

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 302

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING SECTION 18-604, IDAHO CODE, TO DEFINE A TERM
2 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-608, IDAHO CODE,
3 TO REVISE A PROVISION REGARDING ABORTIONS DEEMED NOT TO BE UNLAWFUL AND
4 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-609, IDAHO CODE,
5 TO PROVIDE THAT CERTAIN PRINTED MATERIAL REGARDING DOWN SYNDROME BE
6 MADE AVAILABLE TO PHYSICIANS, HOSPITALS, OR OTHER FACILITIES PROVIDING
7 ABORTION AND ABORTION-RELATED SERVICES; AMENDING SECTION 18-613, IDAHO
8 CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORREC-
9 TIONS; AND AMENDING SECTION 18-617, IDAHO CODE, TO PROVIDE A CORRECT
10 CODE REFERENCE.
11

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

13 SECTION 1. That Section 18-604, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 18-604. DEFINITIONS. As used in this act:

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

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

24 (3) "Down syndrome" means a chromosomal disorder associated either
25 with an extra chromosome 21, in whole or in part, or an effective trisomy for
26 chromosome 21. Down syndrome is sometimes referred to as "trisomy 21."

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

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

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

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

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

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

1 (b) Any reasonably foreseeable complications and risks to the patient
 2 from such procedure, including those related to reproductive health;
 3 and

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

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

10 (~~89~~) "Medical emergency" means a condition ~~which~~ that, on the basis of
 11 the physician's good faith clinical judgment, so complicates the medical
 12 condition of a pregnant woman as to necessitate the immediate abortion of her
 13 pregnancy to avert her death or for which a delay will create serious risk of
 14 substantial and irreversible impairment of a major bodily function.

15 (~~910~~) "Minor" means a woman ~~less than~~ under eighteen (18) years of age.

16 (~~101~~) "Pregnant" and "pregnancy." Each term shall mean the reproductive
 17 condition of having a developing fetus in the body and commences with fertil-
 18 ization.

19 (~~112~~) "Physician" means a person licensed to practice medicine and
 20 surgery or osteopathic medicine and surgery in this state as provided in
 21 chapter 18, title 54, Idaho Code.

22 (~~123~~) "Second trimester of pregnancy" means that portion of a pregnancy
 23 following the thirteenth week and preceding the point in time when the fetus
 24 becomes viable, and there is hereby created a legal presumption that the sec-
 25 ond trimester does not end before the commencement of the twenty-fifth week
 26 of pregnancy, upon which presumption any licensed physician may proceed in
 27 lawfully aborting a patient pursuant to section 18-608, Idaho Code, in which
 28 case the same shall be conclusive and un rebuttable in all civil or criminal
 29 proceedings.

30 (~~134~~) "Third trimester of pregnancy" means that portion of a pregnancy
 31 from and after the point in time when the fetus becomes viable.

32 (~~145~~) Any reference to a viable fetus shall be construed to mean a fetus
 33 potentially able to live outside the mother's womb, albeit with artificial
 34 aid.

35 SECTION 2. That Section 18-608, Idaho Code, be, and the same is hereby
 36 amended to read as follows:

37 18-608. CERTAIN ABORTIONS PERMITTED -- CONDITIONS AND GUIDELINES. The
 38 provisions of sections 18-605 and 18-606, Idaho Code, shall not apply to and
 39 neither this act, nor other controlling rule of Idaho law, shall be deemed to
 40 make unlawful an abortion performed by a physician if:

41 (1) When performed upon a woman who is in the first trimester of
 42 pregnancy, the same is performed following the attending physician's con-
 43 sultation with the pregnant patient and a determination by the physician
 44 that such abortion is appropriate in consideration of such factors as in his
 45 medical judgment he deems pertinent, including, but not limited to physical,
 46 emotional, psychological and/or familial factors, ~~that the child would be~~
 47 ~~born with some physical or mental defect,~~ that the pregnancy resulted from
 48 rape, incest or other felonious intercourse, and a legal presumption is
 49 hereby created that all illicit intercourse with a girl below the age of six-

