

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 571

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE ABORTION COMPLICATIONS REPORTING ACT; AMENDING TITLE 39,
2 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 95, TITLE 39, IDAHO CODE,
3 TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PUR-
4 POSE, TO DEFINE TERMS, TO ESTABLISH PROVISIONS REGARDING REPORTING OF
5 ABORTION COMPLICATIONS, TO PROVIDE FOR REPORTING FORMS, TO ESTABLISH
6 PROVISIONS REGARDING CRIMINAL PENALTIES AND PROFESSIONAL SANCTIONS, TO
7 PROVIDE CLARIFICATION FOR CONSTRUCTION OF THIS CHAPTER, TO PROVIDE A
8 RIGHT OF INTERVENTION AND TO PROVIDE SEVERABILITY; AND AMENDING SECTION
9 54-1814, IDAHO CODE, TO PROVIDE GROUNDS FOR PROFESSIONAL DISCIPLINE.
10

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

12 SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended
13 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
14 ter 95, Title 39, Idaho Code, and to read as follows:

15 CHAPTER 95

16 ABORTION COMPLICATIONS REPORTING ACT

17 39-9501. SHORT TITLE. This act shall be known and may be cited as the
18 "Abortion Complications Reporting Act."

19 39-9502. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature of the
20 state of Idaho asserts and finds that:

21 (a) The state "has legitimate interests from the outset of pregnancy in
22 protecting the health of women," as found by the United States Supreme
23 Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey*;

24 (b) Specifically, the state "has a legitimate concern with the health
25 of women who undergo abortions," as found by the United States Supreme
26 Court in *Akron v. Akron Ctr. for Reproductive Health, Inc.*;

27 (c) Surgical abortion is an invasive procedure that can cause severe
28 physical and psychological complications for women, both short-term
29 and long-term, including, but not limited to, uterine perforation,
30 cervical perforation, infection, bleeding, hemorrhage, blood clots,
31 failure to actually terminate the pregnancy, incomplete abortion,
32 retained tissue, pelvic inflammatory disease, endometritis, missed
33 ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure,
34 metabolic disorder, shock, embolism, coma, placenta previa in subse-
35 quent pregnancies, preterm delivery in subsequent pregnancies, free
36 fluid in the abdomen, adverse reactions to anesthesia and other drugs,
37 an increased risk for developing breast cancer, psychological or emo-
38 tional complications such as depression, suicidal ideation, anxiety
39 and sleeping disorders, and death;

1 (d) To facilitate reliable scientific studies and research on the
2 safety and efficacy of abortion, it is essential that the medical and
3 public health communities have access to accurate information both on
4 the abortion procedure and on complications resulting from abortion;

5 (e) Abortion "record keeping and reporting provisions that are reason-
6 ably directed to the preservation of maternal health and that properly
7 respect a patient's confidentiality and privacy are permissible," ac-
8 cording to the United States Supreme Court in *Planned Parenthood v.*
9 *Danforth*;

10 (f) Abortion and complication reporting provisions do not impose an un-
11 due burden on a woman's right to choose whether or not to terminate a
12 pregnancy. Specifically, the "collection of information with respect
13 to actual patients is a vital element of medical research, and so it can-
14 not be said that the requirements serve no purpose other than to make
15 abortions more difficult," as found by the United States Supreme Court
16 in *Planned Parenthood v. Casey*;

17 (g) The use of RU-486 as part of a chemical abortion can cause sig-
18 nificant medical risks including, but not limited to, abdominal pain,
19 cramping, vomiting, headache, fatigue, uterine hemorrhage, infections
20 and pelvic inflammatory disease;

21 (h) The risk of complications increases with advancing gestational age
22 and with the failure to complete the two-step dosage process for RU-486
23 as part of a chemical abortion;

24 (i) Studies document that increased rates of complications, including
25 incomplete abortion, occur even within the gestational limit approved
26 by the federal food and drug administration (FDA);

