


*I MINA'TRENTAI DOS NA LIHESLATURAN GUÁHAN*  
2013 (First) Regular Session

Bill No. 195-32(COR)

Introduced by:

FRANK B. AGUON, JR. 

**AN ACT RELATIVE TO PROTECTING INFANTS WHO ARE BORN ALIVE AS A RESULT OF AN ABORTION, THROUGH THE ESTABLISHMENT OF THE “INFANT CHILD’S RIGHT TO LIFE ACT”; THROUGH ADDING A NEW CHAPTER 91 TO TITLE 9, GUAM CODE ANNOTATED.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guahån* finds  
3 that a proposal was previously introduced in a prior legislature that would protect  
4 the life of a child who is brought into this world through the abortion process, and  
5 who upon extraction from the mother’s womb is found to still be alive. *I*  
6 *Liheslaturan Guahån* recognizes that a child in this situation who is found to be  
7 alive must be preserved and every effort be made to protect the child’s life.  
8 Therefore, it is the intent of *I Liheslaturan Guahån* to enact legislation that would  
9 require that in such cases whereupon an infant that, through an abortion process, is  
10 found to still be alive, that life must be recognized as a human being and thus must  
11 be extended the right to life.

12 **Section 2. Establishment of the “Infant Child’s Right to Life Act”.** There  
13 is hereby created a new Chapter 91 to Title 9 of the Guam Code Annotated to read  
14 as follows:  
15

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1 "CHAPTER 91

2 INFANT CHILD'S RIGHT TO LIFE ACT

3 §91.01. Title.

4 This Act may be known and cited as the "Infant Child's Right to Life Act."

5 §91.02. Legislative Findings and Purpose.

6 (a) *I Liheslaturan Guahån* finds that:

7 (1) All children, no matter their age, have the right to life. Guam  
8 has a paramount interest in protecting all human life.

9 (2) If an abortion results in the live birth of an infant, the infant is a  
10 legal person for all purposes under the laws of this Territory.

11 (3) Guam must assert its interest in protecting an infant whose live  
12 birth occurred as the result of an abortion.

13 (4) Without proper legal protection, newly-born infants who  
14 survive abortions could be denied proper life-saving or life-  
15 sustaining medical treatment and left to die.

16 (b) Accordingly, it is the purpose of this Act to ensure the protection and  
17 promotion of the health and well-being of all infants born alive in this  
18 Territory. Therefore, this Act mandates that healthcare providers give  
19 medically appropriate and reasonable life-saving and life-sustaining medical  
20 care and treatment to all born-alive infants.

21 § 91.03. Definitions.

22 For the purposes of this Act only:

23 (a) "**Abortion**" means the termination of a human pregnancy with  
24 an intention other than to produce a live birth or to remove a dead  
25 fetus.

26 (b) "**Born alive**" or "**live birth**" means the complete expulsion or  
27 extraction of an infant from his or her mother, regardless of the state

1 of gestational development, that, after expulsion or extraction,  
2 whether or not the umbilical cord has been cut or the placenta is  
3 attached, and regardless of whether the expulsion or extraction occurs  
4 as a result of natural or induced labor, cesarean section, or induced  
5 abortion, shows any evidence of life, including, but not limited to, one  
6 or more of the following:

- 7 (1) breathing;
- 8 (2) a heartbeat;
- 9 (3) umbilical cord pulsation; or
- 10 (4) definite movement of voluntary muscles.

11 (c) **"Consent"** means knowledge of and explicit or implicit  
12 agreement to or instruction to perform a violation of this Act.

13 (d) **"Facility"** or **"medical facility"** means any public or private  
14 hospital, clinic, center, medical school, medical training institution,  
15 healthcare facility, physician's office, infirmary, dispensary,  
16 ambulatory surgical treatment center, or other institution or location  
17 wherein medical care is provided to any person.

18 (e) **"Infant,"** for the purposes of this Act, and as used in this Act,  
19 means a child of the species *homo sapiens* that has been completely  
20 expelled or extracted from its mother, regardless of the stage of  
21 gestational development, until the age of thirty (30) days post birth.  
22 An "infant" is also a human being for purposes of Chapter 16 of Title  
23 9, Guam Code Annotated.

24 (f) **"Premature"** or **"preterm"** means occurring prior to the  
25 thirty-seventh (37th) week of gestation.

26 **§ 91.04. Requirements and Responsibilities.**

1 (a) A person shall not deny or deprive an infant of nourishment with the  
2 intent to cause or allow the death of the infant for any reason.

3 (b) A person shall not deprive an infant of medically appropriate and  
4 reasonable medical care and treatment or surgical care.

5 (c) The requirements of this Section shall not be construed to prevent an  
6 infant's parent(s) or guardian(s) from refusing to give consent to medical  
7 treatment or surgical care which is not medically necessary or reasonable,  
8 including care or treatment which either:

9 (1) is not necessary to save the life of the infant;

10 (2) has a potential risk to the infant's life or health that outweighs  
11 the potential benefit to the infant of the treatment or care; or

12 (3) is treatment that will do no more than prolong the act of dying  
13 when death is imminent.

