

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 54 (COR)

Introduced by:

E. J.B. Calvo *EJC*
T. R. Muña-Barnes *TMB*
F. F. Blas, Jr. *F. F. Blas, Jr.*

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AN ACT TO ADD NEW SECTION 3218.1 TO CHAPTER 3
ARTICLE 2 TITLE 10 OF THE GUAM CODE ANNOTATED,
RELATIVE TO THE WOMAN'S INFORMED CONSENT
FOR ABORTION AND TO CITE THE ACT AS "THE
WOMAN'S REPRODUCTIVE HEALTH INFORMATION ACT
OF 2009."

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. **Legislative Findings and Intent.** *I Liheslatura* finds that it is essential to
3 the psychological and physical well-being of a woman considering an abortion that she
4 receives complete and accurate information material to her decision of whether or not to
5 undergo an abortion and abortion alternatives, and that every woman submitting to an
6 abortion do so only after giving her voluntary and informed consent in writing to the
7 abortion procedure.

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

10 "Section 3218.1. **The Woman's Reproductive Health Information Act of**
11 **2009. (a) Definitions.** For purposes of this Act, the following words and
12 phrases are defined to mean:

13 1. "**Abortion**" means the act of using or prescribing any
14 instrument, medicine, drug, or any other substance, device, or means with the
15 intent to terminate the clinically diagnosable pregnancy of a woman with
16 knowledge that the termination by those means will with reasonable
17 likelihood cause the death to the unborn child. Such use, prescription, or
18 means is not an abortion if done with the intent to:

- 19 (i) save the life or preserve the health of an unborn child;
20 (ii) remove a dead unborn child caused by spontaneous
21 abortion; or
22 (iii) remove an ectopic pregnancy.

1 2. "**Complication**" means that condition which includes but is not
2 limited to hemorrhage, infection, uterine perforation, cervical laceration,
3 pelvic inflammatory disease, endometritis, and retained products. The
4 Department may further define "complication."

5 3. "**Conception**" means the fusion of a human spermatozoon with
6 a human ovum.

7 4. "**Department**" means the Department of Public Health and
8 Social Services Records Section.

9 5. "**Facility**" or "**medical facility**" means any public or private
10 hospital, clinic, center, medical school, medical training institution, health
11 care facility, physician's office, infirmary, dispensary, ambulatory surgical
12 treatment center, or other institution or location wherein medical care is
13 provided to any person.

14 6. "**First trimester**" means the first twelve (12) weeks of gestation.

15 7. "**Gestational age**" means the time that has elapsed since the first
16 day of the woman's last menstrual period.

17 8. "**Hospital**" means an institution licensed pursuant to the
18 provisions of the law of Guam

19 9. "**Medical emergency**" means that condition which, on the basis
20 of the physician's good faith clinical judgment, so complicates the medical
21 condition of a pregnant woman as to necessitate the immediate termination of
22 her pregnancy to avert her death or for which a delay will create serious risk
23 of substantial and irreversible impairment of a major bodily function.

24 10. "**Physician**" means any person licensed to practice healing arts,
25 pursuant to the laws of Guam. The term includes medical doctors and doctors
26 of osteopathy.

27 11. "**Pregnant**" or "**pregnancy**" means that female reproductive
28 condition of having an unborn child in the mother's uterus.

29 12. "**Qualified person**" means an agent of the physician who is a
30 psychologist, licensed social worker, licensed professional counselor,
31 registered nurse, or physician.

32 13. "**Unborn child**" means the offspring of human beings from
33 conception until birth.

34 14. "**Viability**" means the state of fetal development when, in the
35 judgment of the physician based on the particular facts of the case before him
36 or her and in light of the most advanced medical technology and information
37 available to him or her, there is a reasonable likelihood of sustained survival
38 of the unborn child outside the body of his or her mother, with or without
39 artificial support.

1 **(b) Informed consent requirement.** No abortion shall be performed or
2 induced without the voluntary and informed consent of the woman upon whom the
3 abortion is to be performed or induced. Except in the case of a medical emergency,
4 consent to an abortion is voluntary and informed if and only if:

5 1. At least twenty-four (24) hours before the abortion, the
6 physician who is to perform the abortion or the referring physician has
7 informed the woman in person of the following:

8 (i) The name of the physician who will perform the
9 abortion;

10 (ii) Medically accurate information that a reasonable patient
11 would consider material to the decision of whether or not to undergo
12 the abortion, including (a) a description of the proposed abortion
13 method; (b) the immediate and long-term medical risks associated
14 with the proposed abortion method including, but not limited to, the
15 risks of infection, hemorrhage, cervical or uterine perforation, danger
16 to subsequent pregnancies; and (c) alternatives to the abortion;

17 (iii) The probable gestational age of the unborn child at the
18 time the abortion is to be performed;

19 (iv) The probable anatomical and physiological
20 characteristics of the unborn child at the time the abortion is to be
21 performed;

22 (v) The medical risks associated with carrying the child to
23 term; and

24 (vi) Any need for anti-Rh immune globulin therapy if she is
25 Rh negative, the likely consequences of refusing such therapy, and the
26 cost of the therapy.