27 (j) In July 2011, the FDA reported two thousand two hundred seven
28 (2,207) adverse events after women used RU-486 for abortions. Among
29 these events were fourteen (14) deaths, six hundred twelve (612) hos-
30 pitalizations, three hundred thirty-nine (339) blood transfusions,
31 and two hundred fifty-six (256) infections, including forty-eight (48)
32 severe infections;

33 (k) The adverse event reports systems relied upon by the FDA have lim-
34 itations and typically detect only a small proportion of events that
35 actually occur. Furthermore, the FDA has failed to publicly release
36 data since 2011, and it is necessary to develop a state-based infor-
37 mation system in the wake of court rulings legalizing telemedicine
38 abortions; and

39 (1) To promote its interest in maternal health and life, the state of
40 Idaho maintains an interest in:

41 (i) Collecting information on all complications from all abor-
42 tions performed in the state; and

43 (ii) Compiling statistical reports based on abortion complica-
44 tion information collected pursuant to this chapter for future
45 scientific studies and public health research.

46 (2) Based on the findings in subsection (1) of this section, it is the
47 purpose of this chapter to promote the health and safety of women by adding
48 to the sum of medical and public health knowledge through the compilation of
49 relevant data on all abortions performed in the state, as well as on all medi-
50 cal complications and maternal deaths resulting from these abortions.

1 39-9503. DEFINITIONS. As used in this chapter:

2 (1) "Abortion" means the use of any means to intentionally terminate
3 the clinically diagnosable pregnancy of a woman with knowledge that the ter-
4 mination by those means will, with reasonable likelihood, cause the death of
5 the unborn child. For purposes of this chapter, abortion shall not mean:

6 (a) The use of an intrauterine device or birth control pill to inhibit
7 or prevent ovulation, fertilization or implantation of a fertilized
8 ovum within the uterus; or

9 (b) Any means if the use is intended to:

10 (i) Save the life or preserve the health of the unborn child;

11 (ii) Remove a dead unborn child caused by spontaneous abortion; or

12 (iii) Remove an ectopic pregnancy.

13 (2) "Complication" means any abnormal or deviant process or event aris-
14 ing from the performance or completion of an abortion, including:

15 (a) Uterine perforation or injury to the uterus;

16 (b) Injury or damage to any organ inside the body;

17 (c) Cervical perforation or injury to the cervix;

18 (d) Infection;

19 (e) Heavy or excessive bleeding;

20 (f) Hemorrhage;

21 (g) Blood clots;

22 (h) Blood transfusion;

23 (i) Failure to actually terminate the pregnancy;

24 (j) Incomplete abortion or retained tissue;

25 (k) The need for follow-up care, surgery or an aspiration procedure for
26 incomplete abortion or retained tissue;

27 (l) Weakness, nausea, vomiting or diarrhea that lasts more than twenty-
28 four (24) hours;

29 (m) Pain or cramps that do not improve with medication;

30 (n) A fever of one hundred and four-tenths (100.4) degrees or higher for
31 more than twenty-four (24) hours;

32 (o) Hemolytic reaction due to the administration of ABO-incompatible
33 blood or blood products;

34 (p) Hypoglycemia where onset occurs while the patient is being cared
35 for in the abortion facility;

36 (q) Physical injury associated with therapy performed in the abortion
37 facility;

38 (r) Pelvic inflammatory disease;

39 (s) Endometritis;

40 (t) Missed ectopic pregnancy;

41 (u) Cardiac arrest;

42 (v) Respiratory arrest;

43 (w) Renal failure;

44 (x) Metabolic disorder;

45 (y) Shock;

46 (z) Embolism;

47 (aa) Coma;

48 (bb) Placenta previa or preterm delivery in subsequent pregnancies;

49 (cc) Free fluid in the abdomen;

50 (dd) Adverse or allergic reaction to anesthesia or other drugs;

