

I MINA'TRENTAI SIETTE NA LIHESLATURAN GUÅHAN
2023 (FIRST) Regular Session

Bill No. 162-37 (LS)

Introduced by:

William A. Parkinson
Thomas J. Fisher



**AN ACT TO *AMEND* §3218.1 OF CHAPTER 3,
ARTICLE 2, TITLE 10, GUAM CODE
ANNOTATED AND *REPEALING* RELATIVE TO
UPDATING THE WOMEN'S REPRODUCTIVE
HEALTH ACT OF 2012.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

1 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
2 that abortion in Guam is legal, and it is the duty of *I Liheslaturan* to recognize our
3 responsibility to uphold the rights and well-being of the people of Guam. In pursuit
4 of a just and equitable society, *I Liheslaturan* seeks to address the sensitive issue of
5 abortion, taking into account the diverse perspectives and experiences of our
6 constituents. Through this legislative intent, we aim to update the legal framework
7 for the availability of safe and accessible abortion services in Guam while
8 safeguarding individual rights, promoting public health, and respecting the principle
9 of personal autonomy.

10 It is the goal of *I Liheslaturan* to uphold the constitutional right to privacy and
11 ensure the freedom of choice regarding reproductive health for individuals in Guam.

1 It is essential to recognize that women and pregnant individuals have the right to
2 make informed decisions about their own bodies, including the option to terminate
3 a pregnancy.

4 *I Liheslaturan* acknowledges that access to safe and legal abortion services is
5 crucial to protecting the health and safety of women and pregnant individuals in
6 Guam. By updating the island's abortion laws, *I Liheslaturan* aims to eliminate the
7 risks posed by unsafe, clandestine procedures and provide a regulated environment
8 with qualified medical professionals. *I Liheslaturan* seeks to minimize maternal
9 mortality rates and complications associated with illegal and unsafe abortion
10 practices.

11 *I Liheslaturan* further finds that by recognizing the unique cultural and socio-
12 economic diversity of Guam's population, we must address health disparities that
13 disproportionately affect certain communities in accessing reproductive healthcare.
14 By updating Guam's abortion laws, *I Liheslaturan* aims to ensure equal access to
15 reproductive healthcare services, regardless of economic status, ethnicity, or
16 geographical location.

17 *I Liheslaturan* also finds that updating the island's abortion laws is not an
18 endorsement of the procedure itself but an acknowledgment that it is a deeply
19 personal and complex choice. Through comprehensive sex education and accessible
20 contraceptive methods, we aim to empower individuals to make informed decisions

1 about their reproductive health, reducing the number of unintended pregnancies and
2 abortions.

3 While *I Liheslaturan* recognizes the diversity of religious and moral beliefs
4 on the issue of abortion, this legislation aims to strike a balance by protecting the
5 rights of individuals to make their own choices based on their personal beliefs and
6 values. We aim to respect and safeguard the right of religious freedom while also
7 preserving the principle of secular governance.

8 Finally, *I Liheslaturan* finds that by providing a clear legal framework, we
9 aim to offer guidance to healthcare providers and ensure consistent and
10 compassionate care for individuals seeking abortion services. *I Liheslaturan* seeks
11 to avoid ambiguity in the law and provide a stable foundation for the effective
12 implementation of reproductive healthcare policies.

13 The updating of outdate abortion laws in Guam is a significant step towards
14 upholding individual rights, protecting public health, and fostering a compassionate
15 society. Through this legislative intent, we aim to create an environment where
16 access to safe and legal abortion is available to those who seek it, while respecting
17 the diverse values and perspectives of our community.

18 **Section 2.** Subsection (b)(1) of §3218.1, Title 10, Chapter 3, Article 2 of
19 Guam Code Annotated is hereby *amended* to read:

20 (1) ~~at least twenty-four (24) hours before the abortion,~~ ¶The physician who is

1 to perform the abortion or a qualified person has informed the woman in person or
2 through a virtual medical consultation of the following:

3 (A) the name of the physician who will perform the abortion;

4 (B) the following medically accurate information that a reasonable
5 person would consider material to the decision of whether or not to
6 undergo the abortion:

7 (i) a description of the proposed abortion method and

8 (ii) the immediate and long-term medical risks associated with
9 the proposed abortion method, including but not limited to any
10 risks of infection, hemorrhage, cervical or uterine perforation,
11 and any potential effect upon future capability to conceive as
12 well as to sustain a pregnancy to full term;