1 teen (16) years shall be deemed felonious for purposes of this section, the
2 patient's age and any other consideration relevant to her well-being or di-
3 rectly or otherwise bearing on her health and, in addition to medically diag-
4 nosable matters, including but not limited to such factors as the potential
5 stigma of unwed motherhood, the imminence of psychological harm or stress
6 upon the mental and physical health of the patient, the potential stress upon
7 all concerned of an unwanted child or a child brought into a family already
8 unable, psychologically or otherwise, to care for it, and/or the opinion of
9 the patient that maternity or additional offspring probably will force upon
10 her a distressful life and future; the emotional or psychological conse-
11 quences of not allowing the pregnancy to continue, and the aid and assistance
12 available to the pregnant patient if the pregnancy is allowed to continue;
13 provided, in consideration of all such factors, the physician may rely upon
14 the statements of and the positions taken by the pregnant patient, and the
15 physician shall not be deemed to have held himself out as possessing special
16 expertise in such matters nor shall he be held liable, civilly or otherwise,
17 on account of his good faith exercise of his medical judgment, whether or
18 not influenced by any such nonmedical factors. Abortions permitted by this
19 subsection shall only be lawful if and when performed in a hospital or in a
20 physician's regular office or a clinic, which office or clinic is properly
21 staffed and equipped for the performance of such procedures and respect-
22 ing which the responsible physician or physicians have made satisfactory
23 arrangements with one (1) or more acute care hospitals within reasonable
24 proximity thereof providing for the prompt availability of hospital care as
25 may be required due to complications or emergencies that might arise.

26 (2) When performed upon a woman who is in the second trimester of preg-
27 nancy, the same is performed in a hospital and is, in the judgment of the at-
28 tending physician, in the best medical interest of such pregnant woman, con-
29 sidering those factors enumerated in subsection (1) of this section and such
30 other factors as the physician deems pertinent.

31 (3) When performed upon a woman who is in the third trimester of preg-
32 nancy, the same is performed in a hospital and, in the judgment of the at-
33 tending physician, corroborated by a like opinion of a consulting physician
34 concurring therewith, either is necessary for the preservation of the life
35 of such woman or, if not performed, such pregnancy would terminate in birth
36 or delivery of a fetus unable to survive. Third-trimester abortions under-
37 taken for preservation of the life of a pregnant patient, as permitted by
38 this subsection, shall, consistent with accepted medical practice and with
39 the well-being and safety of such patient, be performed in a manner consis-
40 tent with preservation of any reasonable potential for survival of a viable
41 fetus.

42 SECTION 3. That Section 18-609, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 18-609. PHYSICIANS AND HOSPITALS NOT TO INCUR CIVIL LIABILITY -- CON-
45 SENT TO ABORTION -- NOTICE. (1) Any physician may perform an abortion not
46 prohibited by this act and any hospital or other facility described in sec-
47 tion 18-608, Idaho Code, may provide facilities for such procedures without,
48 in the absence of negligence, incurring civil liability therefor to any per-
49 son including, but not limited to, the pregnant patient and the prospective

1 father of the fetus to have been born in the absence of abortion, if informed
2 consent for such abortion has been duly given by the pregnant patient.

3 (2) In order to provide assistance in assuring that the consent to an
4 abortion is truly informed consent, the director of the department of health
5 and welfare shall publish easily comprehended, nonmisleading and medically
6 accurate printed material to be made available at no expense to physicians,
7 hospitals or other facilities providing abortion and abortion-related ser-
8 vices, and which shall contain the following:

9 (a) Descriptions of the services available to assist a woman through
10 a pregnancy, at childbirth and while the child is dependent, including
11 adoption services, a comprehensive list of the names, addresses, and
12 telephone numbers of public and private agencies that provide such ser-
13 vices and financial aid available;

14 (b) Descriptions of the physical characteristics of a normal fetus, de-
15 scribed at two (2) week intervals, beginning with the fourth week and
16 ending with the twenty-fourth week of development, accompanied by sci-
17 entificallly verified photographs of a fetus during such stages of de-
18 velopment. The description shall include information about physiolog-
19 ical and anatomical characteristics;

20 (c) Descriptions of the abortion procedures used in current medical
21 practices at the various stages of growth of the fetus and any reason-
22 able foreseeable complications and risks to the mother, including those
23 related to subsequent childbearing;

24 (d) A list, compiled by the department of health and welfare, of health
25 care providers, facilities and clinics that offer to perform ultra-
26 sounds free of charge and that have contacted the department annually
27 with a request to be included in the list. The list shall be arranged
28 geographically and shall include the name, address, hours of operation,
29 telephone number and e-mail address of each entity;

30 (e) A statement that the patient has a right to view an ultrasound image
31 and to observe the heartbeat monitoring of her unborn child and that she
32 may obtain an ultrasound free of charge. The statement shall indicate
33 that printed materials required by the provisions of this section con-
34 tain a list, compiled by the department of health and welfare, of health
35 care providers, facilities and clinics that offer to perform such ul-
36 trasounds free of charge; ~~and~~

