

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 400

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PREBORN CHILDREN; AMENDING SECTION 7-1604, IDAHO CODE, TO REVISE
2 TERMINOLOGY; AMENDING SECTION 18-502, IDAHO CODE, TO REVISE A DEFINI-
3 TION; AMENDING SECTION 18-604, IDAHO CODE, TO REVISE DEFINITIONS;
4 AMENDING SECTION 18-608, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING
5 SECTION 18-609, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION
6 18-611, IDAHO CODE, TO REVISE DEFINITIONS AND TO REMOVE A DEFINITION;
7 AMENDING SECTION 18-613, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING
8 SECTION 18-907, IDAHO CODE, TO REVISE TERMINOLOGY AND TO REVISE A DEF-
9 INITION; AMENDING SECTION 18-4001, IDAHO CODE, TO REVISE TERMINOLOGY;
10 AMENDING SECTION 18-4006, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING
11 SECTION 18-4016, IDAHO CODE, TO REVISE A DEFINITION AND TO REVISE TER-
12 MINOLOGY; AMENDING SECTION 18-8801, IDAHO CODE, TO REVISE DEFINITIONS;
13 AMENDING SECTION 39-241, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING
14 SECTION 39-260, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION
15 39-268, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-269,
16 IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-273, IDAHO
17 CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-3402, IDAHO CODE, TO
18 REVISE A DEFINITION; AMENDING SECTION 39-9303, IDAHO CODE, TO REVISE
19 DEFINITIONS; AMENDING SECTION 39-9304, IDAHO CODE, TO REVISE TERMINOL-
20 OGY; AMENDING SECTION 39-9504, IDAHO CODE, TO REVISE TERMINOLOGY; AND
21 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
22

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

24 SECTION 1. That Section 7-1604, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 7-1604. GESTATIONAL AGREEMENT. (1) Prior to assisted reproduction, a
27 gestational carrier and an intended parent shall enter into a written gesta-
28 tional agreement. If the gestational carrier is married, her spouse shall
29 also be a party to the agreement. Neither the gestational carrier nor her
30 spouse may contribute gametes for use in assisted reproduction under the
31 gestational agreement.

32 (2) The gestational agreement shall provide that the intended parent
33 will be the parent of any child conceived through assisted reproduction and
34 born under the terms of the agreement.

35 (3) The gestational agreement shall include the following:

36 (a) Acceptance by the intended parent of all rights and duties of a par-
37 ent for any child conceived through assisted reproduction and born un-
38 der the terms of the gestational agreement;

39 (b) Verification that:

40 (i) All parties to the agreement are at least twenty-one (21)
41 years of age;

1 (ii) The gestational carrier has given birth to a live child at
2 least once before; and

3 (iii) The gestational carrier agrees to become pregnant by means
4 of assisted reproduction; and

5 (c) Relinquishment by the prospective gestational carrier, the
6 prospective gestational carrier's spouse if she is married, and the
7 prospective donor of a gamete for use in assisted reproduction if such
8 prospective donor is not an intended parent of all rights and duties of
9 a parent for any child conceived through assisted reproduction and born
10 under the terms of the agreement.

11 (4) A prospective gestational carrier may not be receiving public as-
12 sistance as defined by section 56-201, Idaho Code.

13 (5) A gestational agreement may provide for payment of consideration.

14 (6) A gestational agreement shall not limit the right of the gesta-
15 tional carrier to make decisions to safeguard her health or that of ~~an embryo~~
16 ~~or a fetus~~ a preborn child that she is carrying.

17 (7) In matters relating to the gestational agreement, the gestational
18 carrier and the intended parent shall have independent legal representa-
19 tion.

20 SECTION 2. That Section 18-502, Idaho Code, be, and the same is hereby
21 amended to read as follows:

22 18-502. DEFINITIONS. For purposes of this chapter:

23 (1) "Abortion" means the use or prescription of any instrument,
24 medicine, drug or other substance or device to terminate the pregnancy of
25 a woman known to be pregnant with an intention other than to increase the
26 probability of a live birth, to preserve the life or health of the child after
27 live birth or to remove a dead unborn child who died as the result of natural
28 causes in utero, accidental trauma, or a criminal assault on the pregnant
29 woman or her unborn child, and which causes the premature termination of the
30 pregnancy;

31 (2) "Attempt to perform or induce an abortion" means an act, or an omis-
32 sion of a statutorily required act, that, under the circumstances as the ac-
33 tor believes them to be, constitutes a substantial step in a course of con-
34 duct planned to culminate in the performance or induction of an abortion in
35 this state in violation of the provisions of this chapter;

36 (3) "Fertilization" means the fusion of a human spermatozoon with a hu-
37 man ovum;

38 (4) "Medical emergency" means a condition that, in reasonable medical
39 judgment, so complicates the medical condition of the pregnant woman as to
40 necessitate the immediate abortion of her pregnancy without first determin-
41 ing postfertilization age to avert her death or for which a delay will create
42 a serious risk of substantial and irreversible physical impairment of a ma-
43 jor bodily function, not including psychological or emotional conditions.
44 No condition shall be deemed a medical emergency if based on a claim or diag-
45 nosis that the woman will engage in conduct that she intends to result in her
46 death or in substantial and irreversible physical impairment of a major bod-
47 ily function;

48 (5) "Physician" means any person licensed to practice medicine and
49 surgery or osteopathic medicine under chapter 18, title 54, Idaho Code;

1 (6) "Postfertilization age" means the age of the unborn child as calcu-
2 lated from the fertilization of the human ovum;

3 (7) "Probable postfertilization age of the unborn child" means what, in
4 reasonable medical judgment, will with reasonable probability be the post-
5 fertilization age of the unborn child at the time the abortion is planned to
6 be performed;

7 (8) "Reasonable medical judgment" means a medical judgment that would
8 be made by a reasonably prudent physician, knowledgeable about the case
9 and the treatment possibilities with respect to the medical conditions in-
10 volved;

11 (9) "Unborn child" or "~~fetus~~" "preborn child" means an individual or-
12 ganism of the species homo sapiens from fertilization until live birth; and

13 (10) "Woman" means a female human being whether or not she has reached
14 the age of majority.

15 SECTION 3. That Section 18-604, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 18-604. DEFINITIONS. As used in this chapter:

18 (1) "Abortion" means the use of any means to intentionally terminate
19 the clinically diagnosable pregnancy of a woman with knowledge that the ter-
20 mination by those means will, with reasonable likelihood, cause the death
21 of the unborn child except that, for the purposes of this chapter, abortion
22 shall not mean:

23 (a) The use of an intrauterine device or birth control pill to inhibit
24 or prevent ovulations, fertilization, or the implantation of a fertil-
25 ized ovum within the uterus;

26 (b) The removal of a dead unborn child;

27 (c) The removal of an ectopic or molar pregnancy; or

28 (d) The treatment of a woman who is no longer pregnant.

29 (2) "Department" means the Idaho department of health and welfare.

30 (3) "Down syndrome" means a chromosomal disorder associated either
31 with an extra chromosome 21, in whole or in part, or an effective trisomy for
32 chromosome 21. Down syndrome is sometimes referred to as "trisomy 21."

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

35 (5) "~~Fetus~~" "Preborn child" and "unborn child." Each term means an in-
36 dividual organism of the species Homo sapiens from fertilization until live
37 birth.

38 (6) "First trimester of pregnancy" means the first thirteen (13) weeks
39 of a pregnancy.

40 (7) "Hospital" means an acute care general hospital in this state, li-
41 censed as provided in chapter 13, title 39, Idaho Code.

