

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

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Bill No. 5231 (COR)

Introduced by:

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

By request of *I Maga'lahaen*
Guåhan in accordance with the
Organic Act of Guam

**AN ACT TO ADD A NEW SECTION 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 WOMAN'S
REPRODUCTIVE HEALTH INFORMATION ACT OF 2011."**

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 or abortion alternatives.
6 *I Liheslaturan Guåhan* further finds that every woman submitting to an abortion
7 should do so only after giving her voluntary and informed consent in writing to the
8 abortion procedure.

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

11 **§3218.1. The Woman's Reproductive Health Information Act of**

1 2011.

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

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

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

17 (3) *Conception* means the fusion of a human spermatozoon with a
18 human ovum;

19 (4) *Department* means the Department of Public Health and Social
20 Services and, when applicable, may more specifically mean the Records

1 Section of the Department of Public Health and Social Services;

2 (5) *Facility or medical facility* means any public or private hospital,
3 clinic, center, medical school, medical training institution, health care
4 facility, physician's office, infirmary, dispensary, ambulatory surgical
5 treatment center, or other institution or location wherein medical care is
6 provided to any person;

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

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

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

19 (9) *Medical emergency* means a condition which, in reasonable
20 medical judgment, so complicates the medical condition of the pregnant

1 woman as to necessitate the immediate termination of her pregnancy to avert
2 her death or for which a delay will create a serious risk of substantial and
3 irreversible physical impairment of a major bodily function. No condition
4 shall be deemed a medical emergency if based on a claim or diagnosis that
5 the woman will engage in conduct which would result in her death or in
6 substantial and irreversible physical impairment of a major bodily function;

7 (10) *Physician* means any person licensed to practice medicine or
8 surgery or osteopathic medicine under the Physicians Practice Act (10 GCA
9 §12201 *et seq.*) or in another jurisdiction of the United States;

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

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

15 (13) *Unborn child* or *fetus* each mean an individual organism of
16 the species *homo sapiens* from conception until live birth;

17 (14) *Viability* means the state of fetal development when, in the
18 reasonable judgment of a physician based on the particular facts of the case
19 before him or her and in light of the most advanced medical technology and
20 information available to him or her, there is a reasonable likelihood of

1 sustained survival of the unborn child outside the body of his or her mother,
2 with or without artificial support; and

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

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

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

- 12 (i) The name of the physician who will perform the abortion;
- 13 (ii) Medically accurate information that a reasonable person
14 would consider material to the decision of whether or not to undergo the abortion,
15 including (a) a description of the proposed abortion method; (b) the immediate and
16 long-term medical risks associated with the proposed abortion method, including
17 but not limited to any risks of infection, hemorrhage, cervical or uterine
18 perforation, and any potential effect upon future capability to conceive as well as
19 to sustain a pregnancy to full term; and (c) alternatives to abortion;

20 (iii) The probable gestational age of the unborn child at the

1 time the abortion is to be performed;

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

4 (v) The medical risks associated with carrying the child to
5 term;

6 (vi) Any need for anti-Rh immune globulin therapy if she is Rh
7 negative, the likely consequences of refusing such therapy, and the cost of the
8 therapy;

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

12 (i) Medical assistance benefits may be available for prenatal
13 care, childbirth, and neonatal care and that more detailed information on the
14 availability of such assistance is contained in the printed materials and
15 informational video given to her and described in Subsection (c);

16 (ii) The printed materials and informational video in Subsection
17 (c) describe the unborn child and list agencies that offer alternatives to abortion;

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

20 In the case of rape or incest, this information may be omitted; and

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

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

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

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

1 6. Except in the case of a medical emergency, the physician who is to
2 perform the abortion shall receive and sign a copy of the written certification
3 prescribed in Subsection (5) of this Section prior to performing the abortion. The
4 physician shall retain a copy of the checklist certification from in the woman's
5 medical record.

6 7. In the event of a medical emergency requiring an immediate
7 termination of the pregnancy, the physician who performed the abortion shall
8 clearly certify in writing the nature of the medical emergency and the
9 circumstances which necessitated the waiving of the informed consent
10 requirements of this Section. This certification shall be signed by the physician
11 who performed the emergency termination of pregnancy, and shall be permanently
12 filed in both the patient records maintained by the physician performing the
13 emergency procedure and the records maintained by the facility where the
14 emergency procedure occurred.

15 8. A physician shall not require of anyone or obtain payment from
16 anyone for providing the information and certification required by this Section
17 until the expiration of the twenty-four (24) hour reflection period required by
18 Subsections (b)(1), (b)(2) and (b)(4).

