

IN THE SENATE

SENATE BILL NO. 1387

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; AND PROVIDING SEVER-  
21 ABILITY.  
22

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

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

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

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

40 (a) Descriptions of the services available to assist a woman through  
41 a pregnancy, at childbirth and while the child is dependent, including  
42 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 entificallly 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.

22 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared  
23 to be severable and if any provision of this act or the application of such  
24 provision to any person or circumstance is declared invalid for any reason,  
25 such declaration shall not affect the validity of the remaining portions of  
26 this act.