

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: speaker@guamlegislature.org

December 28, 2022

HONORABLE THERESE M. TERLAJE

Speaker

I Mina'trentai Sais Na Liheslaturan Guåhan

36th Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

Re: BILL NO. 291-36 (LS) - AN ACT TO ADD A NEW CHAPTER 91B TO DIVISION 4 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO ABORTION, INCLUDING ABORTIONS AFTER DETECTION OF AN UNBORN CHILD'S HEARTBEAT; AND AUTHORIZING A PRIVATE CIVIL RIGHT OF ACTION

Hafa Adai Madame Speaker,

Fewer issues have been subject to more rigorous national debate than abortion. The issue speaks to the most profound values each of us holds dear, engaging ethical, philosophical and religious ideologies that define our existence as human beings. The debate is amplified here on Guam, where the issue is further complicated by the tension between traditional gender norms, and our growing acceptance of the inherent value of women in society and the workforce apart from their childbearing role, and the evolution of our broader societal understanding of the importance of empowering women and families to plan for their futures.

As a woman, a mother, a grandmother, a nurse, a businesswoman, a senator, and now a governor, I have never wavered in my belief that women, as masters of their own personhood and destiny, should retain agency and autonomy over their bodies. While I have experienced firsthand how special and fulfilling motherhood can be, I also understand that for many women, pregnancy and childbirth carry immense pain, discomfort, distress, and risk. And while many women are privileged to conceive in a loving and nurturing environment, with sufficient resources and support, others become pregnant through traumatic or even criminal circumstances. At times, pregnancy is forced upon women who are not women at all, but rather children, unable to care for themselves, let alone others.

As a young nurse, I assisted in the treatment of women whose desperate circumstances led them to pursue dangerous "back alley" abortions, at great risk to their lives. I cannot fathom returning to those dark days. Mindful of the nuances and complexities inherent in every pregnancy, I refuse

to support any measure that fails to even acknowledge the liberty and equality interests of the citizens affected by it, and imposes government control over women's bodies, lives, and, ultimately, their futures. I refuse to reduce women to their wombs.

In 2021, the U.S. Supreme Court issued its Opinion in *Dobbs v. Jackson Women's Health Organization*, dismantling the constitutional right to abortion recognized in the landmark 1973 case *Roe v. Wade*, which had been the law of the land for nearly 50 years. Specifically, *Roe* held that the guarantee of "liberty" in the Fourteenth Amendment to the U.S. Constitution protected individual privacy, including the right to terminate a pregnancy prior to fetal viability. In overturning *Roe*, the U.S. Supreme Court held that "the authority to regulate abortion must be returned to the people and their elected representatives."

While many of us mourn the sudden and shocking reversal of rights that are widely regarded as fundamental to the wholeness of every woman, it falls upon us, as a community, to determine whether these rights are worth protecting. I believe they are, and based on the testimony submitted in opposition to Bill No. 291-36, it is clear that most of our people do, too.

Bill No. 291-36, also known as the "Guam Heartbeat Bill," mirrors similar legislation in other conservative jurisdictions, and seeks to prohibit abortion unless a physician has determined whether a fetus has "a detectable fetal heartbeat." This prohibition has been widely criticized in jurisdictions with corresponding bills because it is broadly accepted in the medical community that embryos at six weeks of gestation, the age identified in the Legislative Intent section of the bill, do not yet possess cardiac valves that create a human heartbeat. In addition to criticism over the pseudo-science on which Bill No. 291-36 is based, as testimony has indicated, the bill restricts abortion during a time when most people would not even realize they are pregnant, which would substantially undermine their ability to exercise meaningful choice.

Further, while the bill creates an exception from the "heartbeat" prohibition where the life of a mother is in danger, the bill does not create an exception in cases of rape or incest. The decision not to exempt victims of rape and incest from this prohibition demonstrates a level of callousness and lack of compassion that conflict with our cultural norms. It is quite simply unconscionable that the 36th Guam Legislature saw fit to pass this bill knowing it would force women and girls who are the victims of rape or incest to carry a resulting pregnancy to term unless they find the presence of mind, emotional and psychological fortitude, and resources to terminate such pregnancy prior to the detection of a so-called fetal heartbeat. The very idea of forcing a child to bear a child is abhorrent.