27 2. At least twenty-four (24) hours before the abortion, the
28 physician who is to perform the abortion, the referring physician, or a
29 qualified person has informed the woman in person, that:

30 (i) Medical assistance benefits may be available for prenatal
31 care, childbirth, and neonatal care and that more detailed information
32 on the availability of such assistance is contained in the printed
33 materials and informational video given to her and described in
34 Subsection (c).

35 (ii) The printed materials and informational video in
36 Subsection (c) describe the unborn child and list agencies that offer
37 alternatives to abortion.

38 (iii) The father of the unborn child is liable to assist in the
39 support of this child, even in instances where he has offered to pay for

1 the abortion. In the case of rape or incest, this information may be
2 omitted.

3 (iv) She is free to withhold or withdraw her consent to the
4 abortion at any time without affecting her right to future care or
5 treatment and without the loss of any state or federally funded benefits
6 to which she might otherwise be entitled.

7 3. The information in Subsection B(1) and (2) is provided to the
8 woman individually and in a private room to protect her privacy and
9 maintain the confidentiality of her decision to ensure that the information
10 focuses on her individual circumstances and that she has an adequate
11 opportunity to ask questions.

12 4. At least twenty-four (24) hours before the abortion, the woman
13 is given a copy of the printed materials and a viewing of, or a copy of, the
14 informational video described in Subsection (c). If the woman is unable to
15 read the materials, they shall be read to her. If the woman asks questions
16 concerning any of the information or materials, answers shall be provided to
17 her in a language she can understand.

18 5. Prior to the abortion, the woman certifies in writing on a
19 checklist form provided or approved by the Department that the information
20 required to be provided under Subsection (b) (1), (2), and (4) has been
21 provided. All physicians who perform abortions shall report the total number
22 of certifications received monthly to the Department. The department shall
23 make the number of certifications received available to the public on an
24 annual basis.

25 6. Except in the case of a medical emergency, the physician who is
26 to perform the abortion shall receive and sign a copy of the written
27 certification prescribed in Subsection (5) of this Section prior to performing
28 the abortion. The physician shall retain a copy of the checklist certification
29 form in the woman's medical record.

30 7. In the event of a medical emergency requiring an immediate
31 termination of pregnancy, the physician who performed the abortion shall
32 clearly certify in writing the nature of the medical emergency and the
33 circumstances which necessitated the waiving of the informed consent
34 requirements of this section. This certification shall be signed by the physician
35 who performed the emergency abortion, and shall be permanently filed in
36 both the records of the physician performing the abortion and the records of
37 the facility where the abortion takes place.

38 8. A physician shall not require or obtain payment for a service
39 provided to a patient who has inquired about an abortion or scheduled an

1 abortion until the expiration of the twenty-four (24) hour reflection period
2 required in Subsection (b) (1), (2) and (4).

3 **(c) Publication of Materials.** **The Department of Public Health and**
4 **Social Services** shall cause to be published printed materials and an informational
5 video in **culturally sensitive languages** within 180 days after this Act becomes law.
6 On an annual basis, the Department shall review and update, if necessary, the
7 following easily comprehensible printed materials and informational video:

8 1. Materials that inform the woman of public and private agencies
9 and services available to assist a woman through pregnancy, upon childbirth
10 and while her child is dependent, including but not limited to adoption
11 services.

12 2. The materials shall include a comprehensive list of the agencies,
13 a description of the services they offer, and the telephone numbers and
14 addresses of the agencies, and shall inform the woman about available
15 medical assistance benefits for prenatal care, childbirth, and neonatal care.
16 The Department shall ensure that the materials described in this section are
17 comprehensive and do not directly or indirectly promote, exclude, or
18 discourage the use of any agency or service described in this section. The
19 materials shall also contain a twenty-four-hour-a-day telephone number
20 which may be called to obtain information about the agencies in the locality
21 of the caller and of the services they offer.

