor.

23 **(g) Civil and Administrative Claims.** In addition to whatever remedies  
24 are available under the common law or statutory laws of Guam, failure to comply  
25 with the requirements of this Act shall:

26 (1) in the case of an intentional violation of the Act, constitute  
27 *prima facie* evidence of a failure to obtain informed consent. When

1 requested, the court shall allow a woman upon whom an abortion was  
2 performed or attempted to be performed allegedly in violation of this Act to  
3 be identified in any action brought pursuant to this Act using solely her  
4 initials or the pseudonym “Jane Doe.” Further, with or without a request,  
5 the court may close any proceedings in the case from public attendance, and  
6 the court may enter other protective orders in its discretion to preserve the  
7 privacy of the woman upon whom the abortion was performed or attempted  
8 to be performed allegedly in violation of this Act.

9 (2) Provide a basis for professional disciplinary action under 10  
10 GCA § 11110.

11 (3) Provide a basis for recovery for the woman for the wrongful  
12 death of her unborn child under Title 7 GCA § 12109, whether or not the  
13 unborn child was born alive or was viable at the time the abortion was  
14 performed.

15 **Section 3. Severability.** 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 to 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 here from and *shall* not affect the remainder hereof *or*  
20 the application of such provision to other persons *not* similarly situated *or* to other  
21 dissimilar circumstances.

22 **Section 4. Effective Date.** This Act *shall* take effect sixty (60) days after  
23 the “printed materials” described in proposed § 3218.1(c) and the “checklist  
24 certification” described in proposed § 3218.1(c)(5) have been approved by the  
25 Department and, pursuant to its rule making process set forth in Title 5, Chapter 9,  
26 Article 3 of the Guam Code Annotated.