13 ~~(C) the probable gestational age of the unborn child at the time the~~
14 ~~abortion is to be performed;~~

15 ~~(D) the probable anatomical and physiological characteristics of the~~
16 ~~unborn child at the time the abortion is to be performed;~~

17 ~~(E)~~ (C) the medical risks associated with carrying the child to term;

18 ~~(F)~~ (D) any need for anti-Rh immune globulin therapy if she is Rh
19 negative, the likely consequences of refusing such therapy, and the cost
20 of the therapy;

1 **Section 3.** Subsection (b)(2) of §3218.1, Title 10, Chapter 3, Article 2 of
2 Guam Code Annotated is hereby *repealed*:

3 ~~(2) at least twenty four (24) hours before the abortion, the physician who is to~~
4 ~~perform the abortion or a qualified person has informed the woman in person~~
5 ~~or through a virtual medical consultation, that:~~

6 ~~(A) medical assistance benefits may be available for prenatal care,~~
7 ~~childbirth, and neonatal care and that more detailed information on~~
8 ~~the availability of such assistance is contained in the printed materials~~
9 ~~given to her and described in Subsection (c) of this § 3218.1;~~

10 ~~(B) public assistance may be available to provide medical insurance and~~
11 ~~other support for her child while he or she is a dependent and that more~~
12 ~~detailed information on the availability of such assistance is contained~~
13 ~~in the printed materials given to her and described in Subsection (c) of~~
14 ~~this § 3218.1;~~

15 ~~(C) public services exist which will help to facilitate the adoption of her~~
16 ~~child and that more detailed information on the availability of such~~
17 ~~services is contained in the printed materials given to her and described~~
18 ~~in Subsection (c) of this § 3218.1;~~

19 ~~(D) the printed materials in Subsection (c) of this Section 3218.1~~
20 ~~describe the unborn child;~~

1 ~~(E) the father of the unborn child is liable to assist in the support of this~~
2 ~~child, even in instances where he has offered to pay for the abortion. In~~
3 ~~the case of rape or incest, this information may be omitted; and~~
4 ~~(F) she is free to withhold or withdraw her consent to the abortion at~~
5 ~~any time without affecting her right to future care or treatment and~~
6 ~~without the loss of any locally or federally funded benefits to which she~~
7 ~~might otherwise be entitled.~~

8 **Section 4.** Subsection (b)(3) of §3218.1, Title 10, Chapter 3, Article 2 of
9 Guam Code Annotated is hereby *repealed*:

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

16 **Section 5.** Subsection (b)(4) of §3218.1, Title 10, Chapter 3, Article 2 of
17 Guam Code Annotated is hereby *amended* to read:

18 (4) The information in Subsections (b)(1), ~~(b)(2)~~ and ~~(b)(3)~~ of this § 3218.1 is
19 provided to the woman individually and ~~in a private room~~ to protect her
20 privacy and maintain the confidentiality of her decision and to ensure that the

1 information focuses on her individual circumstances and that she has an
2 adequate opportunity to ask questions.

3 **Section 6.** The entirety of Subsections (b)(5), (b)(6), (b)(7), and (b)(8) of
4 §3218.1, Title 10, Chapter 3, Article 2 of Guam Code Annotated are hereby
5 *repealed*:

6 ~~(5) Prior to the abortion, the woman certifies in writing on a checklist
7 certification provided by the Department that the information required to be
8 provided under Subsections (b)(1), (b)(2) and (b)(3) of this § 3218.1 has been
9 provided. All physicians who perform abortions shall report the total number
10 of certifications received monthly to the Records Section. The Records
11 Section shall make the number of certifications received available to the
12 public on an annual basis.~~

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

18 ~~(7) In the event of a medical emergency requiring an immediate
19 termination of the pregnancy, the physician who performed the abortion shall
20 clearly certify in writing the nature of the medical emergency and the~~

1 ~~circumstances which necessitated the waiving of the informed consent~~
2 ~~requirements of this § 3218.1. This certification shall be signed by the~~
3 ~~physician who performed the emergency termination of pregnancy, and shall~~
4 ~~be permanently filed in both the patient records maintained by the physician~~
5 ~~performing the emergency procedure and the records maintained by the~~
6 ~~facility where the emergency procedure occurred.~~

7 ~~(8) A physician shall not require or obtain payment from anyone for~~
8 ~~providing the information and certification required by this § 3218.1 until the~~
9 ~~expiration of the twenty four (24) hour reflection period required by this §~~
10 ~~3218.1.~~