Bill No. 291-36 does not stop at merely hurting our island's women, it seeks to hurt anyone who helps them. The novel, disturbing aspect of this bill that distinguishes it from other attempts at anti-choice legislation, is its enforcement mechanism. Expressly limiting government enforcement, the bill would grant to any person the ability to bring a civil action against a person who performs or induces proscribed conduct or who aids and abets such conduct, effectively deputizing private individuals to perform the government's enforcement function. It defies established criteria for who has standing to pursue claims because it does not require harm or injury to the individual authorized to file suit.

To: Speaker Terlaje
Fr: Governor of Guam
Date: December 28, 2022
Re: Bill No. 291-36 (LS)

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The incentivized vigilantism of this already deeply-flawed bill is reprehensible. Seeking to turn brother against brother, and sister against sister, the enforcement mechanism of this bill appeals to one of our most base tendencies as human beings – greed. It rewards individuals with a \$10,000 bounty, plus attorneys fees, for every successful claim. The prospect of authorizing a private suit that would entail investigation and inquiry into the reasons a person’s pregnancy ended, and, consequently, into the most private circumstances of one’s particular reproductive health circumstances, is alarming. If permitted to proceed, it would tear at the very fabric of our gentle society. It would pay people to make the deeply personal and, at times, painful circumstances of a woman and her family the subject of public spectacle. It is dehumanizing. It is a blow to the dignity of women and to the dignity of this community, and it cannot be sustained.

For these reasons, I veto Bill No. 291-36. I ask the 36th Guam Legislature to sustain my veto of this bill, consistent with the will of our constituents, and I urge the senators who voted in favor of this bill to search their hearts for compassion toward women that is absent from both the spirit and the text of this bill.

Senseremente,



LOURDES A. LEON GUERRERO

Maga'hågan Guåhan

Governor of Guam

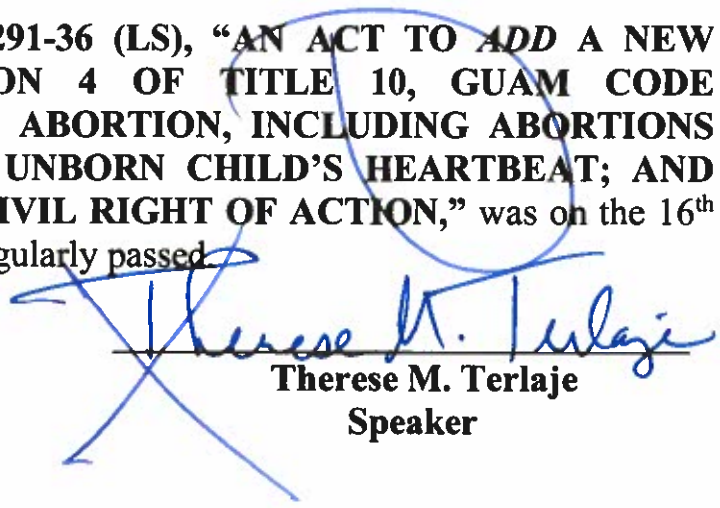
Enclosure: VETO - Bill No. 291-36 (LS)

cc via email: *Honorable Joshua F. Tenorio, Sigundo Maga'låhen Guåhan*, Lt. Governor of Guam
Compiler of Laws

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

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

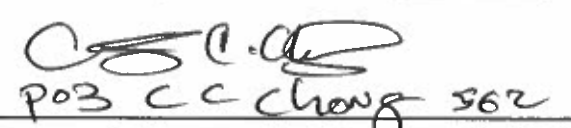
This is to certify that **Bill No. 291-36 (LS)**, "**AN ACT TO ADD A NEW CHAPTER 91B TO DIVISION 4 OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO ABORTION, INCLUDING ABORTIONS AFTER DETECTION OF AN UNBORN CHILD'S HEARTBEAT; AND AUTHORIZING A PRIVATE CIVIL RIGHT OF ACTION,**" was on the 16th day of December 2022, duly and regularly passed.


Therese M. Terlaje
Speaker

Attested:


Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 16TH day of Dec,
2022, at 10:06 o'clock P.M.


Assistant Staff Officer
Maga'håga's Office

APPROVED:


Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 12/28/2022

Public Law No. _____

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 291-36 (LS)

As amended on the Floor.