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

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

1 (b) Any reasonably foreseeable complications and risks to the patient
 2 from such procedure, including those related to reproductive health;
 3 and

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

7 The physician must provide the information in terms that can be understood by
 8 the person making the decision, with consideration of age, level of maturity
 9 and intellectual capability.

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

15 (10) "Minor" means a woman under eighteen (18) years of age.

16 (11) "Pregnant" and "pregnancy." Each term shall mean the reproductive
 17 condition of having a developing fetus preborn child in the body and com-
 18 mences with fertilization.

19 (12) "Physician" means a person licensed to practice medicine and
 20 surgery or osteopathic medicine and surgery in this state as provided in
 21 chapter 18, title 54, Idaho Code.

22 (13) "Second trimester of pregnancy" means that portion of a pregnancy
 23 following the thirteenth week and preceding the point in time when the fetus
 24 preborn child becomes viable, and there is hereby created a legal presump-
 25 tion that the second trimester does not end before the commencement of the
 26 twenty-fifth week of pregnancy, upon which presumption any licensed physi-
 27 cian may proceed in lawfully aborting a patient pursuant to section 18-608,
 28 Idaho Code, in which case the same shall be conclusive and un rebuttable in
 29 all civil or criminal proceedings.

30 (14) "Third trimester of pregnancy" means that portion of a pregnancy
 31 from and after the point in time when the fetus preborn child becomes viable.

32 (15) Any reference to a viable fetus preborn child shall be construed
 33 to mean a fetus preborn child potentially able to live outside the mother's
 34 womb, albeit with artificial aid.

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

37 18-608. CERTAIN ABORTIONS PERMITTED -- CONDITIONS AND GUIDELINES. (1)
 38 Abortions shall only be lawful if and when performed in a hospital or in a
 39 physician's regular office or a clinic, which office or clinic is properly
 40 staffed and equipped for the performance of such procedures and respect-
 41 ing which the responsible physician or physicians have made satisfactory
 42 arrangements with one (1) or more acute care hospitals within reasonable
 43 proximity thereof providing for the prompt availability of hospital care as
 44 may be required due to complications or emergencies that might arise.

45 (2) An abortion performed upon a woman who is in the second trimester of
 46 pregnancy shall only be lawful if the same is performed in a hospital.

47 (3) An abortion performed upon a woman who is in the third trimester of
 48 pregnancy shall only be lawful if the same is performed in a hospital and,
 49 in the judgment of the attending physician, corroborated by a like opin-

1 ion of a consulting physician concurring therewith, either is necessary
 2 for the preservation of the life of such woman or, if not performed, such
 3 pregnancy would terminate in birth or delivery of a fetus child unable to
 4 survive. Third-trimester abortions undertaken for preservation of the life
 5 of a pregnant patient, as permitted by this subsection, shall, consistent
 6 with accepted medical practice and with the well-being and safety of such
 7 patient, be performed in a manner consistent with preservation of any rea-
 8 sonable potential for survival of a viable fetus child.

9 (4) Nothing in this section shall make legal any abortion that is oth-
 10 erwise illegal under any other law of this state, including section 18-622,
 11 Idaho Code.

12 SECTION 5. That Section 18-609, Idaho Code, be, and the same is hereby
 13 amended to read as follows:

14 18-609. PHYSICIANS AND HOSPITALS NOT TO INCUR CIVIL LIABILITY -- CON-
 15 SENT TO ABORTION -- NOTICE. (1) Any physician may perform an abortion not
 16 prohibited by this act and any hospital or other facility described in sec-
 17 tion 18-608, Idaho Code, may provide facilities for such procedures without,
 18 in the absence of negligence, incurring civil liability therefor to any per-
 19 son including, but not limited to, the pregnant patient and the prospective
 20 father of the fetus preborn child to have been born in the absence of abor-
 21 tion, if informed consent for such abortion has been duly given by the preg-
 22 nant patient.

23 (2) In order to provide assistance in assuring that the consent to an
 24 abortion is truly informed consent, the director of the department of health
 25 and welfare shall publish easily comprehended, nonmisleading and medically
 26 accurate printed material to be made available at no expense to physicians,
 27 hospitals or other facilities providing abortion and abortion-related ser-
 28 vices, and which shall contain the following:

29 (a) Descriptions of the services available to assist a woman through
 30 a pregnancy, at childbirth and while the child is dependent, including
 31 adoption services, a comprehensive list of the names, addresses, and
 32 telephone numbers of public and private agencies that provide such ser-
 33 vices and financial aid available;

34 (b) Descriptions of the physical characteristics of a normal fetus
 35 preborn child, described at two (2) week intervals, beginning with the
 36 fourth week and ending with the twenty-fourth week of development, ac-
 37 companied by scientifically verified photographs of a fetus preborn
 38 child during such stages of development. The description shall include
 39 information about physiological and anatomical characteristics;

40 (c) Descriptions of the abortion procedures used in current medical
 41 practices at the various stages of growth of the fetus preborn child
 42 and any reasonable foreseeable complications and risks to the mother,
 43 including those related to subsequent childbearing;

44 (d) A list, compiled by the department of health and welfare, of health
 45 care providers, facilities and clinics that offer to perform ultra-
 46 sounds free of charge and that have contacted the department annually
 47 with a request to be included in the list. The list shall be arranged
 48 geographically and shall include the name, address, hours of operation,
 49 telephone number and e-mail address of each entity;

1 (e) A statement that the patient has a right to view an ultrasound image
2 and to observe the heartbeat monitoring of her unborn child and that she
3 may obtain an ultrasound free of charge. The statement shall indicate
4 that printed materials required by the provisions of this section con-
5 tain a list, compiled by the department of health and welfare, of health
6 care providers, facilities and clinics that offer to perform such ul-
7 trasounds free of charge;

8 (f) Information directing the patient where to obtain further infor-
9 mation and assistance in locating a health care provider whom she can
10 consult about chemical abortion, including the interventions, if any,
11 that may affect the effectiveness or reversal of a chemical abortion,
12 and informs the patient that if she wants to consult with such health
13 care providers, she should contact those health care providers before
14 she takes the abortifacient; and

15 (g) A section specific to unborn children diagnosed with Down syndrome
16 in order to help educate mothers about the development of children with
17 Down syndrome and the resources available in both the private and public
18 sectors to assist parents of children with Down syndrome with the deliv-
19 ery and care of a child born with Down syndrome. The section shall in-
20 clude:

21 (i) Easily comprehended, medically accurate information re-
22 garding the development of a child with Down syndrome, including
23 treatment and therapy strategies available during a pregnancy and
24 after birth; and

25 (ii) Descriptions of the services available to assist Idaho fam-
26 ilies with children born with Down syndrome, including adoption
27 services, support agencies, and organizations in both the public
28 and private sectors. Such directory shall include the name, ad-
29 dress, telephone number, website, and email address of agencies,
30 ministries, and organizations that provide financial, medical,
31 emotional, and spiritual support services to mothers and families
32 with a child with Down syndrome.

33 The department shall ensure that a Spanish language version of the informed
34 consent materials required in this subsection is made available to women
35 considering an abortion.

36 (3) (a) The department of health and welfare shall develop and maintain
37 a stable internet website, that may be part of an existing website, to
38 provide the information described in subsection (2) of this section. No
39 information regarding persons using the website shall be collected or
40 maintained. The department of health and welfare shall monitor the web-
41 site on a weekly basis to prevent and correct tampering.

42 (b) As used in this section, "stable internet website" means a website
43 that, to the extent reasonably practicable, is safeguarded from having
44 its content altered other than by the department of health and welfare.

