

IN THE SENATE

SENATE BILL NO. 1385

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE ADDI-  
2 TION OF A NEW SECTION 18-622, IDAHO CODE, TO PROVIDE AN EFFECTIVE DATE,  
3 TO PROVIDE FOR THE OFFENSE OF CRIMINAL ABORTION, TO PROVIDE PENALTIES,  
4 TO PROVIDE AFFIRMATIVE DEFENSES, AND TO PROVIDE EXCEPTIONS; AND PROVID-  
5 ING SEVERABILITY.  
6

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

8 SECTION 1. That Chapter 6, Title 18, Idaho Code, be, and the same is  
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
10 ignated as Section 18-622, Idaho Code, and to read as follows:

11 18-622. CRIMINAL ABORTION. (1) Notwithstanding any other provision of  
12 law, this section shall become effective thirty (30) days following the oc-  
13 currence of either of the following circumstances:

14 (a) The issuance of the judgment in any decision of the United States  
15 supreme court that restores to the states their authority to prohibit  
16 abortion; or

17 (b) Adoption of an amendment to the United States constitution that re-  
18 stores to the states their authority to prohibit abortion.

19 (2) Every person who performs or attempts to perform an abortion as de-  
20 fined in this chapter commits the crime of criminal abortion. Criminal abor-  
21 tion shall be a felony punishable by a sentence of imprisonment of no less  
22 than two (2) years and no more than (5) years in prison. The professional li-  
23 cense of any health care professional who performs or attempts to perform an  
24 abortion or who assists in performing or attempting to perform an abortion in  
25 violation of this subsection shall be suspended by the appropriate licensing  
26 board for a minimum of six (6) months upon a first offense and shall be perma-  
27 nently revoked upon a subsequent offense.

28 (3) It shall be an affirmative defense to prosecution under subsection  
29 (2) of this section and to any disciplinary action by an applicable licensing  
30 authority, which must be proven by a preponderance of the evidence, that:

31 (a) (i) The abortion was performed or attempted by a physician as  
32 defined in this chapter;

33 (ii) The physician determined, in his good faith medical judgment  
34 and based on the facts known to the physician at the time, that the  
35 abortion was necessary to prevent the death of the pregnant woman.  
36 No abortion shall be deemed necessary to prevent the death of the  
37 pregnant woman because the physician believes that the woman may  
38 or will take action to harm herself; and

39 (iii) The physician performed or attempted to perform the abortion  
40 in the manner that, in his good faith medical judgment and based  
41 on the facts known to the physician at the time, provided the best  
42 opportunity for the unborn child to survive, unless, in his good

1 faith medical judgment, termination of the pregnancy in that man-  
2 ner would have posed a greater risk of the death of the pregnant  
3 woman. No such greater risk shall be deemed to exist because the  
4 physician believes that the woman may or will take action to harm  
5 herself; or

6 (b) (i) The abortion was performed or attempted by a physician as  
7 defined in this chapter;

8 (ii) If the woman is not a minor or subject to a guardianship,  
9 then, prior to the performance of the abortion, the woman has re-  
10 ported the act of rape or incest to a law enforcement agency and  
11 provided a copy of such report to the physician who is to perform  
12 the abortion;

13 (iii) If the woman is a minor or subject to a guardianship, then,  
14 prior to the performance of the abortion, the woman or her parent  
15 or guardian has reported the act of rape or incest to a law enforce-  
16 ment agency or child protective services and a copy of such report  
17 has been provided to the physician who is to perform the abortion;  
18 and

19 (iv) The physician who performed the abortion complied with the  
20 requirements of paragraph (a) (iii) of this subsection regarding  
21 the method of abortion.

22 (4) Medical treatment provided to a pregnant woman by a health care pro-  
23 fessional as defined in this chapter that results in the accidental death of,  
24 or unintentional injury to, the unborn child shall not be a violation of this  
25 section.

26 (5) Nothing in this section shall be construed to subject a pregnant  
27 woman on whom any abortion is performed or attempted to any criminal convic-  
28 tion and penalty.

29 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared  
30 to be severable and if any provision of this act or the application of such  
31 provision to any person or circumstance is declared invalid for any reason,  
32 such declaration shall not affect the validity of the remaining portions of  
33 this act.