

IN THE SENATE

SENATE BILL NO. 1002

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING SECTION 18-622, IDAHO CODE, TO REMOVE PROVI-  
2 SIONS REGARDING AN EFFECTIVE DATE, TO DEFINE TERMS, TO REVISE A PROVI-  
3 SION REGARDING AN AFFIRMATIVE DEFENSE, TO REVISE AN EXCEPTION, AND TO  
4 MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY AND PROVIDING  
5 AN EFFECTIVE DATE.  
6

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

8 SECTION 1. That Section 18-622, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 18-622. CRIMINAL ABORTION. (1) ~~Notwithstanding any other provision of~~  
11 ~~law, this section shall become effective thirty (30) days following the oc-~~  
12 ~~currence of either of the following circumstances:~~

13 ~~(a) The issuance of the judgment in any decision of the United States~~  
14 ~~supreme court that restores to the states their authority to prohibit~~  
15 ~~abortion; or~~

16 ~~(b) Adoption of an amendment to the United States constitution that re-~~  
17 ~~stores to the states their authority to prohibit abortion. As used in~~  
18 ~~this section:~~

19 (a) "Abortion" means the use or prescription of any instrument,  
20 medicine, drug, or any other substance or device to intentionally kill a  
21 living embryo or fetus. "Abortion" shall not include the unintentional  
22 death of any human embryo or fetus or conduct that occurs after the natu-  
23 ral death of any human embryo or fetus.

24 (b) "Embryo" or "fetus" mean any human in utero.

25 (2) Every person who performs or attempts to perform an abortion as de-  
26 fined in this ~~chapter~~ section commits the crime of criminal abortion. Crimi-  
27 nal abortion shall be a felony punishable by a sentence of imprisonment of no  
28 less than two (2) years and no more than five (5) years in prison. The profes-  
29 sional license of any health care professional who performs or attempts to  
30 perform an abortion or who assists in performing or attempting to perform an  
31 abortion in violation of this subsection shall be suspended by the appropri-  
32 ate licensing board for a minimum of six (6) months upon a first offense and  
33 shall be permanently revoked upon a subsequent offense.

34 (3) It shall be an affirmative defense to prosecution under subsection  
35 (2) of this section and to any disciplinary action by an applicable licensing  
36 authority, which must be proven by a preponderance of the evidence, that:

37 (a) (i) The abortion was performed or attempted by a physician as  
38 defined in this chapter;

39 (ii) The physician determined, in his good faith medical judgment  
40 and based on the facts known to the physician at the time, that the  
41 abortion was necessary to prevent the death of the pregnant woman.  
42 No abortion shall be deemed necessary to prevent the death of the

1 pregnant woman because the physician believes that the woman may  
2 or will take action to harm herself; and

3 (iii) ~~The physician performed or attempted to perform the abortion~~  
4 intentionally terminated the clinically diagnosable pregnancy of  
5 a woman in the manner that, in his good faith medical judgment and  
6 based on the facts known to the physician at the time, provided the  
7 best opportunity for the unborn child to survive, unless, in his  
8 good faith medical judgment, termination of the pregnancy in that  
9 manner would have posed a greater risk of the death of the pregnant  
10 woman. No such greater risk shall be deemed to exist because the  
11 physician believes that the woman may or will take action to harm  
12 herself; or

13 (b) (i) The abortion was performed or attempted by a physician as  
14 defined in this chapter;

15 (ii) If the woman is not a minor or subject to a guardianship,  
16 then, prior to the performance of the abortion, the woman has re-  
17 ported the act of rape or incest to a law enforcement agency and  
18 provided a copy of such report to the physician who is to perform  
19 the abortion;

20 (iii) If the woman is a minor or subject to a guardianship, then,  
21 prior to the performance of the abortion, the woman or her parent  
22 or guardian has reported the act of rape or incest to a law enforce-  
23 ment agency or child protective services and a copy of such report  
24 has been provided to the physician who is to perform the abortion;  
25 and

26 (iv) The physician who performed the abortion complied with the  
27 requirements of paragraph (a) (iii) of this subsection regarding  
28 the method of abortion.

29 (4) ~~Medical treatment provided~~ Any person who provides care to a preg-  
30 nant woman by a health care professional as defined in this chapter, in an at-  
31 tempt to save the life of the pregnant woman, that results in the accidental  
32 death of, or unintentional injury to, the unborn child shall not be a viola-  
33 tion of this section.

34 (5) Nothing in this section shall be construed to subject a pregnant  
35 woman on whom any abortion is performed or attempted to any criminal convic-  
36 tion and penalty.

37 SECTION 2. An emergency existing therefor, which emergency is hereby  
38 declared to exist, this act shall be in full force and effect on and after  
39 July 1, 2023.