Introduced by:

Telena Cruz Nelson
Christopher M. Duenas
Amanda L. Shelton
V. Anthony Ada
Frank Blas Jr.
Joanne Brown
James C. Moylan
Tina Rose Muña Barnes
Clynton E. Ridgell
Joe S. San Agustin
Telo T. Taitague
Jose “Pedro” Terlaje
Therese M. Terlaje
Mary Camacho Torres

**AN ACT TO *ADD* A NEW CHAPTER 91B TO DIVISION 4
OF TITLE 10, GUAM CODE ANNOTATED, RELATIVE
TO ABORTION, INCLUDING ABORTIONS AFTER
DETECTION OF AN UNBORN CHILD’S HEARTBEAT;
AND AUTHORIZING A PRIVATE CIVIL RIGHT OF
ACTION.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds
that contemporary medical science, not available decades ago, demonstrates that
early infants in the womb are a class of living, distinct human beings that, among
other individual human traits, have their own distinct blood types, distinct organ
systems, distinct central nervous systems, unique fingerprints, unique genetic

1 characteristics, and at approximately six (6) weeks gestational age, detectable human
2 heartbeats. From earliest development, unborn children need only nourishment and
3 a safe environment to grow to full adulthood and that a fetal heartbeat has become a
4 key medical predictor that an unborn child will reach live birth.

5 **Section 2.** A new Chapter 91B is hereby *added* to Division 4 of Title 10,
6 Guam Code Annotated, to read as follows:

7 **“CHAPTER 91B**

8 **THE GUAM HEARTBEAT ACT OF 2022**

9 § 91B101. Title.

10 § 91B102. Definitions.

11 § 91B103. Determination of the Presence of Fetal Heartbeat Required;
12 Record.

13 § 91B104. Prohibited Abortion of Unborn Child with Detectable Fetal
14 Heartbeat; Effect.

15 § 91B105. Exception for Medical Emergency; Records.

16 § 91B106. Construction of Chapter.

17 § 91B107. Limitations on Public Enforcement.

18 § 91B108. Civil Liability for Violations, Aiding, or Abetting Violations.

19 § 91B109. Affirmative Defense.

20 § 91B110. Civil Liability; Undue Burden Defense Limitations.

21 § 91B111. Civil Liability Venue.

22 § 91B112. Sovereign, Governmental, and Official Immunity Preserved.

23 § 91B113. Severability.

24 § 91B114. Award of Attorney’s Fees in Actions Challenging Abortion
25 Laws.

26 § 91B115. Required Documentation.

27 § 91B116. Limitations to Consenting to an Abortion.

1 § 91B117. Medicine Induced Abortions.

2 § 91B118. Reporting.

3 § 91B119. Education.

4 **§ 91B101. Title.**

5 This Chapter may be cited and referred to as “*The Guam Heartbeat Act of*
6 *2022.*”

7 **§ 91B102. Definitions.**

8 For the purposes of this Chapter, the following words and phrases are defined
9 to mean:

10 (a) “Act” means all or any provisions or parts thereof of the Guam
11 Heartbeat Act of 2022, including without limitation, any Sections or
12 Subsections.

13 (b) “Fetal Heartbeat” means cardiac activity or the steady and
14 repetitive rhythmic contraction of the fetal heart between the gestational sac.

15 (c) “Gestational Age” means the amount of the time that has elapsed
16 from the first day of the women’s last menstrual period.

17 (d) “Gestational Sac” means the structure comprising the
18 extraembryonic membranes that envelop the unborn child and that is typically
19 visible by ultrasound after the fourth week of pregnancy.

20 (e) “Physician” means an individual licensed to practice medicine
21 on Guam, including a medical doctor and a doctor of osteopathic medicine.

22 (f) “Pregnancy” means the human female reproductive condition
23 that:

24 (1) begins with fertilization;

25 (2) occurs when the woman is carrying the developing human
26 offspring; and

1 (3) is calculated from the first day of the woman's last
2 menstrual period.

3 (g) "Standard Medical Practice" means the degree of the skill, care,
4 and diligence that any physician or obstetrician of ordinary judgement,
5 learning, and skill would employ in like circumstances.

6 (h) "Unborn Child" means a human fetus or embryo in any stage of
7 gestation from fertilization until birth.

8 **§ 91B103. Determination of the Presence of Fetal Heartbeat Required;**
9 **Record.**

10 (a) For the purposes of determining the presence of a fetal heartbeat under
11 this Section, "standard medical practice" includes employing the appropriate means
12 of detecting the heartbeat on the estimated gestational age of the unborn child and
13 the condition of the woman and her pregnancy.

14 (b) A physician may not knowingly perform or induce an abortion on a
15 pregnant woman unless the physician has determined, in accordance with this
16 Section, whether the woman's unborn child has a detectable fetal heartbeat.