- 1 (ee) Subsequent development of breast cancer;
 2 (ff) Inability, refusal or unwillingness to have follow-up care,
 3 surgery or an aspiration procedure following an incomplete abortion or
 4 retained tissue;
 5 (gg) Inability, refusal or unwillingness to have a follow-up visit;
 6 (hh) Referral to or care provided by a hospital, emergency department or
 7 urgent care clinic or department;
 8 (ii) Death;
 9 (jj) Any psychological or emotional condition reported by the patient,
 10 such as depression, suicidal ideation, anxiety or a sleeping disorder;
 11 or
 12 (kk) Any other adverse event as defined by the federal food and drug ad-
 13 ministration criteria provided in the medwatch reporting system.
 14 (3) "Department" means the state department of health and welfare.
 15 (4) "Facility" means any public or private hospital, clinic, center,
 16 medical school, medical training institution, health care facility, physi-
 17 cian's office, infirmary, dispensary, ambulatory surgical center or other
 18 institution or location where medical care is provided to any person.
 19 (5) "Hospital" means any institution licensed as a hospital pursuant to
 20 chapter 13, title 39, Idaho Code.
 21 (6) "Physician" means a person licensed to practice medicine in this
 22 state. The term includes medical doctors and doctors of osteopathy.
 23 (7) "Pregnant" or "pregnancy" means the reproductive condition of hav-
 24 ing an unborn child in the uterus.

25 39-9504. ABORTION COMPLICATION REPORTING. (1) Every hospital, li-
 26 censed health care facility or individual physician shall file a written
 27 report with the department regarding each woman who comes under the hos-
 28 pital's, health care facility's or physician's care and reports any com-
 29 plication, requires medical treatment or suffers death that the attending
 30 physician, hospital staff or facility staff has reason to believe is a pri-
 31 mary, secondary or tertiary result of an abortion. Such reports shall be
 32 completed by the hospital, health care facility or attending physician who
 33 treated the woman, signed by the attending physician and transmitted to the
 34 department within thirty (30) days from the last date of treatment or other
 35 care or consultation for the complication.

36 (2) Each report of a complication, medical treatment or death following
 37 abortion, required under this section, shall contain, at minimum, the fol-
 38 lowing information:

- 39 (a) The age and race of the woman;
 40 (b) The woman's state and county of residence;
 41 (c) The number of previous pregnancies, number of live births and num-
 42 ber of previous abortions of the woman;
 43 (d) The date the abortion was performed and the date that the abortion
 44 was completed, as well as the gestational age of the fetus and the meth-
 45 ods used, if known;
 46 (e) Identification of the physician who performed the abortion, the
 47 facility where the abortion was performed and the referring physician,
 48 agency or service, if any;

1 (f) The specific complication, as that term is defined in section
2 39-9503(2), Idaho Code, including, where applicable, the location of
3 the complication in the woman's body, the date on which the complication
4 occurred and whether there were any preexisting medical conditions that
5 would potentially complicate pregnancy or the abortion; and

6 (g) The amount billed to cover the treatment of the specific com-
7 plication, including whether the treatment was billed to medicaid,
8 insurance, private pay or other method. This should include charges for
9 any physician, hospital, emergency department, prescription or other
10 drugs, laboratory tests and any other costs for the treatment rendered.

11 (3) Reports required under this section shall not contain:

12 (a) The name of the woman;

13 (b) Common identifiers such as the woman's social security number or
14 motor vehicle operator's license number; or

15 (c) Other information or identifiers that would make it possible to
16 identify, in any manner or under any circumstances, a woman who has
17 obtained an abortion and subsequently suffered an abortion-related
18 complication.

19 (4) The department shall prepare a comprehensive annual statistical
20 report for the legislature based on the data gathered from reports under
21 this section. The statistical report shall not lead to the disclosure of the
22 identity of any physician or person filing a report under this section nor of
23 a woman about whom a report is filed. The aggregate data shall also be made
24 independently available to the public by the department in a downloadable
25 format.

26 (5) The department shall summarize aggregate data from the reports re-
27 quired under this chapter and submit the data to the federal centers for dis-
28 ease control and prevention for the purpose of inclusion in the annual vi-
29 tal statistics report. The aggregate data shall also be made independently
30 available to the public by the department in a downloadable format.

31 (6) Reports filed pursuant to this section shall not be deemed public
32 records and shall remain confidential, except that disclosure may be made to
33 law enforcement officials upon an order of a court after application showing
34 good cause. The court may condition disclosure of the information upon any
35 appropriate safeguards it may impose.

