

IN THE SENATE

SENATE BILL NO. 1349

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING SECTION 18-609, IDAHO CODE, TO ESTABLISH
2 PROVISIONS RELATING TO CERTAIN MATERIALS MADE AVAILABLE TO PHYSICIANS,
3 HOSPITALS OR OTHER FACILITIES PROVIDING ABORTION AND ABORTION-RELATED
4 SERVICES, TO ESTABLISH PROVISIONS RELATING TO A LIST OF HEALTH CARE
5 PROVIDERS, FACILITIES AND CLINICS THAT OFFER TO PERFORM CERTAIN UL-
6 TRASOUNDS, TO ESTABLISH PROVISIONS RELATING TO A STATEMENT REGARDING
7 CERTAIN ULTRASOUND IMAGING AND HEART TONE MONITORING, TO ESTABLISH PRO-
8 VISIONS THAT PRIOR TO INFORMED CONSENT GIVEN BY THE PATIENT AND PRIOR TO
9 THE ADMINISTRATION OF ANESTHESIA OR CERTAIN MEDICATIONS, THE PHYSICIAN
10 WHO IS TO PERFORM THE ABORTION OR A QUALIFIED TECHNICIAN SHALL PERFORM
11 AN OBSTETRIC ULTRASOUND, TO REVISE PROVISIONS RELATING TO INFORMING THE
12 PATIENT SHE HAS THE RIGHT TO VIEW CERTAIN ULTRASOUND IMAGES, TO PROVIDE
13 THAT THE PHYSICIAN WHO IS TO PERFORM THE ABORTION OR AN AGENT OF THE
14 PHYSICIAN SHALL SIGN AND DATE A CERTAIN STATEMENT, TO PROVIDE LANGUAGE
15 THAT READS SUBSTANTIALLY AS A CERTAIN STATEMENT SHOULD READ, TO PROVIDE
16 THAT THE PATIENT SHALL INITIAL, SIGN AND DATE THE STATEMENT, TO ESTAB-
17 LISH PROVISIONS RELATING TO THE PRINT OF THE STATEMENT, TO ESTABLISH
18 PROVISIONS LIMITING MATERIAL INCLUDED IN THE STATEMENT, TO PROVIDE FOR
19 A COPY OF THE STATEMENT, TO PROVIDE FOR A SIGNATURE, TO PROVIDE A CORRECT
20 CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION.
21

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

23 SECTION 1. That Section 18-609, Idaho Code, be, and the same is hereby
24 amended to read as follows:

25 18-609. PHYSICIANS AND HOSPITALS NOT TO INCUR CIVIL LIABILITY -- CON-
26 SENT TO ABORTION -- NOTICE. (1) Any physician may perform an abortion not
27 prohibited by this act and any hospital or other facility described in sec-
28 tion 18-608, Idaho Code, may provide facilities for such procedures without,
29 in the absence of negligence, incurring civil liability therefor to any per-
30 son including, but not limited to, the pregnant patient and the prospective
31 father of the fetus to have been born in the absence of abortion, if informed
32 consent for such abortion has been duly given by the pregnant patient.

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

39 (a) Descriptions of the services available to assist a woman through
40 a pregnancy, at childbirth and while the child is dependent, including
41 adoption services, a comprehensive list of the names, addresses, and

1 telephone numbers of public and private agencies that provide such ser-
2 vices and financial aid available;

3 (b) Descriptions of the physical characteristics of a normal fetus, de-
4 scribed at two (2) week intervals, beginning with the fourth week and
5 ending with the twenty-fourth week of development, accompanied by sci-
6 entifically verified photographs of a fetus during such stages of de-
7 velopment. The description shall include information about physiolog-
8 ical and anatomical characteristics; ~~and~~

9 (c) Descriptions of the abortion procedures used in current medical
10 practices at the various stages of growth of the fetus and any reason-
11 able foreseeable complications and risks to the mother, including those
12 related to subsequent ~~child bearing.~~ childbearing;

13 (d) A comprehensive list, compiled by the department of health and wel-
14 fare, of health care providers, facilities, and clinics that offer to
15 perform such ultrasounds free of charge and have contacted the depart-
16 ment, annually, with a request to be included in the listing. The list
17 shall be arranged geographically and shall include the name, address,
18 hours of operation, and telephone number of each entity; and

19 (e) A statement that the patient has a right to view an ultrasound imag-
20 ing and to hear the heart tone monitoring of her unborn child and that
21 she may be able to obtain one (1) free of charge. The statement must
22 indicate that the printed materials required by this section contain a
23 comprehensive list, compiled by the department of health and welfare,
24 of health care providers, facilities, and clinics that offer to perform
25 such ultrasounds free of charge.

