

9 GCA CRIMES AND CORRECTIONS
CH. 91 INFANT CHILD'S RIGHT TO LIFE ACT

CHAPTER 91
INFANT CHILD'S RIGHT TO LIFE ACT

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- § 91.01. Title.
- § 91.02. Legislative Findings and Purpose.
- § 91.03. Definitions.
- § 91.04. Requirements and Responsibilities.
- § 91.05. Criminal Penalties.
- § 91.06. Civil and Administrative Action.

§ 91.01. Title.

This Act may be known and cited as the “Infant Child’s Right to Life Act.”

§ 91.02. Legislative Findings and Purpose.

(a) *I Liheslaturan Guåhan* finds that:

- (1) All children, no matter their age, have the right to life. Guam has a paramount interest in protecting all human life.
- (2) If an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of Guam.
- (3) Guam must assert its interest in protecting an infant whose live birth occurred as the result of an abortion.
- (4) Without proper legal protection, newly-born infants who survive abortions could be denied proper life-saving or life-sustaining medical treatment and left to die.

(b) Accordingly, it is the purpose of this Act to ensure the protection and promotion of the health and wellbeing of all infants born alive in Guam. Therefore, this Act mandates that healthcare providers give medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born alive infants.

§ 91.03. Definitions.

For the purposes of this Act only:

9 GCA CRIMES AND CORRECTIONS
CH. 91 INFANT CHILD'S RIGHT TO LIFE ACT

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

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

- (1) breathing;
- (2) a heartbeat;
- (3) umbilical cord pulsation; or
- (4) definite movement of voluntary muscles.

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

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

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

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

§ 91.04. Requirements and Responsibilities.

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

9 GCA CRIMES AND CORRECTIONS
CH. 91 INFANT CHILD'S RIGHT TO LIFE ACT

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

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

- (1) is not necessary to save the life of the infant;
- (2) has a potential risk to the infant's life or health that outweighs the potential benefit to the infant of the treatment or care; or
- (3) is treatment that will do no more than prolong the act of dying when death is imminent.

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

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

(f) Any infant, including one born in the course of an abortion procedure, shall be treated as a legal person under the laws of Guam, with the same rights to medically-appropriate care and treatment, and birth and death (if death occurs) certificates shall be issued accordingly.

(g) If, before the abortion, the mother and the father have stated in writing that they do not wish to keep the infant in the event that the abortion

9 GCA CRIMES AND CORRECTIONS
CH. 91 INFANT CHILD'S RIGHT TO LIFE ACT

results in a live birth, and this writing is not retracted before the abortion, the infant, if born alive, shall immediately upon birth become a ward of Guam.

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

§ 91.05. Criminal Penalties.

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

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

§ 91.06. Civil and Administrative Action.

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

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

(b) provide a basis for professional disciplinary action for the suspension or revocation of any license of physicians, licensed and registered nurses, or other licensed or regulated persons. Any conviction of any person for any failure to comply with the

9 GCA CRIMES AND CORRECTIONS
CH. 91 INFANT CHILD'S RIGHT TO LIFE ACT

requirements of this Act shall result in the automatic suspension of his or her license for a period of at least one year, and shall be reinstated after that time only under such conditions as shall be required to ensure compliance with this Act; and

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