45 (c) When a pregnant patient contacts a physician by telephone or visit
46 and inquires about obtaining an abortion, the physician or the physi-
47 cian's agent before or while scheduling an abortion-related appoint-
48 ment must provide the woman with the address of the state-sponsored in-
49 ternet website on which the printed materials described in subsection

1 (2) of this section may be viewed as required in subsection (2) of this
2 section.

3 (4) Except in the case of a medical emergency, no abortion shall be
4 performed unless, prior to the abortion, the attending physician or the
5 attending physician's agent certifies in writing that the materials pro-
6 vided by the director have been provided to the pregnant patient at least
7 twenty-four (24) hours before the performance of the abortion. If the ma-
8 terials are not available from the director of the department of health and
9 welfare, no certification shall be required. The attending physician, or
10 the attending physician's agent, shall provide any other information re-
11 quired under this act.

12 (5) Except in the case of medical emergency, no abortion shall be per-
13 formed unless, prior to an initial consultation or any testing, and not less
14 than twenty-four (24) hours prior to the performance of the abortion, the
15 woman is informed by telephone or in person, by the physician who is to per-
16 form the abortion or by an agent of the physician, that ultrasound imaging
17 and heartbeat monitoring are available to the woman enabling the pregnant
18 woman to view her unborn child or observe the heartbeat of the unborn child.
19 The physician or agent of the physician shall inform the pregnant woman
20 that the website and printed materials described in subsection (2) (d), (e)
21 and (f) of this section contain telephone numbers, addresses and e-mail
22 addresses of facilities that offer such services at no cost. If the woman
23 contacts the abortion facility by e-mail, the physician or agent of the
24 physician shall inform the woman of the requirements of this subsection by
25 e-mail with the required information in a larger font than the rest of the
26 e-mail. No fee for an abortion shall be collected prior to providing the
27 information required in this subsection.

28 (6) All physicians or their agents who use ultrasound equipment in the
29 performance of an abortion shall inform the patient that she has the right
30 to view the ultrasound image of her unborn child before an abortion is per-
31 formed. If the patient requests to view the ultrasound image, she shall be
32 allowed to view it before an abortion is performed. The physician or agent
33 shall also offer to provide the patient with a physical picture of the ultra-
34 sound image of her unborn child prior to the performance of the abortion, and
35 shall provide it if requested by the patient. In addition to providing the
36 material, the attending physician may provide the pregnant patient with such
37 other information which in the attending physician's judgment is relevant to
38 the pregnant patient's decision as to whether to have the abortion or carry
39 the pregnancy to term.

40 (7) Within thirty (30) days after performing any abortion without cer-
41 tification and delivery of the materials, the attending physician, or the
42 attending physician's agent, shall cause to be delivered to the director of
43 the department of health and welfare, a report signed by the attending physi-
44 cian, preserving the patient's anonymity, denoting the medical emergency
45 that excused compliance with the duty to deliver the materials. The director
46 of the department of health and welfare shall compile the information annu-
47 ally and report to the public the total number of abortions performed in the
48 state where delivery of the materials was excused; provided that any infor-
49 mation so reported shall not identify any physician or patient in any manner
50 which would reveal their identities.

1 (8) If section 18-608(3), Idaho Code, applies to the abortion to be per-
 2 formed and the pregnant patient is an adult and for any reason unable to give
 3 a valid consent thereto, the requirement for that pregnant patient's consent
 4 shall be met as required by law for other medical or surgical procedures and
 5 shall be determined in consideration of the desires, interests and welfare
 6 of the pregnant patient.

7 (9) The knowing failure of the attending physician to perform any one
 8 (1) or more of the acts required under subsection (7) of this section or
 9 section 39-261, Idaho Code, is grounds for discipline pursuant to section
 10 54-1814(6), Idaho Code, and shall subject the physician to assessment of a
 11 civil penalty of one hundred dollars (\$100) for each month or portion thereof
 12 that each such failure continues, payable to the vital statistics unit of the
 13 department of health and welfare, but such failure shall not constitute a
 14 criminal act.

15 SECTION 6. That Section 18-611, Idaho Code, be, and the same is hereby
 16 amended to read as follows:

17 18-611. FREEDOM OF CONSCIENCE FOR HEALTH CARE PROFESSIONALS. (1) As
 18 used in this section:

19 (a) "Abortifacient" means any drug that causes an abortion as defined
 20 in section 18-604, Idaho Code, emergency contraception or any drug the
 21 primary purpose of which is to cause the destruction of ~~an embryo or fe-~~
 22 ~~tus~~ a preborn child.

23 (b) "Conscience" means the religious, moral or ethical principles sin-
 24 cerely held by any person.

25 ~~(c) "Embryo" means the developing human life from fertilization until~~
 26 ~~the end of the eighth week of gestation.~~

27 ~~(d) (c) "Fetus" "Preborn child" means the developing human life from~~
 28 ~~the start of the ninth week of gestation~~ fertilization until birth.

29 ~~(e) (d) "Health care professional" means any person licensed, certi-~~
 30 ~~fied or registered by the state of Idaho to deliver health care.~~

31 ~~(f) (e) "Health care service" means an abortion, dispensation of an~~
 32 ~~abortifacient drug, human embryonic stem cell research, treatment reg-~~
 33 ~~imens utilizing human embryonic stem cells, human embryo cloning or end~~
 34 ~~of life treatment and care.~~

35 ~~(g) (f) "Provide" means to counsel, advise, perform, dispense, assist~~
 36 ~~in or refer for any health care service.~~

37 ~~(h) (g) "Religious, moral or ethical principles," "sincerely held,"~~
 38 ~~"reasonably accommodate" and "undue hardship" shall be construed con-~~
 39 ~~sistently with title VII of the federal civil rights act of 1964, as~~
 40 ~~amended.~~

41 (2) No health care professional shall be required to provide any health
 42 care service that violates his or her conscience.

43 (3) Employers of health care professionals shall reasonably accommo-
 44 date the conscience rights of their employees as provided in this section,
 45 upon advanced written notification by the employee. Such notice shall suf-
 46 fice without specification of the reason therefor. It shall be unlawful for
 47 any employer to discriminate against any health care professional based upon
 48 his or her declining to provide a health care service that violates his or

1 her conscience, unless the employer can demonstrate that such accommodation
2 poses an undue hardship.

3 (4) No health care professional or employer of the health care pro-
4 fessional shall be civilly, criminally or administratively liable for the
5 health care professional declining to provide health care services that
6 violate his or her conscience, except for life-threatening situations as
7 provided for in subsection (6) of this section.

8 (5) The provisions of this section do not allow a health care profes-
9 sional or employer of the health care professional to refuse to provide
10 health care services because of a patient's race, color, religion, sex, age,
11 disability or national origin.

12 (6) If a health care professional invokes a conscience right in a
13 life-threatening situation where no other health care professional capable
14 of treating the emergency is available, such health care professional shall
15 provide treatment and care until an alternate health care professional capa-
16 ble of treating the emergency is found.

17 (7) In cases where a living will or physician's orders for scope of
18 treatment (POST) is operative, as defined by the medical consent and natu-
19 ral death act, and a physician has a conscience objection to the treatment
20 desired by the patient, the physician shall comply with the provisions of
21 section 39-4513(2), Idaho Code, before withdrawing care and treatment to the
22 patient.

23 (8) Nothing in this section shall affect the rights of conscience pro-
24 vided for in section 18-612, Idaho Code, to the extent that those rights are
25 broader in scope than those provided for in this section.