17 (c) In making a determination under this Section, the physician must use a
18 test that is:

19 (1) consistent with the physician's good faith and reasonable
20 understanding of standard medical practice; and

21 (2) appropriate for the estimated gestational age of the unborn child
22 and the condition of the pregnant woman and her pregnancy.

23 (d) A physician making a determination under this Section shall record in
24 the pregnant woman's medical record:

25 (1) the estimated gestational age of the unborn child;

26 (2) the method used to estimate the gestational age; and

1 (3) the test used for detecting a fetal heartbeat including the date,
2 time, and results of the test.

3 **§ 91B104. Prohibited Abortion of Unborn Child with Detectable Fetal**
4 **Heartbeat; Effect.**

5 (a) Except as provided in § 91B105 relative to a medical emergency, a
6 physician may not knowingly perform or induce an abortion on a pregnant woman
7 if the physician detected a fetal heartbeat for the unborn child as required in §91B103
8 as required by this Chapter or failed to perform a test to detect a fetal heartbeat.

9 (b) A physician does not violate this Section if the physician performed a
10 test for a fetal heartbeat required by § 91B103 and did not detect a fetal heartbeat.

11 **§ 91B105. Exception for Medical Emergency; Records.**

12 (a) Section 91B104 does not apply if a physician believes a medical
13 emergency exists, whereby the physician believes that absent performing or
14 inducing an abortion, a pregnant woman may lose her life or her health would be
15 severely impaired.

16 (b) For purposes of Subsection (a) of this Section, “severely impaired”
17 shall mean an impairment or combination of impairments that significantly limit the
18 pregnant woman’s physical or mental abilities.

19 (c) A physician who performs or induces an abortion under circumstances
20 described in Subsection (a) of this Section shall make detailed written notations in
21 the pregnant woman’s medical record of:

22 (1) the physician’s belief that a medical emergency necessitated the
23 abortion; and

24 (2) the medical condition of the pregnant woman that prevented
25 compliance with this Section.

1 (d) A physician performing or inducing an abortion under this Section shall
2 maintain in the physician's records a copy of the written notations made under
3 Subsection (c).

4 **§ 91B106. Construction of Chapter.**

5 (a) This Chapter does not create or recognize a right to abortion before a
6 fetal heartbeat is detected.

7 (b) This Chapter may not be construed to:

8 (1) authorize the initiation of a cause, civil or otherwise, against or
9 the prosecution of a woman on whom an abortion is performed or induced or
10 attempted to be performed or induced in violation of this Chapter; or

11 (2) wholly or partially repeal, either expressly or by implication, any
12 other statute that regulates or prohibits abortion.

13 **§ 91B107. Limitations on Government Enforcement.**

14 (a) The requirements of this Section shall be enforced exclusively through
15 private civil actions described in § 91B108. No enforcement of any provision of this
16 Chapter in response to violations of this Chapter may be taken or threatened by the
17 island of Guam, the Government of Guam, the Governor of Guam, the Lieutenant
18 Governor of Guam, any Guam Senator collectively or individually, the Attorney
19 General of Guam, any Guam Mayor or Vice Mayor collectively or individually, the
20 Mayors Council of Guam, any agency of the Government of Guam, any political
21 subdivision of the Government of Guam, any municipality of Guam, or an executive
22 or administrative officer or employee of the Government of Guam.

23 (b) This Section may not be construed to:

24 (1) legalize the conduct prohibited by any provision of this Chapter;

25 (2) limit in any way or affect the availability of a remedy established
26 by any provision of this Chapter; or

1 (3) limit the enforceability of any other laws that regulate or prohibit
2 abortion.

3 **§ 91B108. Civil Liability for Violation, Aiding, or Abetting Violations.**

4 (a) Any person, other than the Government of Guam, the Governor of
5 Guam, the Lieutenant Governor of Guam, any Guam Senator collectively or
6 individually, the Attorney General of Guam, any Guam Mayor or Vice Mayor
7 collectively or individually, the Mayors Council of Guam, any agency of the
8 Government of Guam, any political subdivision of the Government of Guam, any
9 municipality of Guam, or an executive or administrative officer or employee of the
10 Government of Guam, may bring a civil action against any person who:

11 (1) performs or induces an abortion in violation of any provision of
12 this Chapter;

13 (2) knowingly engages in conduct that aids or abets the performance
14 or inducement of an abortion, including paying for or reimbursing the costs
15 of an abortion through insurance or otherwise, if the abortion is performed or
16 induced in violation of this Section regardless of whether the person knew or
17 should have known that the abortion would be performed or induced in
18 violation of this Section; or

19 (3) intends to engage in the conduct described in Subsection (a)(1)
20 of this Section or if a claimant prevails in an action brought under this Section,
21 the court shall award:

22 (A) injunctive relief sufficient to prevent the defendant from
23 violating this Chapter or any provision of this Section that aids or abets
24 violations of this Section; statutory damages in an amount of not less
25 than Ten Thousand Dollars (\$10,000) for each abortion that the
26 defendant performed or induced in violation of this Section, and for

1 each abortion performed or induced in violation of this Section, that the
2 defendant aided or abetted; and

3 (B) costs and attorney's fees.

