EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

SEP 18 2018

Honorable Therese M. Terlaje
Acting Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guåhan
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Vice Speaker Therese M. Terlaje
34GL-18-2224
SEP 18 2018
Time: 3:04p
Received by:

Dear Madam Speaker:

Transmitted herewith is Bill No. 322-34 (COR), **"AN ACT TO *ADD* A NEW § 31.30(c) TO CHAPTER 31 TITLE 9, GUAM CODE ANNOTATED, AND *ADD* A NEW ARTICLE 5 TO CHAPTER 13 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A DEFENSE TO PROSECUTION FOR CHILD ABANDONMENT, AND PROTECTING NEWBORN INFANTS FROM HARM BY PROVIDING A SAFE AND ANONYMOUS MEANS FOR MOTHERS IN DISTRESS TO RELINQUISH THE INFANT TO MEDICAL PROFESSIONALS; TO BE KNOWN AS THE 'NEWBORN INFANT SAFE HAVEN ACT',"** which was signed on September 8, 2018, as **Public Law 34-120.**

Senseramente,

EDDIE BAZA CALVO

2018 SEP 18 PM 3:41

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

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

This is to certify that **Bill No. 322-34 (COR), "AN ACT TO *ADD* A NEW § 31.30(c) TO CHAPTER 31 OF TITLE 9, GUAM CODE ANNOTATED, AND *ADD* A NEW ARTICLE 5 TO CHAPTER 13 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A DEFENSE TO PROSECUTION FOR CHILD ABANDONMENT, AND PROTECTING NEWBORN INFANTS FROM HARM BY PROVIDING A SAFE AND ANONYMOUS MEANS FOR MOTHERS IN DISTRESS TO RELINQUISH THE INFANT TO MEDICAL PROFESSIONALS; TO BE KNOWN AS THE 'NEWBORN INFANT SAFE HAVEN ACT', "** was on the 28th day of August 2018, duly and regularly passed.

Benjamin J.F. Cruz
Speaker

Attested:

Régine Biscoe Lee
Legislative Secretary

This Act was received by *I Maga'låhen Guåhan* this 28th day of August, 2018, at 5:16 o'clock P.M.

Assistant Staff Officer
Maga'låhi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'låhen Guåhan

Date: SEP 08 2018

Public Law No. 34-120

I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
2018 (SECOND) Regular Session

Bill No. 322-34 (COR)
As corrected by the Prime Sponsor;
and amended on the Floor.

Introduced by:

Mary Camacho Torres
B. J.F. Cruz
Régine Biscoe Lee
Thomas C. Ada
FRANK B. AGUON, JR.
William M. Castro
James V. Espaldon
Fernando Barcinas Esteves
Tommy Morrison
Louise B. Muña
Telena Cruz Nelson
Dennis G. Rodriguez, Jr.
Joe S. San Agustin
Michael F.Q. San Nicolas
Therese M. Terlaje

AN ACT TO *ADD* A NEW § 31.30(c) TO CHAPTER 31 OF TITLE 9, GUAM CODE ANNOTATED, AND *ADD* A NEW ARTICLE 5 TO CHAPTER 13 OF TITLE 19, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING A DEFENSE TO PROSECUTION FOR CHILD ABANDONMENT, AND PROTECTING NEWBORN INFANTS FROM HARM BY PROVIDING A SAFE AND ANONYMOUS MEANS FOR MOTHERS IN DISTRESS TO RELINQUISH THE INFANT TO MEDICAL PROFESSIONALS; TO BE KNOWN AS THE "NEWBORN INFANT SAFE HAVEN ACT."

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that Guam has experienced an increase in the abandonment of newborn infants

under unsafe circumstances; and, that it is in the best interest of the community to protect newborn babies from such circumstances.

I Liheslaturan Guåhan further finds that those who abandon their newborn infants are often desperate, young mothers who are unable or unwilling to deal with the responsibilities of parenthood. Their solution is abandoning the baby with the hope that someone will find and care for it. However, the act of abandonment endangers the baby and gives rise to criminal liability for parents who may already be under severe emotional distress.