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

28 18-613. PARTIAL-BIRTH ABORTIONS PROHIBITED. (1) Prohibited acts. Any
29 physician who knowingly performs a partial-birth abortion and thereby kills
30 a ~~human fetus~~ preborn child shall be subject to the penalties imposed in sec-
31 tion 18-605, Idaho Code. This section shall not apply to partial-birth abor-
32 tions necessary to save the life of the mother when her life is endangered
33 by a physical disorder, physical illness, or physical injury, including a
34 life-endangering physical condition caused by or arising from the pregnancy
35 itself.

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

37 (a) "~~Fetus~~" "Preborn child" has the same meaning as provided in section
38 18-604(5), Idaho Code.

39 (b) "Partial-birth abortion" means an abortion in which the person per-
40 forming the abortion:

41 (i) Deliberately and intentionally vaginally delivers a living
42 ~~fetus~~ preborn child until, in the case of a head-first presenta-
43 tion, the entire fetal head is outside the body of the mother or, in
44 the case of breech presentation, any part of the fetal trunk past
45 the navel is outside the body of the mother, for the purpose of per-
46 forming an overt act that the physician knows will kill the par-
47 tially delivered living ~~fetus~~ preborn child; and

48 (ii) Performs the overt act, other than completion of delivery,
49 that kills the partially delivered living ~~fetus~~ preborn child.

1 (c) "Physician" has the same meaning provided in section 18-604, Idaho
 2 Code. However, any individual who is not a physician or not otherwise
 3 legally authorized by this state to perform abortions but who neverthe-
 4 less directly performs a partial-birth abortion shall be subject to the
 5 provisions described in this section.

6 (3) (a) Civil actions. The father of the aborted fetus child, if married
 7 to the mother of the aborted fetus child at the time of the partial-birth
 8 abortion, or the maternal grandparents of the aborted fetus child, if
 9 the mother is not at least eighteen (18) years of age at the time of the
 10 abortion, may bring a civil action against the defendant physician to
 11 obtain appropriate relief. Provided however, that a civil action by the
 12 father is barred if the pregnancy resulted from the father's criminal
 13 conduct or if the father consented to the abortion. Further, a civil
 14 action by the maternal grandparents is barred if the pregnancy is the
 15 result of a maternal grandparent's criminal conduct or if a maternal
 16 grandparent consented to the abortion.

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

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

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

23 (4) (a) Hearing. A physician accused of violating this section may re-
 24 quest a hearing before the state board of medicine on whether the physi-
 25 cian's conduct was necessary to save the life of the mother whose life
 26 was endangered by a physical disorder, physical illness, or physical
 27 injury, including a life-endangering physical condition caused by or
 28 arising from the pregnancy itself.

29 (b) The findings of the board of medicine regarding the issues de-
 30 scribed in paragraph (a) of this subsection are admissible at the
 31 criminal and civil trials of the defendant physician. Upon a motion
 32 by the defendant physician, the court shall delay the beginning of the
 33 criminal and civil trials for not more than thirty (30) days to permit
 34 the hearing to take place.

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

39 SECTION 8. That Section 18-907, Idaho Code, be, and the same is hereby
 40 amended to read as follows:

41 18-907. AGGRAVATED BATTERY DEFINED. (1) A person commits aggravated
 42 battery who, in committing battery:

43 (a) Causes great bodily harm, permanent disability or permanent dis-
 44 figurement; or

45 (b) Uses a deadly weapon or instrument; or

46 (c) Uses any vitriol, corrosive acid, or a caustic chemical of any na-
 47 ture; or

48 (d) Uses any poison or other noxious or destructive substance or liq-
 49 uid; or

1 (e) Upon the person of a pregnant female, causes great bodily harm,
2 permanent disability or permanent disfigurement to ~~an embryo or fetus a~~
3 preborn child.

4 (2) For purposes of this section the terms "~~embryo~~" or "~~fetus~~" "preborn
5 child" shall mean any human in utero.

6 (3) There shall be no prosecution under subsection (1) (e) of this sec-
7 tion:

8 (a) Of any person for conduct relating to an abortion for which the con-
9 sent of the pregnant female, or person authorized by law to act on her
10 behalf, has been obtained or for which such consent is implied by law.

11 (b) Of any person for any medical treatment of the pregnant female or
12 her ~~embryo or fetus~~ preborn child; or

13 (c) Of any female with respect to her ~~embryo or fetus~~ preborn child.

14 (4) Nothing in this chapter is intended to amend or nullify the provi-
15 sions of chapter 6, title 18, Idaho Code.

16 SECTION 9. That Section 18-4001, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 18-4001. MURDER DEFINED. Murder is the unlawful killing of a human be-
19 ing including, but not limited to, a ~~human embryo or fetus~~ preborn child,
20 with malice aforethought or the intentional application of torture to a hu-
21 man being, which results in the death of a human being. Torture is the in-
22 tentional infliction of extreme and prolonged pain with the intent to cause
23 suffering. It shall also be torture to inflict on a human being extreme and
24 prolonged acts of brutality irrespective of proof of intent to cause suffer-
25 ing. The death of a human being caused by such torture is murder irrespective
26 of proof of specific intent to kill; torture causing death shall be deemed
27 the equivalent of intent to kill.

28 SECTION 10. That Section 18-4006, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 18-4006. MANSLAUGHTER DEFINED. Manslaughter is the unlawful killing
31 of a human being including, but not limited to, a ~~human embryo or fetus~~
32 preborn child, without malice. It is of three (3) kinds:

33 (1) Voluntary -- upon a sudden quarrel or heat of passion.

34 (2) Involuntary -- in the perpetration of or attempt to perpetrate any
35 unlawful act, other than those acts specified in section 18-4003(d), Idaho
36 Code; or in the commission of a lawful act which might produce death, in an
37 unlawful manner, or without due caution and circumspection; or in the oper-
38 ation of any firearm or deadly weapon in a reckless, careless or negligent
39 manner which produces death.

40 (3) Vehicular -- in which the operation of a motor vehicle is a signifi-
41 cant cause contributing to the death because of:

42 (a) The commission of an unlawful act, not amounting to a felony, with
43 gross negligence; or

44 (b) The commission of a violation of section 18-8004 or 18-8006, Idaho
45 Code; or

46 (c) The commission of an unlawful act, not amounting to a felony, with-
47 out gross negligence.

1 Notwithstanding any other provision of law, any evidence of conviction under
2 subsection (3) (b) of this section shall be admissible in any civil action for
3 damages resulting from the occurrence. A conviction for the purposes of sub-
4 section (3) (b) of this section means that the person has pled guilty or has
5 been found guilty, notwithstanding the form of the judgment(s) or withheld
6 judgment(s).

7 SECTION 11. That Section 18-4016, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 18-4016. DEFINITION OF ~~HUMAN EMBRYO AND FETUS~~ PREBORN CHILD -- PRO-
10 HIBITING THE PROSECUTION OF CERTAIN PERSONS. (1) For purposes of this chap-
11 ter ~~"embryo" or "fetus"~~ "preborn child" shall mean any human in utero.

12 (2) Nothing in this chapter, arising from the killing of ~~an embryo or~~
13 ~~fetus~~ a preborn child, shall be construed to permit the prosecution:

14 (a) Of any person for conduct relating to an abortion for which the con-
15 sent of the pregnant woman, or a person authorized by law to act on her
16 behalf, has been obtained or for which such consent is implied by law;

17 (b) Of any person for any medical treatment of the pregnant woman or her
18 ~~embryo or fetus~~ preborn child; or

19 (c) Of any woman with respect to her ~~embryo or fetus~~ preborn child.