4 (C) Notwithstanding Subsection (B), a court may not award
5 relief under this Section in response to a violation of Subsection (a)(1)
6 or (2) if the defendant demonstrates that the defendant previously paid
7 the full amount of statutory damages under Subsection (b)(2) in a
8 previous action for that particular abortion performed or induced in a
9 violation of this Section, or for the particular conduct that aided or
10 abetted an abortion performed or induced in violation of this Section.

11 (D) Notwithstanding this Section or any other provision of
12 law, a person may bring an action under this Section no later than the
13 sixth anniversary of the date the cause of action accrues.

14 (E) Notwithstanding any other provision of law, the following
15 are not a defense to an action brought under this Section:

16 (i) ignorance or mistake of law;

17 (ii) a defendant's belief that the requirements of this
18 Section are unconstitutional or were unconditional;

19 (iii) a defendant's reliance on any court decision that has
20 been overruled on appeal or by a subsequent court, even if that
21 court decision had not been overruled when the defendant
22 engaged in conduct that violated this Section;

23 (iv) a defendant's reliance on any state, federal or
24 territorial court decision that is not binding on the court in which
25 the action has been brought;

26 (v) non-mutual issue preclusion or non-mutual claim
27 preclusion; or

(vi) the consent of the unborn child's mother to the abortion.

§ 91B109. Affirmative Defense.

It is an affirmative defense if:

(a) a person sued under this Chapter or any provision of this Chapter, reasonably believed after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this Chapter or any provision of this Chapter; or

(b) a person sued under this Chapter or any provision of this Chapter reasonably believed after conducting a reasonable investigation that the physician performing or inducing the abortion will comply with this Chapter or any provision of this Chapter.

(c) The defendant has the burden of proving any affirmative defense by a preponderance of the evidence.

(d) This Chapter or any provision of this Chapter may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to states and the island of Guam through the United States Supreme Court interpretation of the Fourteenth Amendment of the United States Constitution or by any provision of the Organic Act of Guam related to freedom of speech.

(e) Notwithstanding any other provision of law, the island of Guam, the Government of Guam, the Governor of Guam, the Lieutenant Governor of Guam, any Guam Senator collectively or individually, the Attorney General of Guam, any Guam Mayor or Vice Mayor collectively or individually, the Mayors Council of Guam, any agency of the Government of Guam, any political subdivision of the Government of Guam, any municipality of Guam, or an executive or administrative officer or employee of the Government of

1 Guam, may not intervene in an action brought under this Chapter or any
2 provision of this Chapter.

3 **§ 91B110. Civil Liability; Undue Burden Defense Limitations.**

4 A defendant against whom an action is brought under this Chapter or any
5 provision of this Chapter does not have standing to assert the rights of women
6 seeking an abortion as a defense to unless: the United States Supreme Court holds
7 that the courts of Guam, federal or local, must confer standing for defendant to assert
8 the third-party rights of women seeking an abortion in court as a matter of
9 constitutional law; or the defendant has standing to assert the rights of women
10 seeking an abortion under the tests for third-party standing established by the United
11 States Supreme Court.

12 (a) A defendant in an action brought under this Chapter or any
13 provision of this Chapter may assert an affirmative defense to liability under
14 this Chapter or any provision of this Chapter if:

15 (1) the defendant has standing to assert the third-party rights
16 of a woman or group of women seeking an abortion in accordance with
17 this Chapter or any provision of this Chapter; and

18 (2) the defendant demonstrated that the relief sought by the
19 claimant will impose an undue burden on that woman or that group of
20 women seeking an abortion.

21 (b) A court may not find an undue burden under this Chapter or any
22 provision of this Chapter unless the defendant introduced evidence proving
23 that:

24 (1) an award of relief will prevent a substantial obstacle in the
25 path of a woman or a group of women who are seeking an abortion; or

26 (2) an award of relief will place a substantial obstacle in the
27 path of a woman or a group of women who are seeking an abortion.

