

IN THE SENATE

SENATE BILL NO. 1386

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; TO PROVIDE A SHORT TITLE; AMENDING SECTION 18-604,
2 IDAHO CODE, TO PROVIDE ADDITIONAL DEFINITIONS AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE ADDI-
4 TION OF NEW SECTIONS 18-622 THROUGH 18-629, IDAHO CODE, TO PROHIBIT
5 DISMEMBERMENT ABORTIONS, TO PROVIDE FOR PROTECTION OR PRIVACY IN
6 COURT PROCEEDINGS, TO PROVIDE FOR INJUNCTIONS AGAINST DISMEMBERMENT
7 ABORTIONS, TO PROVIDE CIVIL REMEDIES, TO PROVIDE ATTORNEY'S FEES, TO
8 PROVIDE CRIMINAL PENALTIES, TO PROVIDE FOR CONSTRUCTION AND TO PROVIDE
9 SEVERABILITY; AMENDING SECTION 18-617, IDAHO CODE, TO PROVIDE A CORRECT
10 CODE REFERENCE; REPEALING SECTION 18-613, IDAHO CODE, RELATING TO PAR-
11 TIAL-BIRTH ABORTIONS; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE
12 ADDITION OF A NEW SECTION 18-613, IDAHO CODE, TO PROHIBIT PARTIAL-BIRTH
13 ABORTIONS, TO PROVIDE AN EXCEPTION, TO PROVIDE DEFINITIONS, TO PROVIDE
14 FOR CIVIL ACTIONS, TO PROVIDE FOR A FACT-FINDING HEARING WITH THE STATE
15 MEDICAL BOARD AND TO PROVIDE LIMITED IMMUNITY TO THE PERSON UPON WHOM
16 THE ABORTION IS PERFORMED; PROVIDING SEVERABILITY; AND DECLARING AN
17 EMERGENCY.
18

19 Be It Enacted by the Legislature of the State of Idaho:

20 SECTION 1. SHORT TITLE. This act shall be known and may be cited as the
21 "Idaho Unborn Child Protection from Dismemberment Abortion Act."

22 SECTION 2. That Section 18-604, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 18-604. DEFINITIONS. As used in this ~~act~~ chapter:

25 (1) "Abortion" means the use of any means to intentionally terminate
26 the clinically diagnosable pregnancy of a woman with knowledge that the ter-
27 mination by those means will, with reasonable likelihood, cause the death
28 of the unborn child except that, for the purposes of this chapter, abortion
29 shall not mean the use of an intrauterine device or birth control pill to in-
30 hibit or prevent ovulations, fertilization or the implantation of a fertil-
31 ized ovum within the uterus.

32 (2) "Department" means the Idaho department of health and welfare.

33 (3) "Dismemberment abortion" means an abortion, with the purpose of
34 causing the death of an unborn child, by dismembering a living unborn child
35 by piece or part from the uterus through use of clamps, grasping forceps,
36 tongs, scissors or similar instruments that, at the convergence of two (2)
37 rigid levers, grasp a portion of the unborn child's body to remove it by piece
38 or part from the uterus. The term "dismemberment abortion" does not include
39 an abortion that uses suction to dismember the body of the unborn child by
40 sucking fetal parts into a collection container, nor does it include an abor-
41 tion following fetal demise that uses a suction curette, suction curettage

1 and/or forceps to dismember the body of a dead unborn child, although it does
 2 include an abortion in which a dismemberment abortion, as defined in this
 3 subsection, is used to cause the death of an unborn child but suction is sub-
 4 sequently used to extract fetal parts after the death of the unborn child.

5 (4) "Emancipated" means any minor who has been married or is in active
 6 military service.

7 (45) "Fetus" and "unborn child." Each term means an individual organism
 8 of the species ~~H~~Homo sapiens from fertilization until live birth.

9 (56) "First trimester of pregnancy" means the first thirteen (13) weeks
 10 of a pregnancy.

11 (67) "Hospital" means an acute care, general hospital in this state,
 12 licensed as provided in chapter 13, title 39, Idaho Code.