36 (7) Absent a valid court order or judicial subpoena, the department,
37 any other state department, agency or office, or any employees or contrac-
38 tor thereof shall not compare data concerning abortions or abortion compli-
39 cations maintained in an electronic or other information system file with
40 data in any other electronic or other information system, a comparison of
41 which could result in identifying, in any manner or under any circumstances,
42 a woman obtaining or seeking to obtain an abortion.

43 (8) Statistical information that may reveal the identity of a woman ob-
44 taining or seeking to obtain an abortion shall not be maintained by the de-
45 partment, any other state department, agency or office, or any employee or
46 contractor thereof.

47 (9) The department or an employee or contractor of the department shall
48 not disclose to a person or entity outside the department the reports or the
49 contents of the reports required under this section in a manner or fashion
50 that would permit the person or entity to whom the report is disclosed to

1 identify, in any way or under any circumstances, the woman who is the subject
2 of the report.

3 (10) Original copies of all reports filed under this section shall be
4 available to the state board of medicine for use in the performance of its of-
5 ficial duties.

6 (11) The department shall communicate this reporting requirement to all
7 medical professional organizations, licensed physicians, hospitals, emer-
8 gency departments, abortion facilities, clinics, ambulatory surgical fa-
9 cilities, and other health care facilities operating in the state.

10 39-9505. REPORTING FORMS. The department shall create the forms re-
11 quired by this chapter within sixty (60) days after the effective date of
12 this chapter. No provision of this chapter requiring the reporting of in-
13 formation on forms published by the department shall be applicable until ten
14 (10) days after the requisite forms are first created or until the effective
15 date of this chapter, whichever is later.

16 39-9506. CRIMINAL PENALTIES AND PROFESSIONAL SANCTIONS. (1) Any per-
17 son who willfully delivers or discloses to the department any report, record
18 or information required pursuant to this chapter and known by him or her to be
19 false is guilty of a misdemeanor.

20 (2) Any person who willfully discloses any information obtained from
21 reports filed pursuant to this chapter, other than the disclosure authorized
22 by this chapter or otherwise authorized by law, is guilty of a misdemeanor.

23 (3) Any person required under this chapter to file a report, keep any
24 records or supply any information, who willfully fails to file such report,
25 keep such records or supply such information at the time or times required by
26 law or rule, is guilty of unprofessional conduct, and his or her professional
27 license shall be subject to suspension or revocation in accordance with pro-
28 cedures provided in chapter 18, title 54, Idaho Code. A licensed medical
29 professional responsible for filing an adverse reaction report with the de-
30 partment who fails to do so shall also be subject to a civil fine of five hun-
31 dred dollars (\$500) for each instance of failure to report.

32 (4) In addition to the above penalties, any facility that willfully vi-
33 olates any of the requirements of this chapter shall, upon conviction:

34 (a) In the case of a first violation, be subject to a civil fine of one
35 thousand dollars (\$1,000) for each instance of failure to report;

36 (b) Have its license suspended for a period of six (6) months for the
37 second violation; and

38 (c) Have its license suspended for a period of one (1) year upon a third
39 or subsequent violation.

40 39-9507. CONSTRUCTION. (1) Nothing in this chapter shall be construed
41 as creating or recognizing a right to abortion.

42 (2) It is not the intention of this chapter to make lawful an abortion
43 that is currently unlawful.

44 39-9508. RIGHT OF INTERVENTION. The legislature, by concurrent reso-
45 lution, may appoint one (1) or more of its members who sponsored or co-spon-
46 sored this chapter in his or her official capacity, or other member or mem-

1 bers if the original sponsors and co-sponsors are no longer serving, to in-
2 tervene as a matter of right in any case in which the constitutionality of
3 this law is challenged.

4 39-9509. SEVERABILITY. The provisions of this chapter are hereby de-
5 clared to be severable, and if any provision of this chapter or the applica-
6 tion of such provision to any person or circumstance is declared invalid for
7 any reason, such declaration shall not affect the validity of the remaining
8 portions of this chapter.