19 (c) **Publication of Materials.** The Department of Public Health and Social
20 Services shall cause to be published printed materials and an informational video

1 in culturally sensitive languages within 180 days after this Act becomes law (and
2 not 180 days after the effective date described in Section 4). On an annual basis,
3 the Department shall review and update, if necessary, the following easily
4 comprehensible printed materials and informational video:

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

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

17 The materials shall state that it is unlawful for any individual to coerce
18 a woman to undergo an abortion and that if a minor is denied financial support by
19 the minor's parents, guardian, or custodian due to the minor's refusal to have an
20 abortion performed, the minor shall be deemed emancipated for the limited

1 purpose of eligibility of public assistance benefits, except that such benefits may
2 not be used to obtain an abortion. The materials shall also state that any physician
3 who performs an abortion upon a woman without her informed consent may be
4 liable to her for damages in a civil action at law and that the law permits adoptive
5 parents to pay costs of prenatal care, childbirth, and neonatal care. The materials
6 shall include the following statement:

7 “There are public agencies and private services willing and able to
8 help you to carry your child to term, and to assist you and your child after your
9 child is born, whether you choose to keep your child or to place her or him for
10 adoption. You are strongly urged to contact one or more of these agencies and
11 services before making a final decision about abortion. The law required that your
12 physician or his or her agent give you the opportunity to call agencies and services
13 like these before you undergo an abortion.”

14 3. Materials that include information on the support obligations of the
15 father of a child who is born alive, including but not limited to the father’s legal
16 duty to support his child, which may include child support payments and health
17 insurance, and the fact that paternity may be established by the father’s signature
18 on a birth certificate or statement of paternity, or by court action. The printed
19 material shall also state that more information concerning paternity establishment
20 and child support services and enforcement may be obtained by calling the Guam

1 Attorney General's Office Child Support Division or the Department of Public
2 Health and Social Services Public Assistance Branch.

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

15 5. Materials which contain objective information describing the
16 various surgical and drug-induced methods of abortion, as well as the immediate
17 and long-term medical risks commonly associated with each abortion method
18 including but not limited to the risks of infection, hemorrhage, cervical or uterine
19 perforation or rupture, any potential effect upon future capability to conceive as
20 well as to sustain a pregnancy to full term, the possible adverse psychological

1 effects associated with an abortion, and the medical risks associated with carrying
2 a child to term.

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

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

9 8. The Department shall produce a standardized video that may be
10 used islandwide, presenting the information described in Subsection (c)(1), (c)(2),
11 (c)(3), and (c)(4), in accordance with the requirements of those Subsections. In
12 preparing the video, the Department may summarize and make reference to the
13 printed comprehensive list of geographically indexed names and services described
14 in Subsection (c)(1). The video shall in addition to the information described in
15 Subsections (c)(1), (c)(2), (c)(3), and (c)(4), show an ultrasound of the heartbeat of
16 an unborn child at four (4) to five (5) weeks gestational age gestational age to six
17 (6) to eight (8)-weeks gestational age, and each month thereafter, until visibility.
18 That information shall be presented in an objective, unbiased manner designed to
19 convey only accurate scientific information.

20 9. The materials required under this Section and the video described

1 in Subsection (c)(8) shall be available at no cost from the Department upon request
2 and in appropriate number to any person, facility or hospital.

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

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

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

13 1. Provide a basis for a civil malpractice action, and provide standing
14 to any woman upon whom an abortion was performed or attempted allegedly in
15 violation of this Act to bring such an action. Any intentional violation of this Act
16 shall be admissible in a civil suit as *prima facie* evidence of a failure to obtain
17 informed consent. When requested, the court shall allow a woman upon whom an
18 abortion was performed or attempted to be performed allegedly in violation of this
19 Act to be identified in any action brought pursuant to this Act using solely her
20 initials or the pseudonym "Jane Doe". Further, with or without a request, the court

1 may close any proceedings in the case from public attendance, and the court may
2 enter other protective orders in its discretion to preserve the privacy of the woman
3 upon whom the abortion was performed or attempted to be performed allegedly in
4 violation of this Act.

5 2. Provide a basis for professional disciplinary action under Section
6 11110 of Chapter 11 of Title 10 Guam Code Annotated.

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

11 **Section 3. Severability.** If any provision of this Act is 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 holding
14 shall be one of utter invalidity or unenforceability, in which even such provision
15 *shall* be deemed severable herefrom and *shall* not affect the remainder hereof *or*
16 the application of such provision to other persons *not* similarly situated *or* to other,
17 dissimilar circumstances.

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