FILE COPY

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008(SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 374 (EC), "AN ACT TO *ADD* A NEW CHAPTER 91A TO DIVISION 4 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO PARTIAL-BIRTH ABORTION; TO *AMEND* §3218 OF CHAPTER 3, DIVISION 1 OF TITLE 10 OF THE GUAM CODE ANNOTATED; AND TO CITE THE ACT AS *"THE PARTIAL-BIRTH ABORTION BAN ACT OF 2008,"*** was on the 17th day of November, 2008, duly and regularly passed.

Dr. David L.G. Shimizu
Acting Speaker

Attested:

Tina Rose Muña Barnes
Senator and Secretary of the Legislature

This Act was received by *I Maga'lahen Guåhan* this 18 day of Nov., 2008, at 10:55 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

Bill No. 374 (EC)
As substituted by the Author and
amended on the Floor.

Introduced by:

Edward J. B. Calvo
Frank F. Blas, Jr.
James V. Espaldon
Mark Forbes
Frank T. Ishizaki
J. A. Lujan
Ray Tenorio
Dr. David L.G. Shimizu
Tina Rose Muña Barnes
B. J.F. Cruz
Judith P. Guthertz, DPA
A. B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
J. T. Won Pat, Ed.D.

AN ACT TO *ADD* A NEW CHAPTER 91A TO DIVISION 4 OF TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO PARTIAL-BIRTH ABORTION; TO *AMEND* §3218 OF CHAPTER 3, DIVISION 1 OF TITLE 10 OF THE GUAM CODE ANNOTATED; AND TO CITE THE ACT AS *"THE PARTIAL-BIRTH ABORTION BAN ACT OF 2008."*

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 91A is hereby *added* to Division 4 of Title 10 of the Guam Code Annotated to read as follows:

"CHAPTER 91A.

PARTIAL-BIRTH ABORTION BAN.

§91A101.	**Title.**
§91A102.	**Legislative Findings and Intent.**
§91A103.	**Definitions.**
§91A104.	**Prohibition.**
§91A105.	**Partial-Birth Abortions Punished.**
§91A106.	**Criminal Penalties.**
§91A107.	**Civil Penalties.**
§91A108.	**Review by the Guam Board of Medical Examiners.**
§91A109.	**Prosecutorial Exclusion.**
§91A110.	**Construction.**
§91A111.	**Penalties for Ambulatory Healthcare Facilities.**

§91A101. Title. This Chapter may be cited and referred to as ***"The Partial-Birth Abortion Ban Act of 2008".***

§91A102. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that a moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion is a gruesome and inhumane procedure that is *never* medically necessary and should be prohibited. The passage by the 108th Congress with the President signing the federal Partial-Birth Abortion Ban Act of 2003 into law provides a legal direction for Guam to ban partial-birth abortions.

I Liheslaturan Guåhan further finds that on March 18, 2007, the United States Supreme Court upheld this position in Gonzales v. Carhart, 127 S. Ct. 1610 (2007), ruling that the State may prohibit partial-birth abortions that *do not* include the maternal "health" exception. The language in this bill stems from and uses as its primary influence the language of the federal "Partial-Birth Abortion Ban Act of 2003, 18 U.S.C. §1531", upheld in Gonzales.

Partial-birth abortion poses serious risks to the long-term health of women. It is *not* an abortion procedure that is universally embraced by the mainstream medical community.

Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure. Those risks include, among other things: an increase in a woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult *or* impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position, a procedure which, according to a leading obstetrics textbook, "there are very few, *if* any, indications for other than for delivery of a second twin"; and a risk of lacerations and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he *or* she is lodged in the birth canal, an act which could result in severe bleeding and subsequent shock. As a result, at least thirty-one (31) States have enacted bans of "partial-birth" abortions, as did the 104th, 105th, 106th and 108th Congresses, and the President, upon signing of the "Partial-Birth Abortion Ban Act of 2003" into law.

There is *no* credible medical evidence that partial-birth abortions are safer than other abortion procedures. *No* controlled studies of partial-birth abortions have been conducted *nor* have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. Furthermore, there have been *no* articles published in peer-review journals that establish that partial-birth abortions are superior in any way to established abortion procedures.

In light of the overwhelming evidence, Guam has an interest in prohibiting partial-birth abortions. Both Roe v. Wade and Planned Parenthood v. Casey, 505 U.S. 833 (1992) recognized a governmental interest in protecting the life of a child during the delivery process. This interest arises during a partial-birth abortion because labor is induced and the birth process has begun. Partial-birth abortions kill a child that is mere inches away from becoming a "person" under Roe. Thus, the government has a heightened interest in protecting the life of the partially-born child.