1 (c) Any affirmative defense under this Chapter or any provision of
2 this Chapter is not available if the United States Supreme Court overrules *Roe*
3 *v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833
4 (1992), regardless of whether the conduct on which the cause of action is
5 based under this Chapter or any provision of this Chapter occurred before the
6 Supreme Court overruled either of those decisions.

7 (d) Nothing in this Chapter or any provision of this Chapter shall in
8 any way limit or preclude a defendant from asserting the defendant's personal
9 constitutional rights as a defense to liability under this Chapter or any
10 provision of this Chapter, and a court may not award relief under this Chapter
11 or any provision of this Chapter if the conduct for which the defendant has
12 been sued was an exercise of territorial or federal constitutional rights that
13 personally belong to the defendant.

14 **§ 91B111. Civil Liability Venue.**

15 (a) Notwithstanding any other provision of law, including this Chapter or
16 any provision of this Chapter, a civil action brought under this Chapter or any
17 provision of this Chapter shall be brought in either the United States District Court
18 of Guam or the Superior Court of Guam.

19 (b) If a civil action is brought under this Chapter or any provision of this
20 Chapter, in either the United States District Court of Guam or the Superior Court of
21 Guam, the action may not be transferred to a different venue without the written
22 consent of all parties.

23 **§ 91B112. Sovereign, Governmental, and Official Immunity Preserved.**

24 (a) This Section prevails over any conflicting law, including:

- 25 (1) the Uniform Declaratory Judgements Act; and
26 (2) any provision of the Guam Civil Procedure Code.

(b) Guam has sovereign immunity, the Government of Guam and its agencies have sovereign immunity, the Governor of Guam has official immunity, the Lieutenant Governor of Guam has official immunity, Guam Senators collectively or individually have official immunity, the Attorney General of Guam has official immunity, any Guam Mayor or Vice Mayor collectively or individually have official immunity, the Mayors Council of Guam has official immunity, any political subdivision of the Government of Guam shall have sovereign immunity, any municipality of Guam shall have sovereign immunity, and an executive or administrative officer or employee of the Government of Guam shall have official immunity, in any action, claim, or counterclaim of any type of legal or equitable action that challenges the availability of any provision or application of this Chapter or any provision of this Chapter on constitutional grounds or otherwise.

(c) A provision of federal or territorial law may not be construed to waive or abrogate an immunity described in Subsection (b) unless it expressly waives immunity under this Section.

§ 91B113. Severability.

(a) In *Leavitt v. Jane L.*, 518 U.S. 137, (1996), in which in the context of determining the severability of a state statute regulating abortion, the United States Supreme Court held that an explicit statement of legislative intent is controlling. It is the intent of *I Liheslaturan Guåhan* by virtue of this Chapter that every provision, section, subsection, sentence, clause, phrase or word in this Chapter and every application of the provisions in this Chapter are severable from each other.

(b) Other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this Chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in full force and effect, because it is *I Liheslaturan Guåhan*'s intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a

1 provision of this Chapter to impose an undue burden in a large or substantial fraction
2 of relevant cases, the applications that do not present an undue burden shall be
3 severed from the remaining applications and shall remain in full force and effect,
4 and shall be treated as if the legislature had enacted a statute limited to the persons,
5 group of persons, or circumstances for which the statute's application does not
6 present an undue burden.

7 (c) If any court declares or finds any provision of this Act facially
8 unconstitutional, when discrete applications of that provision can be enforced
9 against a person, group of persons, or circumstances without violating the United
10 States Constitution and/or the Organic Act of Guam, those applications shall be
11 severed from all remaining applications of the provision, and the provision shall be
12 interpreted as if the people had enacted a provision limited to the persons, group of
13 persons, or circumstances for which the provision's application will not violate the
14 United States Constitution and/or the Organic Act of Guam.

15 (d) If any provision of this Chapter is found by any court to be
16 unconstitutionally vague, then the applications of that provision that do not present
17 constitutional vagueness problems shall be severed and remain in full force and
18 effect.

19 (e) No court may decline to enforce the severability requirements of this
20 Chapter or any provision of this Chapter on the grounds that severance would rewrite
21 the statute or involve the court in legislative or lawmaking activity. A court that
22 declines to enforce or enjoin a state official from enforcing a statutory provision does
23 not rewrite a statute, as the statute continues to contain the same words as before the
24 court's decision.

