

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 88

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; TO PROVIDE A SHORT TITLE; AMENDING CHAPTER 6, TITLE 18,
2 IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 18-617 THROUGH 18-621, IDAHO
3 CODE, TO DEFINE TERMS, TO PROVIDE REQUIREMENTS FOR CHEMICAL ABORTION,
4 TO PROVIDE REQUIREMENTS FOR ADMINISTERING CERTAIN DRUGS IN ABORTIONS,
5 TO PROVIDE FOR CERTAIN CHEMICAL ABORTIONS, TO PROVIDE A CIVIL CAUSE OF
6 ACTION, TO PROVIDE CONDITIONS FOR ANONYMITY OF THE FEMALE, TO PROVIDE
7 FOR CONSTRUCTION AND TO PROVIDE SEVERABILITY.
8

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

10 SECTION 1. SHORT TITLE. This act shall be known and may be cited as the
11 "Physician Physical Presence and Women Protection Act."

12 SECTION 2. That Chapter 6, Title 18, Idaho Code, be, and the same is
13 hereby amended by the addition thereto of NEW SECTIONS, to be known and des-
14 ignated as Sections 18-617 through 18-621, Idaho Code, and to read as fol-
15 lows:

16 18-617. CHEMICAL ABORTIONS. (1) As used in this section:

17 (a) "Abortifacient" means mifepristone, misoprostol and/or other
18 chemical or drug dispensed with the intent of causing an abortion as
19 defined in section 18-604(1), Idaho Code;

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

22 (c) "Physician" has the same meaning as provided in section 18-604(11),
23 Idaho Code.

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

27 (a) Has the ability to assess the duration of the pregnancy accurately
28 in accordance with the applicable standard of care for medical practice
29 in the state;

30 (b) Has determined that the unborn child to be aborted is within the
31 uterus and not ectopic;

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

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

1 (e) Has examined in person the woman to whom the abortifacient is admin-
2 istered to determine the medical appropriateness of such administra-
3 tion and has determined that the abortifacient is sufficiently safe for
4 use in the gestational age at which it will be administered; and

5 (f) Has complied with the informed consent provisions of section
6 18-609, Idaho Code.

7 (3) The physician inducing the abortion, or a person acting on behalf
8 of the physician inducing the abortion, shall make all reasonable efforts to
9 ensure that the patient returns for a follow-up visit so that the physician
10 can confirm that the pregnancy has been terminated and assess the patient's
11 medical condition.

12 18-618. CIVIL CAUSES OF ACTION. (1) Any female upon whom an abortion
13 has been attempted or performed, or the father of the unborn child who was the
14 subject of the abortion if the father was married to the woman who received
15 the abortion at the time the abortion was attempted or performed, or a mater-
16 nal grandparent of the unborn child in the event the mother is deceased, may
17 maintain an action for actual damages against the person who in knowing or
18 reckless violation of section 18-617, Idaho Code, attempted or performed the
19 abortion. The court may, in its discretion award punitive damages and enjoin
20 further violations of sections 18-617 through 18-621, Idaho Code.

21 (2) A cause of action for injunctive relief against any person who has
22 knowingly or recklessly violated sections 18-617 through 18-621, Idaho
23 Code, may be maintained by a county prosecuting attorney with appropriate
24 jurisdiction or by the attorney general. The injunction shall prevent the
25 abortion provider from performing further abortions in violation of sec-
26 tions 18-617 through 18-621, Idaho Code, in this state.

27 18-619. ANONYMITY OF FEMALE. In every court proceeding or action
28 brought under this chapter, the court shall rule whether the anonymity of
29 any female upon whom an abortion has been performed or attempted shall be
30 preserved from public disclosure if she does not give her consent to such
31 disclosure. The court, upon motion or sua sponte, shall make such a ruling
32 and, upon determining that her anonymity should be preserved, shall issue
33 orders to the parties, witnesses and counsel and shall direct the sealing of
34 the record and exclusion of individuals from courtrooms or hearing rooms to
35 the extent necessary to safeguard her identity from public disclosure. Each
36 order shall be accompanied by specific written findings explaining why the
37 anonymity of the female should be preserved from public disclosure, why the
38 order is essential to that end, how the order is narrowly tailored to serve
39 that interest and why no reasonable less restrictive alternative exists. In
40 the absence of written consent of the female upon whom an abortion has been
41 performed or attempted, anyone, other than a public official, who brings an
42 action under this section shall do so under a pseudonym. This section may not
43 be construed to conceal the identity of the plaintiff or of witnesses from
44 the defendant.

45 18-620. CONSTRUCTION. (1) Nothing in sections 18-617 through 18-621,
46 Idaho Code, shall be construed as creating or recognizing a right to abor-
47 tion.

1 (2) It is not the intention of sections 18-617 through 18-621, Idaho
2 Code, to make lawful an abortion that is currently unlawful.

3 18-621. SEVERABILITY. The provisions of this act are hereby declared
4 to be severable and if any provision of this act or the application of such
5 provision to any person or circumstance is declared invalid for any reason,
6 such declaration shall not affect the validity of the remaining portions of
7 this act.