22 The materials shall state that it is unlawful for any individual to coerce
23 a woman to undergo an abortion and that if a minor is denied financial
24 support by the minor's parents, guardian, or custodian due to the minor's
25 refusal to have an abortion performed, the minor shall be deemed
26 emancipated for the purposes of eligibility for public assistance benefits,
27 except that such benefits may not be used to obtain an abortion. The materials
28 shall also state that any physician who performs an abortion upon a woman
29 without her informed consent may be liable to her for damages in a civil
30 action at law and that the law permits adoptive parents to pay costs of
31 prenatal care, childbirth, and neonatal care. The materials shall include the
32 following statement:

33 "There are public and private services willing and able to help you to
34 carry your child to term, and to assist you and your child after your child is
35 born, whether you choose to keep your child or to place her or him for
36 adoption. The Territory of Guam strongly urges you to contact one or more of
37 the agencies before making a final decision about abortion. The law required
38 that your physician or his agent give you the opportunity to call agencies like
39 these before you undergo an abortion."

1 3. Materials that include information on the support obligations of
2 the father of a child who is born alive, including but not limited to the father's
3 legal duty to support his child, which may include child support payments
4 and health insurance, and the fact that paternity may be established by the
5 father's signature on a birth certificate or statement of paternity, or by court
6 action. The printed material shall also state that more information concerning
7 paternity establishment and child support services and enforcement may be
8 obtained by calling the Department of Public Health and Social Services
9 Public Assistance Branch.

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

22 5. Materials which contain objective information describing the
23 various surgical and drug-induced methods of abortion, as well as the
24 immediate and long-term medical risks commonly associated with each
25 abortion method including, but not limited to, the risks of infection,
26 hemorrhage, cervical or uterine perforation or rupture, danger to subsequent
27 pregnancies, the possible adverse psychological effects associated with an
28 abortion, and the medical risks associated with carrying a child to term.

29 6. A checklist certification form to be used by the physician or a
30 qualified person under Subsection (b) (5) of this Act, which will list all the
31 items of information which are to be given to the woman by a physician or
32 the agent under this Act.

33 7. The materials shall be printed in a typeface large enough to be
34 clearly legible.

35 8. The Department shall produce a standardized video that may
36 be used island wide, presenting the information described in subsection (c)
37 (I), (2), (3), and (4), in accordance with the requirements of those Subsections.
38 In preparing the video, the Department may summarize and make reference
39 to the printed comprehensive list of geographically indexed names and
40 services described in Subsection (c) (1). The video shall in addition to the

1 information described in Subsection c) (1), (2), (3), and (4), show an
2 ultrasound of the heartbeat of an unborn child at four (4) to five (5) weeks
3 gestational age to six (6) to eight (8)-weeks gestational age, and each month
4 thereafter, until viability. That information shall be presented in an objective,
5 unbiased manner designed to convey only accurate scientific information.

6 9. The materials required under this section and the video
7 described in Subsection(c) (8) shall be available at no cost from the
8 Department upon request and in appropriate number to any person, facility,
9 or hospital.

10 **(d) Emergencies.** When a medical emergency compels the performance of
11 an abortion, the physician shall inform the woman, before the abortion if possible, of
12 the medical indications supporting the physician's judgment that an immediate
13 abortion is necessary to avert her death or that a twenty-four (24) hour delay will
14 cause substantial and irreversible impairment of a major bodily function.

15 **(e) Criminal Penalties.** Any person who intentionally, knowingly, or
16 recklessly violates this Act is guilty of a **misdemeanor**.

17 **(f)** In addition to whatever remedies are available under the common or
18 statutory laws of Guam, failure to comply with the requirements of this Act shall:

19 1. Provide a basis for a civil malpractice action. Any intentional
20 violation of this Act shall be admissible in a civil suit as prima facie evidence
21 of a failure to obtain informed consent. When requested, the court shall allow
22 a woman to proceed using solely her initials or a pseudonym and may close
23 any proceedings in the case and enter other protective orders to preserve the
24 privacy of the woman upon whom the abortion was performed.

25 2. Provide a basis for professional disciplinary action under
26 Section 11110 of Chapter 11 of Title 10 Guam Code Annotated.

27 3. Provide a basis for recovery for the woman for the wrongful
28 death of her unborn child under Section 12109 of Chapter 12 of Title 7 Guam
29 Code Annotated, whether or not the unborn child was born alive or was
30 viable at the time the abortion was performed."

31 **Section 3. Severability.** If any provision of this Act held to be invalid *or*
32 unenforceable by its terms, *or* as applied to any person or circumstance, *shall* be construed
33 so as give it the maximum effect permitted by law unless such holding shall be one of utter
34 invalidity or unenforceability, in which even such provision *shall* be deemed severable
35 herefrom and *shall* not affect the remainder hereof *or* the application of such provision to
36 other persons *not* similarly situated *or* to other, dissimilar circumstances.

37 **Section 4. Effective Date.** This Act *shall* take effect 180 days after enactment.