Therefore, *I Liheslaturan Guåhan* intends to discourage baby abandonment by providing a safe alternative to a desperate mother who is unwilling or unable to care for her baby. As an incentive to relinquish the baby safely to medical professionals, this Act allows the mother to remain anonymous without fear of criminal prosecution; and furthermore, *I Liheslaturan Guåhan* adopts the following motto for this Newborn Infant Safe Haven Act: "*No Shame. No Blame. No Names.*"

Section 2. A new Subsection (c) is hereby *added* to § 31.30 of Chapter 31, Title 9, Guam Code Annotated, to read:

"(c) Voluntary surrender of physical custody of a newborn infant by a mother to authorized Safe Haven personnel pursuant to the provisions of the Newborn Infant Safe Haven Act, 19 GCA, Chapter 13, Article 5, is an absolute defense to prosecution for child abuse as a result of deserting that child with intent to abandon that child under Subsection (a)(2)(A) of this Section.

(1) For purposes of this Subsection, "authorized Safe Haven personnel" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(a).

(2) For purposes of this Subsection, "mother" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(d).

(3) For purposes of this Subsection, "newborn infant" has the same meaning as defined under the Newborn Infant Safe Haven Act, 19 GCA § 13503(e)."

Section 3. A new Article 5 is hereby *added* to Chapter 13 of Title 19, Guam Code Annotated, to read:

"ARTICLE 5

NEWBORN INFANT SAFE HAVEN ACT

§ 13501. Citation.
§ 13502. General Policy.
§ 13503. Definitions.
§ 13504. Anonymity; Confidentiality; Waiver.
§ 13505. Custody.
§ 13506. Reunification.
§ 13507. Duties of Authorized Safe Haven Personnel.
§ 13508. Liability Protection.
§ 13509. Penalties for Unauthorized Disclosure.

§ 13501. Citation.

This Article may be cited as the "Newborn Infant Safe Haven Act."

§ 13502. General Policy.

(a) The mother of a newborn infant may relinquish custody of the newborn infant to an authorized Safe Haven by voluntarily surrendering the newborn infant to authorized Safe Haven personnel; provided, that:

(1) the infant is thirty (30) days or younger, as determined to a reasonable degree of medical certainty by authorized Safe Haven personnel;

(2) the mother expresses no clear intention to return for the newborn infant; and

(3) the infant presents no evidence of child abuse that occurred at any time prior to the act of relinquishment.

(b) Authorized Safe Haven personnel *shall* receive an infant properly relinquished under this Article on behalf of an affiliated authorized Safe Haven.

(c) Any attempt to relinquish a newborn infant under this Article *shall* constitute implied consent for authorized Safe Haven personnel and any affiliated authorized Safe Haven to perform all necessary emergency medical services. The newborn infant *shall* be presumed eligible for coverage under Medicaid, subject to federal regulations.

(d) Proper relinquishment under this Article *shall not*, in and of itself, constitute abuse or neglect requiring reporting and investigation under Article 2 of this Chapter.

§ 13503. Definitions.

As used in this Article:

(a) *Authorized Safe Haven personnel shall* mean:

(1) any medical professional licensed under 10 GCA Chapter 12 to practice the Healing Arts, as defined by that Chapter, working in conjunction with an authorized Safe Haven; or

(2) any emergency medical services personnel certified by the Administrator of the Office of Emergency Medical Services under 10 GCA Chapter 84 working in their capacity as emergency medical services personnel.

(b) *Authorized Safe Haven* means a hospital, a free-standing birthing center, a fire station, or a community health center that employs authorized Safe Haven personnel.

(c) *Child abuse* has the same meaning as defined under 9 GCA § 31.30(a).

(d) *Mother* means the biological mother, a woman who has conceived rather than adopted or acquired custody of a newborn infant by other means.

(e) *Newborn infant* means a human child thirty (30) days or younger.

(f) *Physician* means a person licensed to practice medicine by the Guam Board of Medical Examiners under 10 GCA, Chapter 12, Article 2.

(g) *Safe Haven facilitator* means any agent or employee of the government of Guam that, in the course of their duties as an agent or employee of the government of Guam, assists a mother in relinquishing her newborn infant under this Article, to include employees of Child Protective Services and the Guam Police Department.

§ 13504. Anonymity; Confidentiality; Waiver.

