

IN THE SENATE

SENATE BILL NO. 1094

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING SECTION 18-604, IDAHO CODE, TO DEFINE A TERM;
2 AMENDING SECTION 18-608, IDAHO CODE, TO PROVIDE THAT ABORTIONS SHALL
3 ONLY BE LAWFUL WHEN PERFORMED BY A PHYSICIAN WITH ADMITTING PRIVILEGES
4 AT A HOSPITAL WITHIN TWENTY MILES OF WHERE THE PHYSICIAN PERFORMS ABOR-
5 TIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-608A,
6 IDAHO CODE, TO PROVIDE THAT A PHYSICIAN WHO PERFORMS ABORTIONS MUST HAVE
7 ADMITTING PRIVILEGES AT A HOSPITAL WITHIN TWENTY MILES OF WHERE THE
8 PHYSICIAN PERFORMS ABORTIONS; AND PROVIDING SEVERABILITY.
9

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

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

13 18-604. DEFINITIONS. As used in this act:

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

21 (2) "Admitting privileges" means the right of a physician, by virtue of
22 membership as a hospital's medical staff, to admit patients to a particular
23 hospital for providing specific diagnostic or therapeutic services to such
24 patient in that hospital.

25 (3) "Department" means the Idaho department of health and welfare.

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

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

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

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

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

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

40 (b) Any reasonably foreseeable complications and risks to the patient
41 from such procedure, including those related to reproductive health;
42 and

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

4 The physician must provide the information in terms which can be understood
 5 by the person making the decision, with consideration of age, level of matu-
 6 rity and intellectual capability.

7 (~~89~~) "Medical emergency" means a condition which, on the basis of the
 8 physician's good faith clinical judgment, so complicates the medical con-
 9 dition of a pregnant woman as to necessitate the immediate abortion of her
 10 pregnancy to avert her death or for which a delay will create serious risk of
 11 substantial and irreversible impairment of a major bodily function.

12 (~~910~~) "Minor" means a woman less than eighteen (18) years of age.

13 (~~101~~) "Pregnant" and "pregnancy." Each term shall mean the reproductive
 14 condition of having a developing fetus in the body and commences with fertil-
 15 ization.

16 (~~112~~) "Physician" means a person licensed to practice medicine and
 17 surgery or osteopathic medicine and surgery in this state as provided in
 18 chapter 18, title 54, Idaho Code.

19 (~~123~~) "Second trimester of pregnancy" means that portion of a pregnancy
 20 following the thirteenth week and preceding the point in time when the fetus
 21 becomes viable, and there is hereby created a legal presumption that the sec-
 22 ond trimester does not end before the commencement of the twenty-fifth week
 23 of pregnancy, upon which presumption any licensed physician may proceed in
 24 lawfully aborting a patient pursuant to section 18-608, Idaho Code, in which
 25 case the same shall be conclusive and un rebuttable in all civil or criminal
 26 proceedings.

27 (~~134~~) "Third trimester of pregnancy" means that portion of a pregnancy
 28 from and after the point in time when the fetus becomes viable.

29 (~~145~~) Any reference to a viable fetus shall be construed to mean a fetus
 30 potentially able to live outside the mother's womb, albeit with artificial
 31 aid.

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

34 18-608. CERTAIN ABORTIONS PERMITTED -- CONDITIONS AND GUIDELINES. The
 35 provisions of sections 18-605 and 18-606, Idaho Code, shall not apply to and
 36 neither this act, nor other controlling rule of Idaho law, shall be deemed to
 37 make unlawful an abortion performed by a physician if:

38 (1) When performed upon a woman who is in the first trimester of
 39 pregnancy, the same is performed following the attending physician's con-
 40 sultation with the pregnant patient and a determination by the physician
 41 that such abortion is appropriate in consideration of such factors as in his
 42 medical judgment he deems pertinent, including, but not limited to, physi-
 43 cal, emotional, psychological and/or familial factors, that the child would
 44 be born with some physical or mental defect, that the pregnancy resulted
 45 from rape, incest or other felonious intercourse, and a legal presumption
 46 is hereby created that all illicit intercourse with a girl below the age of
 47 sixteen (16) years shall be deemed felonious for purposes of this section,
 48 the patient's age and any other consideration relevant to her well-being or
 49 directly or otherwise bearing on her health and, in addition to medically

1 diagnosable matters, including, but not limited to, such factors as the
 2 potential stigma of unwed motherhood, the imminence of psychological harm
 3 or stress upon the mental and physical health of the patient, the potential
 4 stress upon all concerned of an unwanted child or a child brought into a
 5 family already unable, psychologically or otherwise, to care for it, and/or
 6 the opinion of the patient that maternity or additional offspring probably
 7 will force upon her a distressful life and future; the emotional or psycho-
 8 logical consequences of not allowing the pregnancy to continue, and the aid
 9 and assistance available to the pregnant patient if the pregnancy is allowed
 10 to continue; provided, in consideration of all such factors, the physician
 11 may rely upon the statements of and the positions taken by the pregnant
 12 patient, and the physician shall not be deemed to have held himself out as
 13 possessing special expertise in such matters nor shall he be held liable,
 14 civilly or otherwise, on account of his good faith exercise of his medical
 15 judgment, whether or not influenced by any such nonmedical factors. Abor-
 16 tions permitted by this subsection shall only be lawful if and when performed
 17 in a hospital or in a physician's regular office or a clinic which office or
 18 clinic is properly staffed and equipped for the performance of such proce-
 19 dures and respecting which the responsible physician or physicians have ~~made~~
 20 ~~satisfactory arrangements~~ admitting privileges with one (1) or more acute
 21 care hospitals within ~~reasonable proximity thereof~~ twenty (20) miles of
 22 where the physician performs abortions providing for the prompt availabil-
 23 ity of hospital care as may be required due to complications or emergencies
 24 that might arise.

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

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

41 SECTION 3. That Section 18-608A, Idaho Code, be, and the same is hereby
 42 amended to read as follows:

43 18-608A. PERSONS AUTHORIZED TO PERFORM ABORTIONS. It is unlawful for
 44 any person other than a physician who has admitting privileges at a hospital
 45 within twenty (20) miles of where the physician performs abortions to cause
 46 or perform an abortion.

47 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared
 48 to be severable and if any provision of this act or the application of such

1 provision to any person or circumstance is declared invalid for any reason,
2 such declaration shall not affect the validity of the remaining portions of
3 this act.