14 (d) The physician performing an abortion must take all medically  
15 appropriate and reasonable steps to preserve the life and health of an infant.  
16 If an abortion performed in a hospital results in a live birth, the physician  
17 attending the abortion shall provide immediate medical care to the infant,  
18 inform the mother of the live birth, and request transfer of the infant to a  
19 resident or on-duty or emergency care physician who shall provide  
20 medically-appropriate and reasonable medical care and treatment to the  
21 infant. If an abortion performed in a facility other than a hospital results in a  
22 live birth, a physician attending the abortion shall provide immediate  
23 medical care and treatment to the infant and call 9-1-1 for an emergency  
24 transfer of the infant to a hospital that shall provide medically-appropriate  
25 and reasonable care and treatment to the infant.

26 (e) If the physician described in paragraph (d) of this Section is unable to  
27 perform the duties in that paragraph because he is assisting the woman on

1 whom the abortion was performed, then an attending physician's assistant,  
2 nurse, or other licensed healthcare provider must assume the duties outlined  
3 in that paragraph.

4 (f) Any infant including one born in the course of an abortion procedure  
5 shall be treated as a legal person under the laws of this Territory, with the  
6 same rights to medically-appropriate care and treatment, and birth and death  
7 (if death occurs) certificates shall be issued accordingly.

8 (g) If, before the abortion, the mother and the father have stated in writing  
9 that they do not wish to keep the infant in the event that the abortion results  
10 in a live birth, and this writing is not retracted before the abortion, the infant,  
11 if born alive, shall immediately upon birth become a ward of the Territory.

12 (h) No person may use any infant for any type of scientific research or  
13 other kind of experimentation except as necessary to protect or preserve the  
14 life and health of the premature born alive infant.

15 **§ 91.05. Criminal Penalties.**

16 (a) Any physician, nurse, or other licensed healthcare provider who  
17 intentionally with premeditation, or intentionally, or knowingly, or  
18 recklessly, or by criminal negligence fails to provide reasonable and  
19 medically-appropriate and reasonable care and treatment to an infant in the  
20 course of an abortion shall be guilty of a criminal homicide as defined in  
21 Chapter 16 of Title 9, Guam Code Annotated and may be punished in  
22 accordance with that Chapter. The mother will not be liable, criminally or  
23 civilly, for actions of a physician, nurse, or other licensed healthcare  
24 provider, in violation of this Act to which she did not give her consent.

25 (b) Any violation of Section 91.04, paragraph (h) of this Act concerning  
26 the research use of a born- alive infant is a felony of the first degree and

1 upon conviction may be punished in accordance with Article 2, Chapter 80  
2 of Title 9, Guam Code Annotated.

3 **§ 91.06. Civil and Administrative Action.**

4 In addition to whatever remedies are available under the common or  
5 statutory law of this Territory, failure to comply with the requirements of  
6 this Act shall:

7 (a) Provide a basis for a civil action for compensatory and punitive  
8 damages. Any conviction under this Act shall be admissible in a civil  
9 suit as *prima facie* evidence of a failure to provide medically  
10 appropriate and reasonable care and treatment to a born-alive infant.  
11 Any civil action may be based on a claim that the death of or injury to  
12 the born-alive infant was a result of simple negligence, gross  
13 negligence, wantonness, willfulness, intentional conduct, or another  
14 violation of the legal standard of care.

15 (b) Provide a basis for professional disciplinary action for the  
16 suspension or revocation of any license for physicians, licensed and  
17 registered nurses, or other licensed or regulated persons. Any  
18 conviction of any person for any failure to comply with the  
19 requirements of this Act shall result in the automatic suspension of his  
20 or her license for a period of at least one year and shall be reinstated  
21 after that time only under such conditions as shall be required to  
22 ensure compliance with this Act.

23 (c) Provide a basis for recovery for the parent(s) of the infant or the  
24 parent(s) or guardian(s) of the mother if the mother is a minor, for the  
25 wrongful death of the infant whether or not the infant was viable at  
26 the time abortion was performed.”

27 **Section 3. Construction.**

1 (a) Nothing in this Act shall be construed to affirm, deny, expand, or  
2 contract any legal status or legal right applicable to any member of the  
3 species *homo sapiens* at any point prior to being born alive, as defined in this  
4 Act.

5 (b) Nothing in this Act shall be construed to affect existing Federal or  
6 Territorial law regarding abortion.

7 (c) Nothing in this Act shall be construed as creating or recognizing a  
8 right to abortion.

9 (d) Nothing in this Act shall be construed to alter generally accepted medical  
10 standards.

11 **Section 4. Severability.** Any provision of this Act held to be invalid or  
12 unenforceable by its terms, or as applied to any person or circumstance, shall be  
13 construed so as to give it the maximum effect permitted by law, unless such  
14 holding shall be one of utter invalidity or unenforceability, in which event such  
15 provision shall be deemed severable here from and shall not affect the remainder  
16 hereof or the application of such provision to other persons not similarly situated or  
17 to other, dissimilar circumstances.

18 **Section 5. Effective Date.** The provisions contained herein shall be effective  
19 upon enactment of this Act.