37 (f) Information directing the patient where to obtain further infor-
38 mation and assistance in locating a health care provider whom she can
39 consult about chemical abortion, including the interventions, if any,
40 that may affect the effectiveness or reversal of a chemical abortion,
41 and informs the patient that if she wants to consult with such health
42 care providers, she should contact those health care providers before
43 she takes the abortifacient; and

44 (g) A section specific to unborn children diagnosed with Down syndrome
45 in order to help educate mothers about the development of children with
46 Down syndrome and the resources available in both the private and public
47 sectors to assist parents of children with Down syndrome with the deliv-
48 ery and care of a child born with Down syndrome. The section shall in-
49 clude:

1 (i) Easily comprehended, medically accurate information re-
2 garding the development of a child with Down syndrome, including
3 treatment and therapy strategies available during a pregnancy and
4 after birth; and

5 (ii) Descriptions of the services available to assist Idaho fam-
6 ilies with children born with Down syndrome, including adoption
7 services, support agencies, and organizations in both the public
8 and private sectors. Such directory shall include the name, ad-
9 dress, telephone number, website, and email address of agencies,
10 ministries, and organizations that provide financial, medical,
11 emotional, and spiritual support services to mothers and families
12 with a child with Down syndrome.

13 The department shall ensure that a Spanish language version of the informed
14 consent materials required in this subsection is made available to women
15 considering an abortion.

16 (3) (a) The department of health and welfare shall develop and maintain
17 a stable internet website, that may be part of an existing website, to
18 provide the information described in subsection (2) of this section. No
19 information regarding persons using the website shall be collected or
20 maintained. The department of health and welfare shall monitor the web-
21 site on a weekly basis to prevent and correct tampering.

22 (b) As used in this section, "stable internet website" means a website
23 that, to the extent reasonably practicable, is safeguarded from having
24 its content altered other than by the department of health and welfare.

25 (c) When a pregnant patient contacts a physician by telephone or visit
26 and inquires about obtaining an abortion, the physician or the physi-
27 cian's agent before or while scheduling an abortion-related appoint-
28 ment must provide the woman with the address of the state-sponsored in-
29 ternet website on which the printed materials described in subsection
30 (2) of this section may be viewed as required in subsection (2) of this
31 section.

32 (4) Except in the case of a medical emergency, no abortion shall be
33 performed unless, prior to the abortion, the attending physician or the
34 attending physician's agent certifies in writing that the materials pro-
35 vided by the director have been provided to the pregnant patient at least
36 twenty-four (24) hours before the performance of the abortion. If the ma-
37 terials are not available from the director of the department of health and
38 welfare, no certification shall be required. The attending physician, or
39 the attending physician's agent, shall provide any other information re-
40 quired under this act.

41 (5) Except in the case of medical emergency, no abortion shall be per-
42 formed unless, prior to an initial consultation or any testing, and not less
43 than twenty-four (24) hours prior to the performance of the abortion, the
44 woman is informed by telephone or in person, by the physician who is to per-
45 form the abortion or by an agent of the physician, that ultrasound imaging
46 and heartbeat monitoring are available to the woman enabling the pregnant
47 woman to view her unborn child or observe the heartbeat of the unborn child.
48 The physician or agent of the physician shall inform the pregnant woman
49 that the website and printed materials described in subsection (2) (d), (e)
50 and (f) of this section contain telephone numbers, addresses and e-mail

1 addresses of facilities that offer such services at no cost. If the woman
2 contacts the abortion facility by e-mail, the physician or agent of the
3 physician shall inform the woman of the requirements of this subsection by
4 e-mail with the required information in a larger font than the rest of the
5 e-mail. No fee for an abortion shall be collected prior to providing the
6 information required in this subsection.

7 (6) All physicians or their agents who use ultrasound equipment in the
8 performance of an abortion shall inform the patient that she has the right
9 to view the ultrasound image of her unborn child before an abortion is per-
10 formed. If the patient requests to view the ultrasound image, she shall be
11 allowed to view it before an abortion is performed. The physician or agent
12 shall also offer to provide the patient with a physical picture of the ultra-
13 sound image of her unborn child prior to the performance of the abortion, and
14 shall provide it if requested by the patient. In addition to providing the
15 material, the attending physician may provide the pregnant patient with such
16 other information which in the attending physician's judgment is relevant to
17 the pregnant patient's decision as to whether to have the abortion or carry
18 the pregnancy to term.

19 (7) Within thirty (30) days after performing any abortion without cer-
20 tification and delivery of the materials, the attending physician, or the
21 attending physician's agent, shall cause to be delivered to the director of
22 the department of health and welfare, a report signed by the attending physi-
23 cian, preserving the patient's anonymity, denoting the medical emergency
24 that excused compliance with the duty to deliver the materials. The director
25 of the department of health and welfare shall compile the information annu-
26 ally and report to the public the total number of abortions performed in the
27 state where delivery of the materials was excused; provided that any infor-
28 mation so reported shall not identify any physician or patient in any manner
29 which would reveal their identities.