20 (3) Nothing in this chapter is intended to amend or nullify the provi-
21 sions of chapter 6, title 18, Idaho Code.

22 SECTION 12. That Section 18-8801, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 18-8801. DEFINITIONS. As used in this chapter:

25 (1) "Abortion" means the use of any means to intentionally terminate
26 the clinically diagnosable pregnancy of a woman with knowledge that the ter-
27 mination by those means will, with reasonable likelihood, cause the death of
28 the preborn child. "Abortion" does not mean the use of an intrauterine de-
29 vice or birth control pill to inhibit or prevent ovulations, fertilization,
30 or the implantation of a fertilized ovum within the uterus.

31 (2) "Fetal heartbeat" means embryonic or fetal cardiac activity or the
32 steady and repetitive rhythmic contraction of the fetal heart within the
33 gestational sac.

34 (3) ~~"Fetus" and "preborn child" each mean~~ "Preborn child" means an in-
35 dividual organism of the species Homo sapiens from fertilization until live
36 birth.

37 (4) "Gestational age" means the age of a preborn human individual as
38 calculated from the first day of the last menstrual period of a pregnant
39 woman.

40 (5) "Medical emergency" means a condition that, in reasonable medical
41 judgment, so complicates the medical condition of a pregnant woman as to ne-
42 cessitate the immediate abortion of her pregnancy to avert her death or for
43 which a delay will create serious risk of substantial and irreversible im-
44 pairment of a major bodily function.

45 SECTION 13. That Section 39-241, Idaho Code, be, and the same is hereby
46 amended to read as follows:

1 39-241. DEFINITIONS. For the purposes of this chapter and this chap-
 2 ter only, the following terms shall be construed to have the meanings here-
 3 inafter set forth:

4 (1) "Adoptive parent" means an adult who has become a parent of a child
 5 through the legal process of adoption.

6 (2) "Advanced practice registered nurse" means a registered nurse li-
 7 censed in this state who has gained additional specialized knowledge, skills
 8 and experience as defined in section 54-1402, Idaho Code, and includes the
 9 following four (4) roles: certified nurse midwife; clinical nurse spe-
 10 cialist; certified nurse practitioner; and certified registered nurse
 11 anesthetist as defined by the applicable board of nursing rule.

12 (3) "Board" means the Idaho state board of health and welfare.

13 (4) "Certified copy" means the reproduction of an original vital record
 14 by typewritten, photographic or electronic means. Such reproductions, when
 15 certified by the state registrar, shall be used as the original.

16 (5) "Consent" means a verified written statement which has been nota-
 17 rized.

18 (6) "Dead body" means a lifeless human body or such parts of the human
 19 body or the bones thereof from the state of which it reasonably may be con-
 20 cluded that death occurred.

21 (7) "Director" means the director of the department of health and wel-
 22 fare.

23 (8) ~~"Fetal death"~~ "Death of a preborn child" means death prior to the
 24 complete expulsion or extraction from its mother of a product of human con-
 25 ception, irrespective of the duration of pregnancy; the death is indicated
 26 by the fact that after such expulsion or extraction, the ~~fetus~~ preborn child
 27 does not breathe or show any other evidence of life such as beating of the
 28 heart, pulsation of the umbilical cord, or definite movement of voluntary
 29 muscles.

30 (a) "Induced termination of pregnancy (induced abortion)" means the
 31 purposeful interruption of pregnancy with an intention other than to
 32 produce a live-born infant or to remove a dead ~~fetus~~ preborn child and
 33 which does not result in a live birth.

34 (b) ~~"Spontaneous fetal death of a preborn child"~~ "Spontaneous death of a preborn child" means the expulsion
 35 or extraction of a product of human conception resulting in other than a
 36 live birth and which is not an induced termination of pregnancy.

37 (9) "Identifying information" includes the following information:

38 (a) The name of the qualified adoptee before placement in adoption;

39 (b) The name and address of each qualified birthparent as it appears in
 40 birth records;

41 (c) The current name, address and telephone number of the qualified
 42 adult adoptee; and

43 (d) The current name, address and telephone number of each qualified
 44 birthparent.

45 (10) "Live birth" means the complete expulsion or extraction from its
 46 mother of a product of human conception, irrespective of the duration of
 47 pregnancy, which, after such expulsion or extraction, breathes, or shows
 48 any other evidence of life such as beating of the heart, pulsation of the um-
 49 bilical cord, or definite movement of voluntary muscles, whether or not the
 50 umbilical cord has been cut or the placenta is attached. Heartbeats are to be

1 distinguished from transient cardiac contractions; respirations are to be
2 distinguished from fleeting respiratory efforts or gasps.

3 (11) "Person in charge of interment" means any person who places or
4 causes to be placed a stillborn ~~fetus~~ child or dead body or the ashes of the
5 same, after cremation, in a grave, vault, urn, or other receptacle, or oth-
6 erwise disposes thereof.

7 (12) "Physician" means a person legally authorized to practice medicine
8 and surgery, osteopathic medicine and surgery or osteopathic medicine in
9 this state as defined in section 54-1803, Idaho Code.

10 (13) "Physician assistant" means any person who is a graduate of an ac-
11 ceptable training program and who is otherwise qualified to render patient
12 services as defined in section 54-1803, Idaho Code.

13 (14) "Qualified adult adoptee" means an adopted person eighteen (18)
14 years of age or older who was born in Idaho.

15 (15) "Qualified adult birth sibling" means a genetic, biological, or
16 natural brother or sister or half-brother or half-sister, eighteen (18)
17 years of age or older.

18 (16) "Qualified birthparent" means a genetic, biological, or natural
19 parent whose rights were voluntarily or involuntarily terminated by a court
20 or otherwise. "Birthparent" includes a man who is the parent of a child prior
21 to the termination of parental rights.

22 (17) "Record" means the original certificate of an event and any re-
23 placement thereof filed for record by virtue of authority contained in this
24 chapter, as well as instruments of any nature provided by this chapter as a
25 means of effecting replacement of certificates.

26 (18) "Registrar" means the state registrar of vital statistics or a des-
27 ignated representative.

28 (19) "Relative" includes only an individual's spouse, birthparent,
29 adoptive parent, sibling, or child who is eighteen (18) years of age or
30 older.

31 (20) "Stillbirth" means a spontaneous ~~fetal~~ death of a preborn child of
32 twenty (20) completed weeks gestation or more, based on a clinical estimate
33 of gestation, or a weight of three hundred fifty (350) grams (twelve and
34 thirty-five hundredths (12.35) ounces) or more.

35 (21) "Vital statistics" includes the registration, preparation, tran-
36 scription, collection, compilation and preservation of data pertaining to
37 births, adoptions, legitimations, deaths, stillbirths, induced termina-
38 tions of pregnancy, marital status and data incidental thereto.

39 (22) "Voluntary adoption registry" or "registry" means a place where
40 eligible persons, as described in section 39-259A, Idaho Code, may indicate
41 their willingness to have their identity and whereabouts disclosed to each
42 other under conditions specified in section 39-259A, Idaho Code.