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

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

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

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

1 (5) Prior to a patient giving informed consent to having any part of
2 an abortion performed or induced, and prior to the administration of any
3 anesthesia or medication in preparation for the abortion on the patient,
4 the physician who is to perform the abortion or a qualified technician shall
5 perform an obstetric ultrasound on the pregnant patient, using whichever
6 method the physician and patient agree is best under the circumstances. All
7 physicians or their agents ~~who use ultrasound equipment in the performance~~
8 of an abortion shall inform the patient that she has the right to view the
9 ultrasound image of her unborn child before an abortion is performed. If
10 the patient requests to view the ultrasound image, she shall be allowed to
11 view it before an abortion is performed. The physician or agent shall also
12 offer to provide the patient with a physical picture of the ultrasound image
13 of her unborn child prior to the performance of the abortion, and shall pro-
14 vide it if requested by the patient. In addition to providing the material,
15 the attending physician may provide the pregnant patient with such other
16 information which in the attending physician's judgment is relevant to the
17 pregnant patient's decision as to whether to have the abortion or carry the
18 pregnancy to term.

19 (6) (a) The physician who is to perform the abortion or an agent of the
20 physician shall sign and date a statement indicating the time of day
21 when the ultrasound test was performed and which reads substantially as
22 follows:

23 I performed an ultrasound test including fetal heartbeat on
24 (insert name of patient) on (insert date and time) at (insert
25 name of facility where ultrasound test was performed). At
26 that time, the gestational age was determined to be (insert
27 #) weeks and the heart rate was (not present or {insert #}
28 beats per minute {mark one}). I informed her of her right to
29 view the ultrasound (which she "accepted" or "refused" {mark
30 one}). I informed her of her right to observe or hear the fe-
31 tal heartbeat because auscultation was performed (which she
32 "accepted" or "refused" or "no heartbeat was detected" {mark
33 one}). I also offered to provide the patient with a physical
34 picture of the ultrasound image of her unborn child prior to
35 the performance of the abortion (which she "accepted" or "re-
36 fused" {mark one}). (Print and sign name of person performing
37 ultrasound test and insert date of signature and the time of
38 day the test was performed.)

39 (b) The patient shall initial each point of information, and must sign
40 and date the statement.

41 (c) The statement must be in bold print of at least twelve-point type
42 and the document containing the statement must only include material
43 which is necessary to carry out the purpose of this subsection. A copy
44 of this statement shall be given to the patient, which shall be cer-
45 tified by signature of the patient that she has received a copy of the
46 statement.

47 (7) Within thirty (30) days after performing any abortion without cer-
48 tification and delivery of the materials, the attending physician, or the
49 attending physician's agent, shall cause to be delivered to the director of
50 the department of health and welfare, a report signed by the attending physi-

1 cian, preserving the patient's anonymity, denoting the medical emergency
2 that excused compliance with the duty to deliver the materials. The director
3 of the department of health and welfare shall compile the information annu-
4 ally and report to the public the total number of abortions performed in the
5 state where delivery of the materials was excused; provided that any infor-
6 mation so reported shall not identify any physician or patient in any manner
7 which would reveal their identities.

8 (78) If section 18-608(3), Idaho Code, applies to the abortion to be
9 performed and the pregnant patient is an adult and for any reason unable to
10 give a valid consent thereto, the requirement for that pregnant patient's
11 consent shall be met as required by law for other medical or surgical proce-
12 dures and shall be determined in consideration of the desires, interests and
13 welfare of the pregnant patient.

14 (89) The knowing failure of the attending physician to perform any one
15 (1) or more of the acts required under subsections (6) and (7) of this section
16 or section 39-261, Idaho Code, is grounds for discipline pursuant to section
17 54-1814(6), Idaho Code, and shall subject the physician to assessment of a
18 civil penalty of one hundred dollars (\$100) for each month or portion thereof
19 that each such failure continues, payable to the vital statistics unit of
20 the department of health and welfare, but such failure shall not constitute a
21 criminal act.