30 (8) If section 18-608(3), Idaho Code, applies to the abortion to be per-
31 formed and the pregnant patient is an adult and for any reason unable to give
32 a valid consent thereto, the requirement for that pregnant patient's consent
33 shall be met as required by law for other medical or surgical procedures and
34 shall be determined in consideration of the desires, interests and welfare
35 of the pregnant patient.

36 (9) The knowing failure of the attending physician to perform any one
37 (1) or more of the acts required under subsection (7) of this section or
38 section 39-261, Idaho Code, is grounds for discipline pursuant to section
39 54-1814(6), Idaho Code, and shall subject the physician to assessment of a
40 civil penalty of one hundred dollars (\$100) for each month or portion thereof
41 that each such failure continues, payable to the vital statistics unit of the
42 department of health and welfare, but such failure shall not constitute a
43 criminal act.

44 SECTION 4. That Section 18-613, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 18-613. PARTIAL-BIRTH ABORTIONS PROHIBITED. (1) Prohibited acts. Any
47 physician who knowingly performs a partial-birth abortion and thereby kills
48 a human fetus shall be subject to the penalties imposed in section 18-605,
49 Idaho Code. This section shall not apply to partial-birth abortions neces-

1 sary to save the life of the mother when her life is endangered by a physical
2 disorder, physical illness, or physical injury, including a life-endanger-
3 ing physical condition caused by or arising from the pregnancy itself.

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

5 (a) "Fetus" has the same meaning as provided in section 18-604(45),
6 Idaho Code.

7 (b) "Partial-birth abortion" means an abortion in which the person per-
8 forming the abortion:

9 (i) Deliberately and intentionally vaginally delivers a living
10 fetus until, in the case of a head-first presentation, the entire
11 fetal head is outside the body of the mother, or, in the case of
12 breech presentation, any part of the fetal trunk past the navel is
13 outside the body of the mother, for the purpose of performing an
14 overt act that the physician knows will kill the partially deliv-
15 ered living fetus; and

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

18 (c) "Physician" has the same meaning provided in section 18-604, Idaho
19 Code. However, any individual who is not a physician or not otherwise
20 legally authorized by this state to perform abortions, but who never-
21 theless directly performs a partial-birth abortion, shall be subject to
22 the provisions described in this section.

23 (3) (a) Civil actions. The father of the aborted fetus, if married to
24 the mother of the aborted fetus at the time of the partial-birth abor-
25 tion, or the maternal grandparents of the aborted fetus, if the mother
26 is not at least eighteen (18) years of age at the time of the abortion,
27 may bring a civil action against the defendant physician to obtain ap-
28 propriate relief. Provided however, that a civil action by the father
29 is barred if the pregnancy resulted from the father's criminal conduct
30 or if the father consented to the abortion. Further, a civil action by
31 the maternal grandparents is barred if the pregnancy is the result of
32 a maternal grandparent's criminal conduct or if a maternal grandparent
33 consented to the abortion.

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

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

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

40 (4) (a) Hearing. A physician accused of violating this section may re-
41 quest a hearing before the state board of medicine on whether the physi-
42 cian's conduct was necessary to save the life of the mother whose life
43 was endangered by a physical disorder, physical illness, or physical
44 injury, including a life-endangering physical condition caused by or
45 arising from the pregnancy itself.

46 (b) The findings of the board of medicine regarding the issues de-
47 scribed in paragraph (a) of this subsection are admissible at the
48 criminal and civil trials of the defendant physician. Upon a motion
49 by the defendant physician, the court shall delay the beginning of the

1 criminal and civil trials for not more than thirty (30) days to permit
2 the hearing to take place.

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

7 SECTION 5. That Section 18-617, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 18-617. CHEMICAL ABORTIONS. (1) As used in this section:

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

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

16 (c) "Physician" has the same meaning as provided in section
17 18-604(1+2), Idaho Code.

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

21 (a) Has the ability to assess the duration of the pregnancy accurately
22 in accordance with the applicable standard of care for medical practice
23 in the state;

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

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

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

39 (e) Has complied with the informed consent provisions of section
40 18-609, Idaho Code.

41 (3) The physician inducing the abortion, or a person acting on behalf of
42 the physician inducing the abortion, shall make reasonable efforts to ensure
43 that the patient returns for a follow-up visit so that a physician can con-
44 firm that the pregnancy has been terminated and assess the patient's medical
45 condition.