43 SECTION 14. That Section 39-260, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 39-260. REGISTRATION OF DEATHS AND STILLBIRTHS. (1) A certificate of
46 each death which occurs in this state shall be filed with the local registrar
47 of the district in which the death occurs, or as otherwise directed by the
48 state registrar, within five (5) days after the occurrence. However, the
49 board shall, by rule and upon such conditions as it may prescribe to assure

1 compliance with the purposes of the vital statistics act, provide for the
2 filing of death certificates without medical certifications of cause of
3 death in cases in which compliance with the applicable prescribed period
4 would result in undue hardship; but provided, however, that medical certi-
5 fications of cause of death shall be provided by the certifying physician,
6 physician assistant, advanced practice registered nurse or coroner to the
7 vital statistics unit within fifteen (15) days from the filing of the death
8 certificate. No certificate shall be deemed complete until every item of
9 information required shall have been provided or its omission satisfacto-
10 rily accounted for. When death occurs in a moving conveyance in the United
11 States and the body is first removed from the conveyance in this state, the
12 death shall be registered in this state and the place where the body is first
13 removed shall be considered the place of death. When a death occurs on a
14 moving conveyance while in international airspace or in a foreign country or
15 its airspace and the body is first removed from the conveyance in this state,
16 the death shall be registered in this state but the certificate shall show
17 the actual place of death insofar as can be determined. If the place of death
18 is unknown but the dead body is found in this state, the certificate of death
19 shall be completed and filed in accordance with this section. The place
20 where the body is found shall be shown as the place of death. If the date of
21 death is unknown, it shall be determined by approximation.

22 The person in charge of interment or of removal of the body from the dis-
23 trict shall be responsible for obtaining and filing the certificate. Said
24 person shall obtain the required information from the following persons,
25 over their respective signatures:

26 (a) Personal data shall be supplied by the person best qualified to sup-
27 ply them; and

28 (b) Except as otherwise provided, medical data shall be supplied by the
29 physician, physician assistant or advanced practice registered nurse
30 who attended the deceased during the last illness, who shall certify to
31 the cause of death according to his best knowledge, information and be-
32 lief within seventy-two (72) hours from time of death. In the absence
33 of the attending physician, physician assistant or advanced practice
34 registered nurse or with said person's approval the certificate may be
35 completed and signed by said person's associate, who must be a physi-
36 cian, physician assistant or advanced practice registered nurse, the
37 chief medical officer of the institution in which death occurred, or the
38 physician who performed an autopsy upon the decedent, provided such in-
39 dividual has access to the medical history of the case, views the de-
40 ceased at or after death, and death is due to natural causes.

41 (2) The person in charge of interment or of removal of the body from the
42 district shall refer the following cases to the coroner who shall make an im-
43 mediate investigation, supply the necessary medical data, and certify to the
44 cause of death:

45 (a) When no physician, physician assistant or advanced practice regis-
46 tered nurse was in attendance during the last illness of the deceased;

47 (b) When the circumstances suggest that the death occurred as a result
48 of other than natural causes; or

49 (c) When death is due to natural causes and the physician, physician as-
50 sistant or advanced practice registered nurse who attended the deceased

1 during the last illness or said person's designated associate who must
2 be a physician, physician assistant or advanced practice registered
3 nurse, is not available or is physically incapable of signing.

4 (3) When a death is presumed to have occurred within this state but the
5 body cannot be located, a death certificate may be prepared by the state reg-
6 istrar upon receipt of an order of a court of record of this state, which
7 shall include the finding of facts required to complete the death certifi-
8 cate. Such a death certificate shall be marked "presumptive" and shall show
9 on its face the date of registration and shall identify the court and the date
10 of decree.

11 (4) Each stillbirth, defined as a spontaneous ~~fetal~~ death of a preborn
12 child of twenty (20) completed weeks gestation or more, based on a clini-
13 cal estimate of gestation, or a weight of three hundred fifty (350) grams
14 (twelve and thirty-five hundredths (12.35) ounces) or more, which occurs in
15 this state shall be registered on a certificate of stillbirth within five
16 (5) days after delivery with the local registrar of the district in which
17 the stillbirth occurred. All induced terminations of pregnancy shall be re-
18 ported in the manner prescribed in section 39-261, Idaho Code, and shall not
19 be reported as stillbirths. No certificate shall be deemed complete until
20 every item of information required shall have been provided or its omission
21 satisfactorily accounted for.

22 (a) When a stillbirth occurs in an institution, the person in charge of
23 the institution or a designated representative shall prepare the cer-
24 tificate, obtain the signature of the physician, physician assistant or
25 advanced practice registered nurse in attendance, except as otherwise
26 provided in subsection (5) of this section, who shall provide the medi-
27 cal data, and forward the certificate to the mortician or person acting
28 as such. In the absence of the attending physician, physician assistant
29 or advanced practice registered nurse or with said person's approval
30 the certificate may be completed and signed by said person's associate,
31 who must be a physician, physician assistant or advanced practice reg-
32 istered nurse, the chief medical officer of the institution in which
33 the stillbirth occurred, or the physician who performed an autopsy on
34 the stillborn ~~fetus~~ child, provided such individual has access to the
35 medical history of the case and views the ~~fetus~~ stillborn child at or
36 after stillbirth. The mortician or person acting as such shall provide
37 the disposition information and file the certificate with the local
38 registrar.

39 (b) When a stillbirth occurs outside an institution, the mortician or
40 person acting as such shall complete the certificate, obtain the medi-
41 cal data from and signature of the attendant at the stillbirth, except
42 as otherwise provided in subsection (5) of this section, and file the
43 certificate. If the attendant at or immediately after the stillbirth
44 is not a physician, physician assistant or advanced practice registered
45 nurse, the coroner shall investigate and sign the certificate of still-
46 birth.

47 (c) When a stillbirth occurs in a moving conveyance in the United States
48 and the stillborn ~~fetus~~ child is first removed from the conveyance in
49 this state, the stillbirth shall be registered in this state and the
50 place where the stillborn ~~fetus~~ child is first removed shall be con-

1 sidered the place of stillbirth. When a stillbirth occurs in a moving
2 conveyance while in international airspace or in a foreign country or
3 its airspace and the stillborn ~~fetus~~ child is first removed from the
4 conveyance in this state, the stillbirth shall be registered in this
5 state but the certificate shall show the actual place of stillbirth in-
6 sofar as can be determined.

7 (d) When a stillborn ~~fetus~~ child is found in this state and the place
8 of stillbirth is unknown, it shall be reported in this state. The place
9 where the stillborn ~~fetus~~ child was found shall be considered the place
10 of stillbirth.

11 (e) The name of the father shall be entered on the certificate of still-
12 birth as provided by section 39-255, Idaho Code.

13 (5) The person responsible for the preparation or completion of the
14 stillbirth certificate as stated in subsection (4) (a) and (b) of this
15 section shall refer the following cases to the coroner who shall make an im-
16 mediate investigation, supply the necessary medical data and certify to the
17 cause of stillbirth:

18 (a) When the circumstances suggest that the stillbirth occurred as a
19 result of other than natural causes, excepting legally induced abor-
20 tions, as defined by section 39-241, Idaho Code; or

21 (b) When death is due to natural causes and the physician, physician as-
22 sistant or advanced practice registered nurse in attendance at or imme-
23 diately after the stillbirth or said person's designated associate is
24 not available or is physically incapable of signing.

25 SECTION 15. That Section 39-268, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 39-268. AUTHORIZATION FOR FINAL DISPOSITION. (1) The mortician or
28 person acting as such who first assumes possession of a dead body or still-
29 born ~~fetus~~ child shall make a written report to the registrar of the district
30 in which death or stillbirth occurred or in which the body or stillborn ~~fetus~~
31 child was found within twenty-four (24) hours after taking possession of
32 the body or stillborn ~~fetus~~ child, on a form prescribed and furnished by
33 the state registrar and in accordance with rules promulgated by the board.
34 Except as specified in subsection (2) of this section, the written report
35 shall serve as permit to transport, bury or entomb the body or stillborn
36 ~~fetus~~ child within this state, provided that the mortician or person acting
37 as such shall certify that the physician, physician assistant or advanced
38 practice registered nurse in charge of the patient's care for the illness or
39 condition which resulted in death or stillbirth has been contacted and has
40 affirmatively stated that said physician, physician assistant or advanced
41 practice registered nurse or the designated associate according to section
42 39-260(1) (b) or (4) (a), Idaho Code, will sign the certificate of death or
43 stillbirth.