The public's perception of the appropriate role of a physician during the delivery process is undermined by aborting a child in the manner that purposefully seeks to kill the child inches from "personhood" and the resulting protections conferred upon the fully born child.

Partial-birth abortion is disturbingly similar to the killing of a newborn infant and blurs the line between infanticide and abortion. This legislation reinforces the line at birth between abortion and infanticide that the Supreme Court established in Roe v. Wade, 410 U.S. 113 (1973). This legislation draws a bright line that clearly distinguishes abortion and infanticide that preserves the integrity of the medical profession, and promotes respect for human life.

The vast majority of babies killed during partial-birth abortions are alive up through the very end of the procedure. It is a medical fact that unborn infants subjected to partial-birth abortion can feel pain when subjected to painful stimuli. Furthermore, an unborn child's perception of pain is even more than that of newborn infants and older children.

I Liheslaturan Guåhan, for these reasons, finds that partial-birth abortion is in fact unrecognized as a valid abortion procedure by the mainstream medical community; poses additional health risks to the mother; blurs the line between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned.

§91A103. Definitions. For purposes of this Chapter, the following words and phrases are defined to mean:

(a) The term *partial-birth abortion* means an abortion in which the person performing the abortion:

(1) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, *or*, in the case of breech presentation, any part of the fetal trunk past the navel is outside of the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially-delivered living fetus; and

(2) performs the overt act, other than completion of delivery, that kills the partially-delivered living fetus.

(b) The term *physician* means a doctor of medicine *or* osteopathy legally authorized to practice medicine and surgery by the Guam Board of

Medical Examiners in which the doctor performs such activity, *or* any other individual legally authorized by the Guam Board of Medical Examiners to perform abortions; provided, however, that any individual who is *not* a physician *or not* otherwise legally authorized by the Guam Board of Medical Examiners to perform abortions, but who nevertheless directly performs a partial-birth abortion, *shall* be subject to the provisions of this Section.

§91A104. Prohibition. A person *shall* not knowingly perform *or* attempt to perform a partial-birth abortion. Any physician who knowingly performs a partial-birth abortion and thereby kills a human fetus *shall* be fined under this Title *or* imprisoned *not more than* ten (10) years, *or* both. This Subsection takes effect one (1) day after the enactment. This Subsection does *not* apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, *or* physical injury, including a life-endangering physical condition caused by *or* arising from the pregnancy itself.

§91A105. Partial-Birth Abortions Punished. Any person performing a partial-birth abortion *shall* be guilty of a third degree felony.

§91A106. Criminal Penalties. (a) Any person who intentionally *or* knowingly violates this Act is guilty of a third degree felony.

(b) Any physician who intentionally *or* knowingly performs a partial-birth abortion and thereby kills a human fetus *shall* be fined *not less than* Ten Thousand Dollars ($10,000.00) *nor more than* One-Hundred Thousand Dollars ($100,000.00) under this Title, *or* imprisoned for *not less than* one (1) year *nor more than* ten (10) years, *or* both.

§91A107. Civil Penalties. (a) The father, *if* married to the mother at the time she receives a partial-birth abortion procedure, and, *if* the mother has *not* attained the age of eighteen (18) years at the time of the abortion, the maternal grandparents of the fetus *may* in a civil action obtain appropriate relief, *unless* the pregnancy resulted from the plaintiff's criminal conduct *or* the plaintiff consented to the abortion.

(b) Such relief *shall* include:

(1) money damages for all injuries, psychological and physical, occasioned by the violation of this Section; and

(2) statutory damages equal to three (3) times the cost of partial-birth abortion.

(3) Attorney's Fees. *If* judgment is rendered in favor of the plaintiff in an action described in this Section, the court *shall* also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant. *If* the judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court *shall* also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

§91A108. Review by the Guam Board of Medical Examiners. (a) A defendant accused of an offense under this Section may seek a hearing before the Guam Board of Medical Examiners as to whether the physician's conduct was necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, *or* physical injury, including a life-endangering physical condition caused by *or* arising from the pregnancy itself.

(b) The findings on the issue are admissible at the civil and/or criminal trial(s) of the defendant. Upon a motion of the defendant, the court *shall* delay the beginning of the trial(s) for *not more than* thirty (30) days to permit such a hearing to take place.

(c) A defendant convicted of an offense under this Act *shall* have his medical license revoked by the Guam Board of Medical Examiners.

