

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

ACKNOWLEDGEMENT RECEIPT
Received by: EBM
Time: 1:25 PM
Date: 1-6-2010

Bill No. 309-30(COR)

Introduced by:

E. J. B. Calvo
Ray Tenorio
TELO T. TITAGUE

**AN ACT TO ADD A NEW CHAPTER 91 ENTITLED
"CHILD'S RIGHT TO LIVE ACT" TO TITLE 9 OF THE
GUAM CODE ANNOTATED RELATIVE TO THE
PROTECTION OF INFANTS BORN ALIVE AS A RESULT
OF AN ABORTION**

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

2 **Section 1.** There is hereby created a new Chapter 91 to Title 9 of the Guam Code

3 Annotated to read as follows:

4 **"CHAPTER 91**
5 **CHILD'S RIGHT TO LIVE ACT**

6 **§ 91.01. Title.**

7 This Act may be known and cited as the "Child's Right to Live Act."

8 **§ 91.02. Legislative Findings and Purpose.**

9 (a) *I Mina' Trenta na Liheslaturan Guåhan* finds that:

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

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

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

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

19 (b) Accordingly, it is the purpose of this Act to ensure the protection and promotion
20 of the health and well-being of all infants born alive in this Territory. Therefore, this Act

1 mandates that healthcare providers give medically appropriate and reasonable life-saving
2 and life-sustaining medical care and treatment to all born-alive infants.

3 **§ 91.03. Definitions.**

4 For the purposes of this Act only:

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

7 (b) "**Born alive**" or "**live birth**" means the complete expulsion or extraction of an
8 infant from his or her mother, regardless of the state of gestational development, that,
9 after expulsion or extraction, whether or not the umbilical cord has been cut or the
10 placenta is attached, and regardless of whether the expulsion or extraction occurs as a
11 result of natural or induced labor, cesarean section, or induced abortion, shows any
12 evidence of life, including, but not limited to, one or more of the following:

13 (1) breathing;

14 (2) a heartbeat;

15 (3) umbilical cord pulsation; or

16 (4) definite movement of voluntary muscles.

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

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

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

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

30

31

1 **§ 91.04. Requirements and Responsibilities.**

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

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

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

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

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

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

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

25 (e) If the physician described in paragraph (d) of this Section is unable to perform the
26 duties in that paragraph because he is assisting the woman on whom the abortion was
27 performed, then an attending physician's assistant, nurse, or other licensed healthcare
28 provider must assume the duties outlined in that paragraph.

29 (f) Any infant including one born in the course of an abortion procedure shall be
30 treated as a legal person under the laws of this Territory, with the same rights to

1 medically-appropriate care and treatment, and birth and death (if death occurs)
2 certificates shall be issued accordingly.

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

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

10 **§ 91.05. Criminal Penalties.**

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

19 (b) Any violation of Section 91.04, paragraph (h) of this Act concerning the research
20 use of a born- alive infant is a felony of the first degree and upon conviction may be
21 punished in accordance with Article 2, Chapter 80 of Title 9, Guam Code Annotated.

22 **§ 91.06. Civil and Administrative Action.**

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

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

31 (b) Provide a basis for professional disciplinary action for the suspension or

1 revocation of any license for physicians, licensed and registered nurses, or other licensed
2 or regulated persons. Any conviction of any person for any failure to comply with the
3 requirements of this Act shall result in the automatic suspension of his or her license for a
4 period of at least one year and shall be reinstated after that time only under such
5 conditions as shall be required to ensure compliance with this Act.

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

9 **Section 2. Construction.**

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

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

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

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

19 **Section 3. Severability.**

20 Further, any provision of this Act held to be invalid or unenforceable by its terms, or as
21 applied to any person or circumstance, shall be construed so as to give it the maximum
22 effect permitted by law, unless such holding shall be one of utter invalidity or
23 unenforceability, in which event such provision shall be deemed severable here from and
24 shall not affect the remainder hereof or the application of such provision to other persons
25 not similarly situated or to other, dissimilar circumstances.