13 (78) "Informed consent" means a voluntary and knowing decision to un-
 14 dergo a specific procedure or treatment. To be voluntary, the decision must
 15 be made freely after sufficient time for contemplation and without coercion
 16 by any person. To be knowing, the decision must be based on the physician's
 17 accurate and substantially complete explanation of:

18 (a) A description of any proposed treatment or procedure;

19 (b) Any reasonably foreseeable complications and risks to the patient
 20 from such procedure, including those related to reproductive health;
 21 and

22 (c) The manner in which such procedure and its foreseeable complica-
 23 tions and risks compare with those of each readily available alterna-
 24 tive to such procedure, including childbirth and adoption.

25 The physician must provide the information in terms ~~which~~ that can be under-
 26 stood by the person making the decision, with consideration of age, level of
 27 maturity and intellectual capability.

28 (89) "Medical emergency" means a condition which, on the basis of the
 29 physician's good faith clinical judgment, so complicates the medical con-
 30 dition of a pregnant woman as to necessitate the immediate abortion of her
 31 pregnancy to avert her death or for which a delay will create serious risk of
 32 substantial and irreversible impairment of a major bodily function.

33 (910) "Minor" means a woman less than eighteen (18) years of age.

34 (101) "Pregnant" and "pregnancy." Each term shall mean the reproductive
 35 condition of having a developing fetus in the body and commences with fertil-
 36 ization.

37 (112) "Physician" means a person licensed to practice medicine and
 38 surgery or osteopathic medicine and surgery in this state as provided in
 39 chapter 18, title 54, Idaho Code.

40 (123) "Second trimester of pregnancy" means that portion of a pregnancy
 41 following the thirteenth week and preceding the point in time when the fetus
 42 becomes viable, and there is hereby created a legal presumption that the sec-
 43 ond trimester does not end before the commencement of the twenty-fifth week
 44 of pregnancy, upon which presumption any licensed physician may proceed in
 45 lawfully aborting a patient pursuant to section 18-608, Idaho Code, in which
 46 case the same shall be conclusive and un rebuttable in all civil or criminal
 47 proceedings.

48 (14) "Serious health risk to the unborn child's mother" means that in
 49 reasonable medical judgment she has a condition that so complicates her med-
 50 ical condition that it necessitates the abortion of her pregnancy to avert

1 her death or to avert serious risk of substantial and irreversible physi-
 2 cal impairment of a major bodily function, not including psychological or
 3 emotional conditions. No such condition may be determined to exist if it is
 4 based on a claim or diagnosis that the woman will engage in conduct which she
 5 intends to result in her death or in substantial and irreversible physical
 6 impairment of a major bodily function.

7 (135) "Third trimester of pregnancy" means that portion of a pregnancy
 8 from and after the point in time when the fetus becomes viable.

9 (16) "Woman" means a female human being whether or not she has reached
 10 the age of majority.

11 (147) Any reference to a viable fetus shall be construed to mean a fetus
 12 potentially able to live outside the mother's womb, albeit with artificial
 13 aid.

14 SECTION 3. That Chapter 6, Title 18, Idaho Code, be, and the same is
 15 hereby amended by the addition thereto of NEW SECTIONS, to be known and des-
 16 ignated as Sections 18-622 through 18-629, Idaho Code, and to read as fol-
 17 lows:

18 18-622. DISMEMBERMENT ABORTION. (1) Unlawful conduct. Notwithstand-
 19 ing any other provision of law, it shall be unlawful for any person to perform
 20 or attempt to perform a dismemberment abortion unless necessary to prevent
 21 serious health risk to the unborn child's mother.

22 (2) Exclusion. No woman upon whom an abortion is performed or attempted
 23 to be performed shall be thereby guilty of or liable for violating this sec-
 24 tion. No nurse, technician, secretary, receptionist or other employee or
 25 agent who is not a physician but who acts at the direction of a physician,
 26 and no pharmacist or other individual who is not a physician but who fills a
 27 prescription or provides instruments or materials used in an abortion at the
 28 direction of or to a physician shall be thereby liable for performing or at-
 29 tempting to perform a dismemberment abortion.

30 (3) Rape and incest. This act does not prevent abortion for any lawful
 31 reason including rape and incest by any other method.

32 18-623. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. Protection of an
 33 individual's privacy in court proceedings is as codified in section 18-609,
 34 Idaho Code.

