

IN THE SENATE

SENATE BILL NO. 1193

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; REPEALING SECTION 18-603, IDAHO CODE, RELATING TO  
2 ADVERTISING MEDICINES OR OTHER MEANS FOR PREVENTING CONCEPTION OR FA-  
3 CILITATING MISCARRIAGE OR ABORTION; AMENDING SECTION 18-606, IDAHO  
4 CODE, TO REVISE PROVISIONS REGARDING UNLAWFUL ABORTIONS AND ACCOM-  
5 PLICES OR ACCESSORIES TO ABORTION AND TO MAKE TECHNICAL CORRECTIONS;  
6 AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SEC-  
7 TION 18-607A, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE REQUIREMENTS FOR  
8 MEDICAL ABORTION, TO PROVIDE REQUIREMENTS FOR ADMINISTERING CERTAIN  
9 DRUGS IN ABORTIONS AND TO PROVIDE FOR CERTAIN MEDICAL ABORTIONS; AND  
10 AMENDING SECTION 18-608, IDAHO CODE, TO PROVIDE THAT ABORTIONS IN THE  
11 SECOND AND THIRD TRIMESTERS OF PREGNANCY MAY OCCUR IN A PHYSICIAN'S REG-  
12 ULAR OFFICE OR CLINIC UNDER CERTAIN CIRCUMSTANCES AND TO MAKE TECHNICAL  
13 CORRECTIONS.  
14

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

16 SECTION 1. That Section [18-603](#), Idaho Code, be, and the same is hereby  
17 repealed.

18 SECTION 2. That Section 18-606, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 18-606. UNLAWFUL ABORTIONS -- ACCOMPLICE OR ACCESSORY -- SUBMITTING  
21 TO -- PENALTY. ~~Except as permitted by this act:~~ (1) Every person who, as  
22 an accomplice or accessory to any violation of the provisions of section  
23 18-605, Idaho Code, knowingly induces or knowingly aids in the production or  
24 performance of an abortion upon another person, except as otherwise permit-  
25 ted under this chapter; and

26 (2) Every woman who ~~knowingly~~ submits to an abortion or solicits of  
27 another, for herself, the production of an abortion, with actual knowledge  
28 that the person performing or solicited to perform the abortion is not a  
29 physician or who purposely, unless a physician, willfully terminates her  
30 own pregnancy otherwise than by a live birth without a prior determination  
31 that a medical emergency exists, shall be deemed guilty of a felony and shall  
32 be fined not to exceed five thousand dollars (\$5,000) and/or imprisoned in  
33 the state prison for not less than one (1) and not more than five (5) years;  
34 provided, however, that no hospital, nurse, or other health care personnel  
35 shall be deemed in violation of the provisions of this section if in good  
36 faith providing services in reliance upon the directions of a physician or  
37 upon the hospital admission of a patient for such purpose on the authority of  
38 a physician.

1 SECTION 3. That Chapter 6, Title 18, Idaho Code, be, and the same is  
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
3 ignated as Section 18-607A, Idaho Code, and to read as follows:

4 18-607A. MEDICAL ABORTIONS. (1) As used in this section:

5 (a) "Abortifacient" means mifepristone, misoprostol and/or other med-  
6 ication dispensed with the intent of causing an abortion;

7 (b) "Drug label" means the pamphlet accompanying mifepristone which  
8 outlines the protocol tested and authorized by the FDA and agreed upon  
9 by the drug company applying for FDA authorization of that drug;

10 (c) "FDA" means the United States food and drug administration;

11 (d) "Medical abortion" means the exclusive use of an abortifacient or  
12 combination of abortifacients to effect an abortion;

13 (e) "Physician" has the same meaning as provided in section 18-604(11),  
14 Idaho Code.

15 (2) No physician shall give, sell, dispense, administer, prescribe or  
16 otherwise provide an abortifacient for the purpose of effecting a medical  
17 abortion unless the physician:

18 (a) Has the ability to assess the duration of the pregnancy accurately  
19 in accordance with the applicable standard of care for medical practice  
20 in the state;

21 (b) Has determined that the pregnancy to be aborted is within the uterus  
22 and not ectopic;

23 (c) Has the ability to provide surgical intervention in cases of in-  
24 complete abortion or severe bleeding, or has made and documented in the  
25 patient's medical record plans to provide such emergency care through  
26 other qualified physicians who have agreed in writing to provide such  
27 care;

28 (d) Is able to assure patient access to medical facilities equipped to  
29 provide blood transfusions and resuscitation, if necessary as a result  
30 of or in connection with the abortion procedure, on a twenty-four (24)  
31 hour basis; and

32 (e) Has examined in person the woman to whom the abortifacient is admin-  
33 istered to determine the medical appropriateness of such administra-  
34 tion and has determined that the abortifacient is sufficiently safe for  
35 use in the gestational age at which it will be administered.

36 (3) (a) A physician shall administer mifepristone in compliance with  
37 its drug label, including its medication guide and patient agreement,  
38 and other abortifacients in compliance with level A recommendations  
39 contained in practice bulletin no. 67 of the American college of ob-  
40 stetricians and gynecologists, or any modification to or replacement  
41 of such practice bulletin; provided however, that mifepristone may be  
42 administered in accordance with regimes or protocols specified in prac-  
43 tice bulletin no. 67's level A recommendations three, five and six, or  
44 any modification to or replacement of them, after the patient has been  
45 informed of any deviation from the final label's medication guide and  
46 the patient agreement has been modified, if necessary, to reflect such  
47 deviation.