11 **Section 7.** The entirety of Subsections (c), (d), (e), (f), and (g) of §3218.1,
12 Title 10, Chapter 3, Article 2 of Guam Code Annotated are hereby *repealed*:

13 ~~(c) — Publication of Materials. The Department shall cause to be published~~
14 ~~printed materials in English and any other culturally sensitive languages which the~~
15 ~~Department deems appropriate within one hundred eighty (180) days after this Act~~
16 ~~becomes law. The printed materials shall be printed in a typeface large enough to be~~
17 ~~clearly legible and shall be presented in an objective, unbiased manner designed to~~
18 ~~convey only accurate scientific information. On an annual basis, the Department~~
19 ~~shall review and update, if necessary, the following easily comprehensible printed~~
20 ~~materials:~~

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

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

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

17 ~~“The Territory of Guam strongly urges you to contact the~~
18 ~~resources provided in this booklet before making a final~~
19 ~~decision about abortion. The law requires that your physician or~~
20 ~~his or her agent give you the opportunity to call agencies and~~

1 ~~service providers like these before you undergo an abortion.”~~

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

10 ~~(3) Printed 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 at several and equidistant increments~~
18 ~~throughout a full term pregnancy. If a photograph is not available, a picture~~
19 ~~must contain the dimensions of the unborn child and must be anatomically~~
20 ~~accurate and realistic. The materials shall be objective, nonjudgmental, and~~

1 ~~designed to convey only accurate scientific information about the unborn~~
2 ~~child at the various gestational ages.~~

3 ~~(4) Printed materials which contain objective information describing~~
4 ~~the various surgical and drug induced methods of abortion, as well as the~~
5 ~~immediate and long term medical risks commonly associated with each~~
6 ~~abortion method including but not limited to the risks of infection,~~
7 ~~hemorrhage, cervical or uterine perforation or rupture, any potential effect~~
8 ~~upon future capability to conceive as well as to sustain a pregnancy to full~~
9 ~~term, the possible adverse psychological effects associated with an abortion,~~
10 ~~and the medical risks associated with carrying a child to term.~~

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

15 ~~(d) Cost of Materials. The Department shall make available the materials~~
16 ~~enumerated in Subsection (c) of this § 3218.1 for purchase by the physician or~~
17 ~~qualified person who is required to provide these materials to women pursuant to~~
18 ~~Subsection (b)(3) of this § 3218.1 at such cost as reasonably determined by the~~
19 ~~Department. No claim of inability to pay the cost charged by the Department for~~
20 ~~these materials will excuse any party from complying with the requirements set forth~~

1 in this § 3218.1.

2 ~~(e) Emergencies. When a medical emergency compels the performance of an~~
3 ~~abortion or termination of pregnancy, the physician shall inform the woman, before~~
4 ~~the abortion if possible, of the medical indications supporting the physician's~~
5 ~~judgment that an immediate abortion or termination of pregnancy is necessary to~~
6 ~~avert her death or that a twenty four (24) hour delay would cause substantial and~~
7 ~~irreversible impairment of a major bodily function.~~

8 ~~(f) Criminal Penalties. Any person who intentionally, knowingly, or~~
9 ~~recklessly violates this Act is guilty of a misdemeanor.~~

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

13 ~~(1) in the case of an intentional violation of the Act, constitute prima~~
14 ~~facie evidence of a failure to obtain informed consent. When requested, the~~
15 ~~court shall allow a woman upon whom an abortion was performed or~~
16 ~~attempted to be performed allegedly in violation of this Act to be identified in~~
17 ~~any action brought pursuant to this Act using solely her initials or the~~
18 ~~pseudonym "Jane Doe." Further, with or without a request, the court may~~
19 ~~close any proceedings in the case from public attendance, and the court may~~
20 ~~enter other protective orders in its discretion to preserve the privacy of the~~

1 ~~woman upon whom the abortion was performed or attempted to be performed~~
2 ~~allegedly in violation of this Act.~~

3 ~~(2) Provide a basis for professional disciplinary action under 10 GCA~~
4 ~~§ 11110.~~

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

8 **Section 8. Effective Date.** This Act shall be effective upon enactment.

9 **Section 9. Severability.** If any provision of this Act or its application to
10 any person or circumstance is found to be invalid or inorganic, such invalidity
11 shall not affect other provisions or applications of this Act that can be given effect
12 without the invalid provision or application, and to this end the provisions of this
13 Act is severable.