35 18-624. INJUNCTIONS AGAINST DISMEMBERMENT ABORTIONS. Injunctive re-
 36 lief to prohibit a dismemberment abortion may be brought against a person who
 37 has performed or attempted to perform a dismemberment abortion in violation
 38 of section 18-622, Idaho Code. Such civil action may be maintained by the at-
 39 torney general or a prosecuting attorney with appropriate jurisdiction.

40 18-625. CIVIL REMEDIES. Any female upon whom a dismemberment abortion
 41 has been attempted or performed, or the father of the unborn child who was
 42 the subject of the dismemberment abortion if the father was married to the
 43 woman who received the dismemberment abortion at the time the abortion was
 44 attempted or performed, or a maternal grandparent of the unborn child in the
 45 event the mother is deceased, may maintain an action against the person who

1 in knowing or reckless violation of section 18-622, Idaho Code, attempted or
2 performed the dismemberment abortion.

3 18-626. ATTORNEY'S FEES. (1) If judgment is rendered in favor of the
4 plaintiff in an action described in section 18-624 or 18-625, Idaho Code, the
5 court shall also render judgment for a reasonable attorney's fee in favor of
6 the plaintiff against the defendant.

7 (2) If judgment is rendered in favor of the defendant in an action de-
8 scribed in section 18-624 or 18-625, Idaho Code, and the court finds that
9 the plaintiff's suit was frivolous and brought in bad faith, the court shall
10 render judgment for a reasonable attorney's fee in favor of the defendant
11 against the plaintiff.

12 (3) No attorney's fee may be assessed against the woman upon whom an
13 abortion was performed or attempted to be performed except in accordance
14 with subsection (2) of this section.

15 18-627. CRIMINAL PENALTY. Any physician or other person not exempt
16 who performs a dismemberment abortion in violation of section 18-622, Idaho
17 Code, shall be guilty of a felony, fined not in excess of ten thousand dollars
18 (\$10,000) or imprisoned for not more than two (2) years or both such fine and
19 imprisonment.

20 18-628. CONSTRUCTION. Nothing in this act shall be construed as creat-
21 ing or recognizing a right to abortion, nor a right to a particular method of
22 abortion.

23 18-629. SEVERABILITY. The provisions of this act are hereby declared
24 to be severable and if any provision of this act or the application of such
25 provision to any person or circumstance is declared invalid for any reason,
26 such declaration shall not affect the validity of the remaining portions of
27 this act.

28 SECTION 4. That Section 18-617, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 18-617. CHEMICAL ABORTIONS. (1) As used in this section:

31 (a) "Abortifacient" means mifepristone, misoprostol and/or other
32 chemical or drug dispensed with the intent of causing an abortion as de-
33 fined in section 18-604(1), Idaho Code. Nothing in the definition shall
34 apply when used to treat ectopic pregnancy;

35 (b) "Chemical abortion" means the exclusive use of an abortifacient or
36 combination of abortifacients to effect an abortion;

37 (c) "Physician" has the same meaning as provided in section
38 18-604(1+2), Idaho Code.

39 (2) No physician shall give, sell, dispense, administer, prescribe or
40 otherwise provide an abortifacient for the purpose of effecting a chemical
41 abortion unless the physician:

42 (a) Has the ability to assess the duration of the pregnancy accurately
43 in accordance with the applicable standard of care for medical practice
44 in the state;

1 (b) Has determined, if clinically feasible, that the unborn child to be
2 aborted is within the uterus and not ectopic;

3 (c) Has the ability to provide surgical intervention in cases of incom-
4 plete abortion or severe bleeding, or, if the physician does not have
5 admitting privileges at a local hospital, has made and documented in the
6 patient's medical record plans to provide such emergency care through
7 other qualified physicians who have agreed in writing to provide such
8 care;

9 (d) Informs the patient that she may need access to medical facilities
10 equipped to provide blood transfusions and resuscitation, if neces-
11 sary, as a result of or in connection with the abortion procedure on a
12 twenty-four (24) hour basis. If the appropriate medical facility is
13 other than a local hospital emergency room, the physician shall provide
14 the patient with the name, address and telephone number of such facility
15 in writing;

16 (e) Has examined in person the woman to whom the abortifacient is admin-
17 istered to determine the medical appropriateness of such administra-
18 tion and has determined that the abortifacient is sufficiently safe for
19 use in the gestational age at which it will be administered; and

20 (f) Has complied with the informed consent provisions of section
21 18-609, Idaho Code.