25 **§ 91B114. Award of Attorney's Fees in Actions Challenging Abortion**
26 **Laws.**

1 (a) Notwithstanding any other law, any person, including an entity,
2 attorney, or law firm, who seeks declaratory or injunctive relief to prevent the island
3 of Guam, the Government of Guam, the Governor of Guam, the Lieutenant
4 Governor of Guam, any Guam Senator collectively or individually, the Attorney
5 General of Guam, any Guam Mayor or Vice Mayor collectively or individually, the
6 Mayors Council of Guam, any agency of the Government of Guam, any political
7 subdivision of the Government of Guam, any municipality of Guam, or an executive
8 or administrative officer or employee of the Government of Guam, from enforcing
9 any statute, ordinance, rule, regulation, or any other type of law that regulates or
10 restricts abortion or that limits taxpayer funding for individuals or entities that
11 perform or promote abortions, in the United States District Court of Guam or
12 Superior Court of Guam, or that represents any litigant seeking such relief in any
13 court, is jointly and severally liable to pay the costs and attorney's fees of the
14 prevailing party.

15 (b) For purposes of this Section, a party is considered a prevailing party if
16 the United States District Court of Guam or Superior Court of Guam:

17 (1) dismisses any claim or cause of action brought against the party
18 that seeks the declaration or injunctive relief described in Subsection (a),
19 regardless of the reason for the dismissal; or

20 (2) enters judgment in the party's favor on any such claim or cause
21 of action.

22 **§ 91B115. Required Documentation.**

23 (a) If an abortion is performed or induced on a pregnant woman because of
24 a medical emergency, the physician who performs or induces the abortion shall
25 execute a written document that certifies the abortion is necessary due to a medical
26 emergency and specifies the woman's medical condition requiring the abortion.

27 (b) A physician shall:

1 (1) place the document described in Subsection (a) in the pregnant
2 woman's medical records; and

3 (2) maintain a copy of the document described in Subsection (a) in
4 the physician's records.

5 (c) A physician who performs or induces an abortion on a pregnant woman
6 shall:

7 (1) if the abortion is performed or induced to preserve the health of
8 the pregnant woman, execute a written document that:

9 (A) specifies the medical condition of the pregnant woman the
10 abortion is asserted to address; and

11 (B) provides the medical rationale for the physician's
12 conclusion that the abortion is necessary to address the medical
13 condition; or

14 (2) for an abortion other than an abortion described in Subsection (a),
15 specify in a written document that maternal health is not a purpose of
16 the abortion.

17 (d) The physician shall maintain copies of all documents described in this
18 Section in the physician's practice records.

19 **§ 91B116. Limitations to Consenting to an Abortion.**

20 (a) Consent to an abortion is voluntary and informed only if:

21 (1) the physician who is to perform or induce the abortion informs
22 the pregnant woman on whom the abortion is to be performed or induced of:

23 (A) the physician's name;

24 (B) the particular medical risks associated with the particular
25 abortion to be induced or performed;

26 (C) the risks of infection and hemorrhage;

1 (D) the potential danger to a subsequent pregnancy and of
2 infertility;

3 (E) the possibility of increased risk of breast cancer following
4 an induced abortion and the natural protective effect of a completed
5 pregnancy in avoiding breast cancer;

6 (F) the probable gestational age of the unborn child at the time
7 the abortion is to be performed or induced; and

8 (G) the medical risks associated with carrying the child to
9 term.

10 (2) the physician who is to perform or induce the abortion or the
11 physician's agent informs the pregnant woman that:

12 (A) medical assistance benefits may be available for the
13 prenatal care, childbirth, and neonatal care;

14 (B) the father is liable for assistance in the support of the child
15 without regard to whether the father has offered to pay for the abortion;
16 and

17 (C) private agencies that provide assistance for the adoption of
18 children and/or the foster care of children;

19 (3) the physician who is to perform or induce the abortion, or the
20 physician's agent, before any sedative or anesthesia is administered to the
21 pregnant woman and at least twenty-four (24) hours before the abortions:

22 (A) the physician who is to perform or induce the abortion, or
23 an agent of the physician who is a licensed sonographer, shall display
24 the sonogram to the pregnant woman the abortion is to be performed or
25 induced;

26 (B) the physician who is to perform or induce the abortion
27 displays the sonogram images to the pregnant woman in a quality

1 consistent with current medical practices in a manner that the pregnant
2 woman may view them;

3 (C) the physician who is to perform or induce the abortion
4 provides, in a manner understandable to a layperson, a verbal
5 explanation of the results of the sonogram images, including a medical
6 description of the dimension of the embryo or fetus, the presence of
7 cardiac activity, and the presence of external membranes and internal
8 organs; and