(a) Anonymity. A mother who relinquishes her newborn infant under this Article:

(1) has the right to remain anonymous and *shall not* be required to provide any personally identifying information; and

(2) has the right to leave the authorized Safe Haven at any time without being pursued, followed, or tracked in any way.

(b) Confidentiality. Notwithstanding any other provision of law, any personally identifying information that pertains to a mother who relinquishes a newborn infant under this Article is confidential, exempt from disclosure under the Sunshine Reform Act of 1999, and *shall not* be disclosed by any authorized Safe Haven personnel or any Safe Haven facilitator for any purpose, whether obtained as a result of the Medical Information Questionnaire described in § 13507 of this Article or in any other manner.

(c) Waiver. The rights of anonymity and confidentiality under Subsections (a) and (b) of this Section are waived where the infant presents evidence of child abuse that occurred at any time prior to relinquishment, as determined to a reasonable degree of medical certainty by authorized Safe Haven personnel.

§ 13505. Custody.

(a) Notwithstanding any other provision of law, an authorized Safe Haven *shall* assume emergency protective custody of a relinquished newborn infant immediately upon surrender by the mother to authorized Safe Haven personnel affiliated with the authorized Safe Haven, or upon transfer of physical custody by authorized Safe Haven personnel of another authorized Safe Haven that cannot provide necessary emergency medical services, and *shall* maintain custody until custody is assumed by Child Protective Services.

(b) Child Protective Services *shall* assume temporary protective custody of the relinquished newborn infant immediately upon receipt of notice under § 13507(a)(8) of this Article, and *shall* take any action authorized under Guam law to achieve safety and permanency for the newborn infant subject to the limitations of this Article.

(c) Notwithstanding any other provision of law, an authorized Safe Haven *shall* transfer physical custody of the relinquished newborn infant to Child Protective Services as early as possible considering the newborn infant's medical condition as determined to a reasonable degree of medical certainty by a physician.

(d) Notwithstanding any other provision of law, no court of Guam shall enter an order pertaining to custody of the relinquished newborn infant, and Child Protective Services *shall not* relinquish temporary protective custody or place the infant into foster custody until:

(1) forty-eight (48) hours have elapsed from the time of relinquishment by the mother; and

(2) Child Protective Services has reported all identifying information known to the agency concerning the infant, except personally identifying information pertaining to the relinquishing mother, to the Guam Police Department for a determination that the infant, based on all available information, has not been reported as a missing person.

(e) Rebuttable Presumption. Relinquishment of a newborn infant creates a rebuttable presumption effective forty-eight (48) hours after the time of relinquishment that the mother who relinquishes a newborn infant in accordance with this Article intends to permanently relinquish custody of the newborn infant and consents to termination of parental rights.

§ 13506. Reunification.

(a) Notwithstanding any other provision of law, a mother who has voluntarily relinquished her newborn infant pursuant to this Article *shall* have the child returned upon making a request for reunification to Child Protective Services no later than forty-eight (48) hours after relinquishment; provided, that Child Protective Services discovers no evidence of child abuse that occurred at any time prior to relinquishment, as determined by agents of Child Protective Services.

(1) A mother requesting reunification waives her rights to anonymity and confidentiality provided under § 13504 of this Article.

(2) In response to a request for reunification, Child Protective Services may conduct an investigation for the limited purpose of determining whether any evidence exists of child abuse that occurred prior to relinquishment. Such an investigation may include identifying and contacting the mother.

(b) If notice is not provided to Child Protective Services under § 13507(a)(8) of this Article prior to a request for reunification, Child Protective Services *shall* determine the authorized Safe Haven location of the newborn infant based upon information provided by the mother and facilitate reunification, if appropriate, as directed under this Section.

(c) Relinquishment of a newborn infant under this Article does not, in and of itself, constitute child abuse and is not, in and of itself, a sufficient basis to deny reunification.

§ 13507. Duties of Authorized Safe Haven Personnel.