44 (2) The written report as specified in subsection (1) of this section
45 shall not serve as a permit to:

46 (a) Remove a body or stillborn ~~fetus~~ child from this state;

47 (b) Cremate the body or stillborn ~~fetus~~ child; or

1 (c) Make disposal or disposition of any body or stillborn ~~fetus~~ child
2 in any manner when inquiry is required under chapter 43, title 19, Idaho
3 Code, or section 39-260 (2) or (5), Idaho Code.

4 (3) In accordance with the provisions of subsection (2) of this sec-
5 tion, the mortician or person acting as such who first assumes possession of
6 a dead body or stillborn ~~fetus~~ child shall obtain an authorization for final
7 disposition prior to final disposal or removal from the state of the body or
8 stillborn ~~fetus~~ child. The physician, physician assistant, advanced prac-
9 tice registered nurse or coroner responsible for signing the death or still-
10 birth certificate shall authorize final disposition of the body or stillborn
11 ~~fetus~~ child, on a form prescribed and furnished by the state registrar. If
12 the body is to be cremated, the coroner must also give additional authoriza-
13 tion. In the case of stillbirths, the hospital may dispose of the stillborn
14 ~~fetus~~ child if the parent(s) so requests; authorization from the coroner is
15 not necessary unless the coroner is responsible for signing the certificate
16 of stillbirth.

17 (4) When a dead body or stillborn ~~fetus~~ child is transported into the
18 state, a permit issued in accordance with the law of the state in which the
19 death or stillbirth occurred or in which the body or stillborn ~~fetus~~ child
20 was found shall authorize the transportation and final disposition within
21 the state of Idaho.

22 (5) A permit for disposal shall not be required in the case of a ~~dead fe-~~
23 ~~tus~~ stillborn child of less than twenty (20) weeks gestation and less than
24 three hundred fifty (350) grams or twelve and thirty-five hundredths (12.35)
25 ounces where disposal of the fetal remains is made within the institution
26 where the delivery of the ~~dead fetus~~ stillborn child occurred.

27 SECTION 16. That Section 39-269, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 39-269. DISINTERMENT -- RULES. (1) No body or stillborn ~~fetus~~ child
30 shall be disinterred within the state of Idaho except upon a permit granted
31 by the state registrar of vital statistics. The forms of disinterment per-
32 mits shall be prepared by the state registrar.

33 (2) Disinterment and removal must be done under the personal supervi-
34 sion of a licensed mortician, and only upon verified application of the per-
35 son or persons having the highest authority under the provisions of section
36 54-1142, Idaho Code. Only such persons as are actually necessary shall be
37 present. The person having the highest authority under the provisions of
38 section 54-1142, Idaho Code, may choose to be present or may choose the de-
39 signee to attend in the person's place. The coffin shall not be opened either
40 at place of disinterment or place of destination, except by special permit
41 issued by the state registrar.

42 (3) In the case of disinterment of bodies dead by reason of contagious
43 and infectious diseases, as shown by the certificate of death given by the
44 certifying physician or coroner, the sexton and all other persons engaged in
45 such removal or being present shall immediately thereafter change and disin-
46 fect their clothing and properly disinfect their hands, head and face, pro-
47 vided, that such disinterment may also be governed by rules promulgated by
48 the state board of health and welfare and a synopsis of the same shall be
49 printed on the back of every permit. In case of any contagious and infectious

1 disease where remains are to be shipped to points in other states, permission
2 must first be obtained from the state health officer of such state.

3 (4) The state registrar may also issue a special disinterment permit
4 for legal purposes. This permit for legal purposes shall be granted only
5 upon application of a prosecuting attorney, the attorney general of this
6 state, or the coroner of the county in which the body is interred, stating
7 therein such facts which make it evident to the state registrar that the ends
8 of justice require that disinterment be permitted. Such special disinter-
9 ment for legal purposes shall be governed by rules promulgated by the state
10 board of health and welfare and a synopsis of the same shall be printed on the
11 back of every such special disinterment permit for legal purposes.

12 (5) Bodies in a receiving vault when prepared by a licensed mortician
13 shall not be regarded as disinterred bodies until after the expiration of
14 thirty (30) days.

15 SECTION 17. That Section 39-273, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 39-273. PENALTIES. (a) The following acts, if committed unlawfully,
18 purposely and with the intent to deceive, shall be felonies punishable by a
19 fine of not more than five thousand dollars (\$5,000) or imprisonment of not
20 more than five (5) years, or both:

21 (1) furnishing false or fraudulent information affecting any certifi-
22 cate, record or report required by this chapter; or

23 (2) making, counterfeiting, altering, amending or mutilating of any
24 certificate, record or report, or any certified copy of a certificate,
25 record, or report authorized by this chapter; or

26 (3) obtaining, possessing, using, selling, or furnishing, or attempt-
27 ing to obtain, possess, use, sell, or furnish, any certificate, record,
28 or report, or certified copy of a certificate, record, or report, which
29 has been unlawfully made, counterfeited, altered, amended, or muti-
30 lated; or

31 (4) furnishing, selling or using any certificate, record or report,
32 or any certified copy of a certificate, record or report, authorized by
33 this chapter for the purpose of misrepresenting the age or identity of a
34 person or misrepresenting the facts relating to a birth, death or adop-
35 tion.

36 (b) The following acts, if committed with knowledge, recklessness or
37 with criminal negligence, shall be misdemeanors punishable by a fine of not
38 more than one thousand dollars (\$1,000) or imprisonment of not more than one
39 (1) year, or both:

40 (1) except where a different penalty is provided by this section, vio-
41 lating any of the provisions of this chapter or the regulations promul-
42 gated pursuant to this chapter by the board; or

43 (2) neglecting or refusing to perform any of the duties imposed pur-
44 suant to this chapter; or

45 (3) transporting, accepting for transport, interring, or otherwise
46 disposing of a dead body or stillborn ~~fetus~~ child without a permit or
47 other authorization issued in accordance with the provisions of this
48 chapter.

1 (c) In addition to the other penalties herein prescribed, any employee
 2 or officer of the department who knowingly, recklessly or negligently dis-
 3 closes any information in violation of section 39-270, Idaho Code, shall be
 4 subject to immediate dismissal from employment.

5 (d) In addition to any other sanction or penalty authorized by law, the
 6 registrar may hereby impose a fine which may not exceed two hundred fifty
 7 dollars (\$250) for each violation wherein a physician, hospital administra-
 8 tor or his designee, or other birth attendants, or coroner/deputy, or fu-
 9 neral director/mortician fails to sign a birth, or death or stillbirth cer-
 10 tificate within fifteen (15) days of the death or within fifteen (15) days of
 11 the birth. Notice of intent to impose such fine must be given by the regis-
 12 trar to the alleged violator. Each day that a violation continues following
 13 the giving of the notice of intent may constitute a violation and the regis-
 14 trar may impose a fine which may not exceed fifty dollars (\$50.00) per day.
 15 In determining the amount of any fine to be imposed for a violation, the reg-
 16 istrar shall consider the following factors:

- 17 (1) the gravity of the violation or extent to which the provisions of
- 18 the applicable statute or rule were violated;
- 19 (2) any action taken by the alleged violator to correct the violation or
- 20 assure that the violation will not reoccur;
- 21 (3) any previous violation.