9 (D) the physician who is to perform or induce the abortion, or
10 an agent of the physician who is a licensed sonographer, shall make
11 audible the heart auscultation for the pregnant woman to hear, if
12 present, in a quality consistent with current medical practice and
13 provides, in a manner understandable to a layperson, a simultaneous
14 verbal explanation of the heart auscultation;

15 (4) before receiving a sonogram under this Section and before the
16 abortion is performed or induced and before any sedative or anesthesia is
17 administered, the pregnant woman completes and certifies with her signature
18 an election form that states as follows:

19 "ABORTION AND SONOGRAM ELECTION"

20 (1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED
21 IN § 91B117 HAVE BEEN PROVIDED AND EXPLAINED TO ME.

22 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN
23 ABORTION.

24 (3) GUAM LAW REQUIRES THAT I RECEIVE A SONOGRAM
25 PRIOR TO RECEIVING AN ABORTION.

26 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE
27 SONOGRAM IMAGES.

1 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE
2 HEARTBEAT.

3 (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN
4 EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN
5 WRITING THE FOLLOWING:

6 _____ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT
7 OR INCEST AS A RESULT OF A VIOLATION TO THE GUAM PENAL
8 CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT
9 AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I
10 REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK
11 OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

12 _____ MY UNBORN CHILD HAS AN IRREVERSIBLE MEDICAL
13 CODNITION OR ABNORMALITY, AS DIRECTED BY RELIABLE
14 DIAGNOTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL
15 FILE.

16 (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND
17 WITHOUT COERCION.

18 _____
19 SIGNATURE

DATE

20 (5) before the abortion is performed or induced, the physician who
21 is to perform or induce the abortion received a copy of the signed, written
22 certification required by this Section; and

23 (6) the pregnant woman is provided the name of each person who
24 provides or explains the information required under this Section.

25 **§ 91B117. Medicine Induced Abortions.**

26 (a) For purposes of this Section, no physician or person shall administer
27 any medication or provide a pregnant woman with any medication with the primary

1 intent of ending a pregnancy, after a fetal heartbeat has been detected in accordance
2 with § 91B103.

3 (b) Any physician or person in violation of this Section shall be subject to
4 civil liability as provided in § 91B108.

5 (c) For purposes of this Section, the exception for medical emergency
6 pursuant to § 91B105 shall apply.

7 (d) If any provision of this Section or its application to any person or
8 circumstance is found to be invalid or contrary to law, such invalidity shall not affect
9 other provisions of this Section or other provisions of this Chapter that can be given
10 effect without the invalid provision or application, and to this end the provisions of
11 this Section are severable.

12 **§ 91B118. Reporting.**

13 (a) Reports shall be compiled and maintained, and must include:

14 (1) the patient's date of birth, race, marital status, and place of
15 residence;

16 (2) the type of abortion procedure;

17 (3) the date the abortion was performed;

18 (4) whether the patient survived the abortion; and if the patient
19 did not survive, the cause of death;

20 (5) the probable post-fertilization age of the unborn child
21 based on the best medical judgement of the attending physician at the
22 time of the procedure;

23 (6) the date, if known, of the patient's last menstrual cycle;

24 (7) the number of previously induced abortions of the patient;

25 and

1 (8) whether the abortion was performed or induced because of
2 a medical emergency and any medical condition of the pregnant woman
3 that required the abortion.

4 **§ 91B119. Education.**

5 The Guam Department of Education and the Guam Charter Schools Council
6 shall implement a sexual abuse prevention program recognized by the U.S.
7 Department of Health and Human Services to provide schoolchildren and families
8 with the tools, programs, and training toward the understanding and prevention of
9 incest, rape, and other sexual assault, such as, but not limited to:

- 10 (a) Good Touch, Bad Touch;
11 (b) Circles of Training;
12 (c) Sexual Abuse of Children with Disabilities; or
13 (d) Talk To Your Child or Teen.”

14 **Section 3. Severability.** If any provision of this Act or its application to any
15 person or circumstance is found to be invalid or inorganic, such invalidity shall not
16 affect other provisions or applications of this Act that can be given effect without
17 the invalid provision or application, and to this end the provisions of this Act are
18 severable.

19 **Section 4. Effective Date.** This Act shall be effective thirty (30) days after
20 its enactment; and shall not affect, in the interim, any other improvements necessary
21 to be done in carrying out the purpose of this Act.