(a) Upon receiving a relinquished newborn infant under this Article, authorized Safe Haven personnel *shall*:

(1) perform a preliminary medical screening examination;

(2) provide necessary stabilizing treatment to the extent he or she is trained to provide those services;

(3) arrange for the immediate transportation of the newborn infant to the nearest hospital with an emergency department;

(4) assign the newborn infant a unique, confidential identification number;

(5) provide, or make a good faith effort to provide, to the mother a copy of the confidential identification number in order to facilitate reunification with the newborn infant pursuant to § 13506 of this Article;

(6) provide, or make a good faith effort to provide, to the mother a Custody and Parental Rights Notice as described under Subsection (b) of this Section, which may be declined by the mother;

(7) provide, or make a good faith effort to provide, to the mother a Medical Information Questionnaire as described under Subsection (c) of this

Section, which may be declined by the mother or voluntarily filled out at the time the child is relinquished;

(8) notify Child Protective Services of acceptance of emergency protective custody of the relinquished newborn infant on behalf of the authorized Safe Haven as soon as possible, but in no event later than twenty-four (24) hours after accepting custody of the newborn infant; and

(9) provide to Child Protective Services any medical information pertinent to the infant's health, including, but not limited to, information obtained pursuant to the Medical Information Questionnaire described in Subsection (c) of this Section, that has been received by or is in the possession of the authorized Safe Haven, not to include any personally identifying information pertaining to the relinquishing mother.

(b) Custody and Parental Rights Notice. Every notice provided pursuant to Subsection (a)(6) of this Section *shall* contain the following notice in no less than twelve (12)-point type:

NOTICE: YOU HAVE FORTY-EIGHT (48) HOURS TO REQUEST RETURN OF YOUR CHILD. TO DO SO, YOU MUST SUBMIT A REQUEST FOR REUNIFICATION TO CHILD PROTECTIVE SERVICES. IF YOU SUBMIT A REQUEST FOR REUNIFICATION, YOU WILL WAIVE YOUR RIGHT TO ANONYMITY AND CONFIDENTIALITY, MEANING CHILD PROTECTIVE SERVICES COULD IDENTIFY YOU AND CONTACT YOU. AFTER FORTY-EIGHT (48) HOURS, YOU WILL HAVE TO PETITION THE SUPERIOR COURT OF GUAM TO PREVENT FINAL TERMINATION OF YOUR PARENTAL RIGHTS.

(c) Medical Information Questionnaire. The Medical Information Questionnaire described under Subsection (a)(7) of this Section *shall not* require any personally identifying information about the newborn infant or the mother relinquishing the newborn infant, other than the identification code assigned to the

infant. Every questionnaire provided under Subsection (a)(7) of this Section *shall* begin with the following notice in no less than twelve (12)-point type:

> NOTICE: THE INFANT YOU HAVE BROUGHT IN TODAY MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE THAT WE DON'T KNOW ABOUT TODAY. SOME ILLNESSES, INCLUDING CANCER, ARE BEST TREATED WHEN WE KNOW ABOUT FAMILY MEDICAL HISTORIES. IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY WILL HAVE A HEALTHY FUTURE, YOUR ASSISTANCE IN FULLY COMPLETING THIS QUESTIONNAIRE IS ESSENTIAL. THANK YOU.

§ 13508. Liability Protection.

An authorized Safe Haven or any authorized Safe Haven personnel that accept(s) custody of a relinquished newborn infant under this Article *shall not* be subject to civil, criminal, or administrative liability for accepting the newborn infant and caring for the newborn infant in a good faith belief that the action is required or authorized by this Article, including, but not limited to, instances where the infant is older than thirty (30) days or the individual surrendering the newborn infant is not the mother. Nothing in this Article shall be construed as conferring immunity from liability for personal injury or wrongful death, including, but not limited to, injury resulting from malpractice.

§ 13509. Penalties for Unauthorized Disclosure.

Any authorized Safe Haven personnel or Safe Haven facilitator who violates a mother's right to anonymity or confidentiality under § 13504 is guilty of a misdemeanor, and is punishable by confinement for a term not to exceed six (6) months, by a fine of not more than One Thousand Dollars ($1,000), or by both. A second or subsequent conviction *shall* be a felony in the third degree. Fines imposed for violations of this Chapter *shall* be deposited in the Victims Compensation Fund."

Section 4. Effective Date. This Act *shall* become effective upon enactment.