

IN THE SENATE

SENATE BILL NO. 1049

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING SECTION 18-613, IDAHO CODE, TO REVISE A PRO-
2 VISION REGARDING PROHIBITED ACTS, TO DEFINE A TERM, TO REVISE DEFINI-
3 TIONS, TO REMOVE A DEFINITION, TO REVISE PROVISIONS REGARDING CIVIL AC-
4 TIONS, AND TO REVISE PROVISIONS REGARDING A CERTAIN HEARING.
5

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

7 SECTION 1. That Section 18-613, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 18-613. PARTIAL-BIRTH ABORTIONS PROHIBITED. (1) Prohibited acts. Any
10 physician who knowingly performs a partial-birth abortion and thereby kills
11 a human fetus shall be subject to the penalties imposed in section 18-605,
12 Idaho Code. This section shall not apply to partial-birth abortions neces-
13 sary to save the life of the mother when her life is endangered by a physical
14 disorder, physical illness, or physical injury, including a life-endanger-
15 ing physical condition caused by or arising from the pregnancy itself.

16 (2) Definitions. As used in this section:

17 (a) "Fetus" has the same meaning as provided in section 18-604(4),
18 Idaho Code.

19 (b) "Partial-birth abortion" means an abortion in which the person per-
20 forming the abortion partially:

21 (i) Deliberately and intentionally vaginally delivers a living
22 fetus before killing the fetus and completing the delivery until,
23 in the case of a head-first presentation, the entire fetal head is
24 outside the body of the mother, or, in the case of breech presen-
25 tation, any part of the fetal trunk past the navel is outside the
26 body of the mother, for the purpose of performing an overt act that
27 the physician knows will kill the partially delivered living fe-
28 tus; and

29 (ii) Performs the overt act, other than completion of delivery,
30 that kills the partially delivered living fetus.

31 ~~(b) The phrase "vaginally delivers a living fetus before killing the~~
32 ~~fetus" means deliberately and intentionally delivering into the vagina~~
33 ~~a living fetus, or a substantial portion of the fetus, for the purpose~~
34 ~~of performing a procedure the physician knows will kill the fetus, and~~
35 ~~which kills the fetus.~~

36 (c) "Physician" has the same meaning provided in section 18-604, Idaho
37 Code. However, any individual who is not a physician or not otherwise
38 legally authorized by this state to perform abortions, but who never-
39 theless directly performs a partial-birth abortion, shall be subject to
40 the ~~prohibitions~~ provisions described in this section.

41 (3) (a) Civil actions. The father of the aborted fetus, if married
42 to the mother of the aborted fetus at the time of the partial-birth

1 abortion; or the maternal grandparents of the aborted fetus, if the
2 mother is not at least eighteen (18) years of age at the time of the
3 abortion, may bring a civil action against the defendant physician to
4 obtain appropriate relief. Provided however, that a civil action by the
5 ~~plaintiff~~ father is barred if the pregnancy resulted from the father's
6 criminal conduct by or the plaintiff father or he consented to the abor-
7 tion. Further, a civil action by the ~~plaintiff~~ maternal grandparents
8 is barred if the pregnancy is the result of a maternal grandparent's
9 criminal conduct by a maternal grandparent or a maternal grandparent
10 consented to the abortion.

11 (b) As used in this section, "appropriate relief" shall include:

12 (i) Money damages for all mental and physical injuries suffered by
13 the plaintiff as a result of the abortion performed in violation of
14 this section;

15 (ii) Money damages equal to three (3) times the cost of performing
16 the abortion procedure.

17 (4) (a) Hearing. A physician accused of violating this section may
18 request a hearing before the state board of medicine ~~to determine on~~
19 ~~whether the physician's conduct was necessary to save the mother's~~
20 ~~life of the mother whose life was endangered by a physical disorder,~~
21 ~~physical illness, or physical injury and therefor whether perform-~~
22 ~~ing the abortion was necessary to save the mother's life, including a~~
23 ~~life-endangering physical condition caused by or arising from the preg-~~
24 ~~nancy itself.~~

25 (b) The findings of the board of medicine regarding the issues de-
26 scribed in ~~subsection (4) paragraph~~ (a) of this subsection are admissi-
27 ble at the criminal and civil trials of the defendant physician. Upon a
28 motion by the defendant physician, the court shall delay the beginning
29 of the criminal and civil trials for not more than thirty (30) days to
30 permit the hearing to take place.

31 (5) Immunity. A woman upon whom a partial-birth abortion is performed
32 shall not be prosecuted for violations of this section, for conspiracy to vi-
33 olate this section, or for violations of section 18-603, 18-605 or 18-606,
34 Idaho Code, in regard to the partial-birth abortion performed.