§91A109. Prosecutorial Exclusion. A woman upon whom a partial-birth abortion is performed may *not* be prosecuted under this Section for a conspiracy to violate Section 3 of this bill.

§91A110. Construction. (a) Nothing in this Act *shall* be construed as creating *or* recognizing a right to abortion.

(b) It is *not* the intention of this Chapter to make lawful an abortion that is currently unlawful.

§ 91A111. Penalties for Ambulatory Healthcare Facilities. (a) An ambulatory healthcare facility licensed pursuant to Chapter 15, Title 18 of the Guam Code Annotated in which the partial-birth abortion is performed in *shall* be in violation of this Act and *shall* be subject to immediate revocation of its license(s) by the Guam Board of Medical Examiners, pursuant to Part 1, Article 2, §12209, Chapter 12, Title 10 of the Guam Code Annotated.

(b) An ambulatory healthcare facility license pursuant to Chapter 15, Title 18 of the Guam Code Annotated in which the partial-birth abortion is performed in, *shall* be in violation of this Act and *shall* lose all local funding for two (2) years and will be required to reimburse the government for funds from the calendar/fiscal year in which the partial-birth abortion was performed."

Section 2. §3218 of Chapter 3, Division 1 of Title 10 of the Guam Code Annotated is hereby *amended* to read as follows:

"§3218. Partial-Birth Abortion and Abortion Report."

Section 3. Paragraphs (j), (k), (l), (m), (n), (o), and (p) are hereby *added* to §3218 of Chapter 3, Division 1 of Title 10 of the Guam Code Annotated, to read as follows:

"(j) *If* a physician performs a partial-birth abortion on the woman, the physician *shall* report such determination and the reasons for such determination in writing to the medical care facility in which the abortion is performed for inclusion in the report of the medical care facility to the Guam Memorial Hospital Records Section and to the Guam Board of Medical Examiners, *or if* the abortion is *not* performed in a medical care facility, the physician *shall* report the reasons for such determination in writing to the Guam Memorial Hospital Records Section and to the Guam Board of Medical Examiners as part of the written report made by the physician to the Guam Memorial Hospital Records Section and to the Guam Board of Medical Examiners. The physician *shall* retain a copy of the written reports required under this Section for *not less than* five (5) years.

(k) Failure to report under this Section will subject physicians to a fine of *no less than* Ten Thousand Dollars ($10,000), but *no more than* One Hundred Thousand Dollars ($100,000) per offense.

(l) Subsection (k) does *not* preclude sanctions *or* disciplinary action *or* any other appropriate action by the Guam Board of Medical Examiners.

(m) The Guam Memorial Hospital Records Section *shall* compile and retain all partial-birth abortion reports it receives under this Section and collate

and evaluate all data gathered therefrom, and *shall* annually publish a statistical report based on such data from partial-birth abortions performed in the previous calendar year *no later than* January 31st of the following calendar year.

(n) The Guam Memorial Hospital Records Section *shall* make available to physicians performing partial-birth abortions in Guam and the Guam Board of Medical Examiners forms for partial-birth abortion reports.

(o) All information in partial-birth abortion reports the Guam Memorial Hospital Records Section receives *shall* be confidential. Information and reports may be disclosed only in communications between qualified professional persons in the provisions of services *or* in statistical form for research purposes.

(p) Any person who releases confidential information in violation of subsection (o) of this Section *shall* be guilty of a misdemeanor."

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

Section 5. Effective Date. This Act *shall* take effect upon enactment and *shall not* affect, in the interim, any other improvements necessary to be done in carrying out the purpose of this Act.

I MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN

2008 (SECOND) Regular Session

Date: 11/17/08

VOTING SHEET

Bill No. 374(EC)

Resolution No. _____

Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	OUT DURING ROLL CALL	ABSENT
BLAS, Frank F., Jr.	✓				
CALVO, Edward J.B.	✓				
CRUZ, Benjamin J. F.	✓				
ESPALDON, James V.					EA ✓
FORBES, Mark					EA ✓
GUTHERTZ, Judith Paulette	✓				
ISHIZAKI, Frank T.	✓				
LUJAN, Jesse Anderson	✓				
MUNA-BARNES, Tina Rose	✓				
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.	✓				
SHIMIZU, David L.G.	✓				
TENORIO, Ray	✓				
WON PAT, Judith T.	✓				
TOTAL	13	0	0	0	2

CERTIFIED TRUE AND CORRECT:

Patricia C. Santos

Clerk of the Legislature

*3 Passes = No vote

EA = Excused Absence