22 (3) The physician inducing the abortion, or a person acting on behalf
23 of the physician inducing the abortion, shall make reasonable efforts to en-
24 sure that the patient returns for a follow-up visit so that a physician can
25 confirm that the pregnancy has been terminated and assess the patient's med-
26 ical condition.

27 SECTION 5. That Section [18-613](#), Idaho Code, be, and the same is hereby
28 repealed.

29 SECTION 6. That Chapter 6, Title 18, Idaho Code, be, and the same is
30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
31 ignated as Section 18-613, Idaho Code, and to read as follows:

32 18-613. PARTIAL-BIRTH ABORTIONS PROHIBITED. (1) Prohibited acts. Any
33 physician who knowingly performs a partial-birth abortion and thereby kills
34 a human fetus shall be subject to the penalties imposed in section 18-605,
35 Idaho Code. This section shall not apply to partial-birth abortions neces-
36 sary to save the life of the mother when her life is endangered by a physical
37 disorder, illness, or injury, including a life-threatening physical condi-
38 tion caused by or arising from the pregnancy itself.

39 (2) Definitions. As used in this section:

40 (a) "Partial-birth abortion" means an abortion in which the person per-
41 forming the abortion:

42 (i) Deliberately and intentionally vaginally delivers a living
43 fetus until, in the case of a head-first presentation, the entire
44 fetal head is outside the body of the mother, or, in the case of
45 breech presentation, any part of the fetal trunk past the navel is
46 outside the body of the mother, for the purpose of performing an
47 overt act that the person knows will kill the partially delivered
48 living fetus; and

1 (ii) Performs the overt act, other than completion of delivery,
2 that kills the partially delivered living fetus.

3 (b) "Physician" has the same meaning provided in section 18-604, Idaho
4 Code. However, any individual who is not a physician or not otherwise
5 legally authorized by this state to perform abortions, but who never-
6 theless directly performs a partial-birth abortion, shall be subject to
7 the prohibitions described in this section.

8 (3) (a) Civil actions. The father of the aborted fetus, if married to
9 the mother of the aborted fetus at the time of the abortion; or the ma-
10 ternal grandparents of the aborted fetus, if the mother is not at least
11 eighteen (18) years of age at the time of the abortion, may bring a civil
12 action against the defendant physician to obtain appropriate relief.
13 Provided however, that a civil action by the plaintiff father is barred
14 if the pregnancy resulted from criminal conduct by the plaintiff father
15 or he consented to the abortion. Further, a civil action by the plain-
16 tiff maternal grandparents is barred if the pregnancy is the result of
17 criminal conduct by a maternal grandparent or a maternal grandparent
18 consented to the abortion.

19 (b) As used in this section, "appropriate relief" shall include:

20 (i) Money damages for all mental and physical injuries suffered by
21 the plaintiff as a result of the abortion performed in violation of
22 this section;

23 (ii) Money damages equal to three (3) times the cost of performing
24 the abortion procedure.

25 (4) (a) Hearing. A physician accused of violating this section may re-
26 quest a hearing before the state board of medicine to determine whether
27 the mother's life was endangered by a physical disorder, illness or in-
28 jury and therefor whether performing the abortion was necessary to save
29 the mother's life.

30 (b) The findings of the board of medicine regarding the issues de-
31 scribed in subsection (4) (a) of this section are admissible at the
32 criminal and civil trials of the defendant physician. Upon a motion
33 by the defendant physician, the court shall delay the beginning of the
34 criminal and civil trials for not more than thirty (30) days to permit
35 the hearing to take place.

36 (5) Immunity. A woman upon whom a partial-birth abortion is performed
37 shall not be prosecuted for violations of this section, for conspiracy to vi-
38 olate this section, or for violations of section 18-603, 18-605 or 18-606,
39 Idaho Code, in regard to the partial-birth abortion performed.

40 SECTION 7. SEVERABILITY. The provisions of this act are hereby declared
41 to be severable and if any provision of this act or the application of such
42 provision to any person or circumstance is declared invalid for any reason,
43 such declaration shall not affect the validity of the remaining portions of
44 this act.

45 SECTION 8. An emergency existing therefor, which emergency is hereby
46 declared to exist, Sections 5 and 6 of this act shall be in full force and ef-
47 fect on and after passage and approval.