9 SECTION 2. That Section 54-1814, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 54-1814. GROUNDS FOR MEDICAL DISCIPLINE. Every person licensed to
12 practice medicine, licensed to practice as a physician assistant or regis-
13 tered as an extern, intern or resident in this state is subject to discipline
14 by the board pursuant to the procedures set forth in this chapter and rules
15 promulgated pursuant thereto upon any of the following grounds:

16 (1) Conviction of a felony, or a crime involving moral turpitude, or the
17 entering of a plea of guilty or the finding of guilt by a jury or court of com-
18 mission of a felony or a crime involving moral turpitude.

19 (2) Use of false, fraudulent or forged statements or documents, diplo-
20 mas or credentials in connection with any licensing or other requirements of
21 this act.

22 (3) Practicing medicine under a false or assumed name in this or any
23 other state.

24 (4) Advertising the practice of medicine in any unethical or unprofes-
25 sional manner.

26 (5) Knowingly aiding or abetting any person to practice medicine who is
27 not authorized to practice medicine as provided in this chapter.

28 (6) Performing or procuring an unlawful abortion or aiding or abetting
29 the performing or procuring of an unlawful abortion.

30 (7) The provision of health care which fails to meet the standard of
31 health care provided by other qualified physicians in the same community or
32 similar communities, taking into account his training, experience and the
33 degree of expertise to which he holds himself out to the public.

34 (8) Division of fees or gifts or agreement to split or divide fees or
35 gifts received for professional services with any person, institution or
36 corporation in exchange for referral.

37 (9) Giving or receiving or aiding or abetting the giving or receiving of
38 rebates, either directly or indirectly.

39 (10) Inability to obtain or renew a license to practice medicine, or re-
40 vocation of, or suspension of a license to practice medicine by any other
41 state, territory, district of the United States or Canada, unless it can be
42 shown that such action was not related to the competence of the person to
43 practice medicine or to any conduct designated herein.

44 (11) Prescribing or furnishing narcotic or hallucinogenic drugs to ad-
45 dicted persons to maintain their addictions and level of usage without at-
46 tempting to treat the primary condition requiring the use of narcotics.

1 (12) Prescribing or furnishing narcotic, hypnotic, hallucinogenic,
2 stimulating or dangerous drugs for other than treatment of any disease, in-
3 jury or medical condition.

4 (13) Failure to safeguard the confidentiality of medical records or
5 other medical information pertaining to identifiable patients, except as
6 required or authorized by law.

7 (14) The direct promotion by a physician of the sale of drugs, devices,
8 appliances or goods to a patient that are unnecessary and not medically indi-
9 cated.

10 (15) Abandonment of a patient.

11 (16) Willfully and intentionally representing that a manifestly incur-
12 able disease or injury or other manifestly incurable condition can be perma-
13 nently cured.

14 (17) Failure to supervise the activities of externs, interns, res-
15 idents, nurse practitioners, certified nurse-midwives, clinical nurse
16 specialists, or physician assistants.

17 (18) Practicing medicine when a license pursuant to this chapter is sus-
18 pended, revoked or inactive.

19 (19) Practicing medicine in violation of a voluntary restriction or
20 terms of probation pursuant to this chapter.

21 (20) Refusing to divulge to the board upon demand the means, method, de-
22 vice or instrumentality used in the treatment of a disease, injury, ailment,
23 or infirmity.

24 (21) Commission of any act constituting a felony or commission of any
25 act constituting a crime involving moral turpitude.

26 (22) Engaging in any conduct which constitutes an abuse or exploitation
27 of a patient arising out of the trust and confidence placed in the physician
28 by the patient.

29 (23) Being convicted of or pleading guilty to driving under the influ-
30 ence of alcohol, drugs or other intoxicating substances or being convicted
31 of or pleading guilty to other drug or alcohol related criminal charges.

32 (24) Failure to comply with a board order entered by the board.

33 (25) Failure to comply with the requirements of the abortion complica-
34 tions reporting act, chapter 95, title 39, Idaho Code.