48 (b) A physician shall maintain a signed copy of the final label's pa-  
49 tient agreement in the patient's medical file.

1 (c) A physician shall administer any abortifacient other than mifepristone  
 2 to effect a medical abortion in accordance with regimes and protocols  
 3 specified under the level A recommendation in practice bulletin  
 4 no. 67 of the American college of obstetricians and gynecologists.

5 (4) This section does not apply to a medical abortion not otherwise au-  
 6 thorized in subsection (3) (a) and (3) (c) of this section when the physician  
 7 performing the abortion determines that a nonmedical abortion would endan-  
 8 ger the life of a woman by virtue of her physical disorder, physical illness  
 9 or physical injury, including a life-endangering physical condition caused  
 10 by or arising from the pregnancy itself.

11 SECTION 4. That Section 18-608, Idaho Code, be, and the same is hereby  
 12 amended to read as follows:

13 18-608. CERTAIN ABORTIONS PERMITTED -- CONDITIONS AND GUIDELINES. The  
 14 provisions of sections 18-605 and 18-606, Idaho Code, shall not apply to and  
 15 neither this act, nor other controlling rule of Idaho law, shall be deemed to  
 16 make unlawful an abortion performed by a physician if:

17 (1) When performed upon a woman who is in the first trimester of  
 18 pregnancy, the same is performed following the attending physician's con-  
 19 sultation with the pregnant patient and a determination by the physician  
 20 that such abortion is appropriate in consideration of such factors as in his  
 21 medical judgment he deems pertinent, including, but not limited to, physi-  
 22 cal, emotional, psychological and/or familial factors, that the child would  
 23 be born with some physical or mental defect, that the pregnancy resulted  
 24 from rape, incest or other felonious intercourse, and a legal presumption  
 25 is hereby created that all illicit intercourse with a girl below the age of  
 26 sixteen (16) years shall be deemed felonious for purposes of this section,  
 27 the patient's age and any other consideration relevant to her well-being or  
 28 directly or otherwise bearing on her health and, in addition to medically  
 29 diagnosable matters, including, but not limited to, such factors as the  
 30 potential stigma of unwed motherhood, the imminence of psychological harm  
 31 or stress upon the mental and physical health of the patient, the potential  
 32 stress upon all concerned of an unwanted child or a child brought into a  
 33 family already unable, psychologically or otherwise, to care for it, and/or  
 34 the opinion of the patient that maternity or additional offspring probably  
 35 will force upon her a distressful life and future; the emotional or psycho-  
 36 logical consequences of not allowing the pregnancy to continue, and the aid  
 37 and assistance available to the pregnant patient if the pregnancy is allowed  
 38 to continue; provided, in consideration of all such factors, the physician  
 39 may rely upon the statements of and the positions taken by the pregnant  
 40 patient, and the physician shall not be deemed to have held himself out as  
 41 possessing special expertise in such matters nor shall he be held liable,  
 42 civilly or otherwise, on account of his good faith exercise of his medical  
 43 judgment, whether or not influenced by any such nonmedical factors. Abor-  
 44 tions permitted by this subsection shall only be lawful if and when performed  
 45 in a hospital or in a physician's regular office or a clinic which office or  
 46 clinic is ~~properly~~ properly staffed and equipped for the performance of such proce-  
 47 dures and respecting which the responsible physician or physicians have made  
 48 ~~satisfactory~~ satisfactory arrangements with one (1) or more acute care hospitals within  
 49 reasonable proximity thereof providing for the prompt availability of hos-

1 pital care as may be required due to complications or emergencies that might  
2 arise.

3 (2) When performed upon a woman who is in the second trimester of preg-  
4 nancy, the same is performed in a hospital or in a physician's regular office  
5 or a clinic, which office or clinic is staffed and equipped for the perfor-  
6 mance of such procedures and respecting which the responsible physician or  
7 physicians have made arrangements with one (1) or more acute care hospitals  
8 within reasonable proximity thereof, providing for the prompt availability  
9 of hospital care as may be required due to complications or emergencies that  
10 might arise, and is, in the judgment of the attending physician, in the best  
11 medical interest of such pregnant woman, considering those factors enumer-  
12 ated in subsection (1) of this section and such other factors as the physi-  
13 cian deems pertinent.

14 (3) When performed upon a woman who is in the third trimester of preg-  
15 nancy the same is performed in a hospital and, in the judgment of the at-  
16 tending physician, corroborated by a like opinion of a consulting physician  
17 concurring therewith, either is necessary for the preservation of the life  
18 of such woman or, if not performed, such pregnancy would terminate in birth  
19 or delivery of a fetus unable to survive. Third trimester abortions under-  
20 taken for preservation of the life of a pregnant patient, as permitted by  
21 this subsection, shall, consistent with accepted medical practice and with  
22 the well-being and safety of such patient, be performed in a manner consis-  
23 tent with preservation of any reasonable potential for survival of a viable  
24 fetus.