22 SECTION 18. That Section 39-3402, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 39-3402. DEFINITIONS. In this chapter:

25 (1) "Adult" means an individual who is at least eighteen (18) years of
 26 age.

27 (2) "Agent" means an individual:

28 (a) Authorized to make health care decisions on the principal's behalf
 29 by a power of attorney for health care; or

30 (b) Expressly authorized to make an anatomical gift on the principal's
 31 behalf by any other record signed by the principal.

32 (3) "Anatomical gift" means a donation of all or part of a human body
 33 to take effect after the donor's death for the purpose of transplantation,
 34 therapy, research or education.

35 (4) "Decedent" means a deceased individual whose body or part is or may
 36 be the source of an anatomical gift. The term includes a stillborn ~~infant~~
 37 child and, subject to restrictions imposed by law other than this chapter, a
 38 ~~fetus~~ preborn child.

39 (5) "Disinterested witness" means a witness other than the spouse,
 40 child, parent, sibling, grandchild, grandparent or guardian of the indi-
 41 vidual who makes, amends, revokes or refuses to make an anatomical gift, or
 42 another adult who exhibited special care and concern for the individual. The
 43 term does not include a person to which an anatomical gift could pass under
 44 section 39-3412, Idaho Code.

45 (6) "Document of gift" means a donor card or other record used to make
 46 an anatomical gift. The term includes a statement or symbol on a driver's
 47 license, identification card or donor registry.

48 (7) "Donor" means an individual whose body or part is the subject of an
 49 anatomical gift.

1 (8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

2
3 (9) "Driver's license" means a license or permit issued by the Idaho transportation department to operate a vehicle, whether or not conditions are attached to the license or permit.

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6 (10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes or portions of human eyes.

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10 (11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health or welfare of an individual. The term does not include a guardian ad litem.

11
12 (12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

13
14 (13) "Identification card" means an identification card issued by the Idaho transportation department.

15
16 (14) "Know" means to have actual knowledge.

17
18 (15) "Minor" means an individual who is under eighteen (18) years of age.

19
20 (16) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

21
22 (17) "Parent" means a parent whose parental rights have not been terminated.

23
24 (18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

25
26 (19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

27
28 (20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

29
30 (21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

31
32 (22) "Prospective donor" means an individual who is dead or near death and who has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research or education. The term does not include an individual who has made a refusal.

33
34 (23) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

35
36 (24) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

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38 (25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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1 (26) "Refusal" means a record created under section 39-3407, Idaho
2 Code, that expressly states an intent to bar other persons from making an
3 anatomical gift of an individual's body or part.

4 (27) "Sign" means, with the present intent to authenticate or adopt a
5 record:

6 (a) To execute or adopt a tangible symbol; or

7 (b) To attach to or logically associate with the record an electronic
8 symbol, sound or process.

9 (28) "State" means a state of the United States, the District of Colum-
10 bia, Puerto Rico, the United States Virgin Islands, or any territory or insu-
11 lar possession subject to the jurisdiction of the United States.

12 (29) "Technician" means an individual determined to be qualified to re-
13 move or process parts by an appropriate organization that is licensed, ac-
14 credited or regulated under federal or state law. The term includes an enu-
15 cleator.

16 (30) "Tissue" means a portion of the human body other than an organ or
17 an eye. The term does not include blood unless the blood is donated for the
18 purpose of research or education.

19 (31) "Tissue bank" means a person that is licensed, accredited, or regu-
20 lated under federal or state law to engage in the recovery, screening, test-
21 ing, processing, storage or distribution of tissue.

22 (32) "Transplant hospital" means a hospital that furnishes organ trans-
23 plants and other medical and surgical specialty services required for the
24 care of transplant patients.

25 SECTION 19. That Section 39-9303, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 39-9303. DEFINITIONS. As used in this chapter:

28 (1) "Aborted infant" means a deceased unborn infant whose death was
29 caused by abortion.

30 (2) "Abortion" has the same meaning as provided in section 18-604,
31 Idaho Code.

32 (3) "Bodily remains" means the physical remains, body parts or tissue
33 of a deceased unborn infant who has been expelled or extracted from the in-
34 fant's mother.

35 (4) "Experiment" or "experimentation" means the use of bodily remains,
36 including embryonic stem cells, or the use of an unborn infant intended to be
37 aborted, in any trial, test, procedure or observation carried out with the
38 goal of verifying, refuting or establishing the validity of a hypothesis,
39 but does not include:

40 (a) Diagnostic or remedial tests, procedures or observations that have
41 the purpose of promoting the life or health of an unborn infant or of the
42 mother of an unborn infant; or

43 (b) Pathological study.

44 (5) ~~"Fetal death"~~ "Death of a preborn child" means the death of an
45 unborn infant prior to expulsion or extraction from the unborn infant's
46 mother, provided that the unborn infant reached a stage of development such
47 that there are cartilaginous structures or fetal or skeletal parts. The
48 unborn infant's death is indicated by the fact that, after such expulsion or
49 extraction, the unborn infant does not breathe or show any other evidence of

1 life such as a heartbeat, pulsation of the umbilical cord or definite move-
2 ment of voluntary muscles.

3 (6) "Final disposition" means the burial, cremation or other legal dis-
4 position of a deceased unborn infant.

5 (7) "Miscarriage" means the spontaneous or accidental death of an un-
6 born infant in utero other than by induced abortion or stillbirth. The in-
7 fant's death is indicated by the fact that, after the expulsion or extrac-
8 tion of the unborn infant, the infant does not breathe or show any other ev-
9 idence of life such as a heartbeat, pulsation of the umbilical cord or defi-
10 nite movement of voluntary muscles.

11 (8) "Pathological" means the examination of body tissue for diagnostic
12 or forensic purposes and any related activities necessary to perform such a
13 study. The term "study" includes any study or test, genetic or otherwise, to
14 determine paternity or the cause of death.

15 (9) "Stillbirth" has the same meaning as provided in section 39-241,
16 Idaho Code.

17 (10) "Unborn infant" has the same meaning as "fetus" "preborn child" and
18 "unborn child" as provided in section 18-604, Idaho Code.

19 SECTION 20. That Section 39-9304, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 39-9304. RELEASE OF REMAINS FOR FINAL DISPOSITION. In every instance
22 of ~~fetal~~ death of a preborn child involving miscarriage or stillbirth, the
23 individual in charge of the institution where the bodily remains of the
24 deceased unborn infant were expelled or extracted, or the individual's de-
25 signee, shall notify the mother or the mother's authorized representative
26 that the mother has a right to direct the receipt and disposition of her
27 deceased unborn infant's bodily remains. Upon request by the mother or her
28 authorized representative, the institution shall make arrangements for the
29 release of the bodily remains to the mother or her authorized representative
30 for final disposition in accordance with applicable law.

31 SECTION 21. That Section 39-9504, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 39-9504. ABORTION COMPLICATION REPORTING. (1) Every hospital, li-
34 censed health care facility or individual medical practitioner shall file a
35 written report with the department regarding each woman who comes under the
36 hospital's, health care facility's or medical practitioner's care and re-
37 ceives treatment for any item listed in section 39-9503(2), Idaho Code, that
38 the attending medical practitioner has reason to believe, in the practi-
39 tioner's reasonable medical judgment, constitutes an abnormal or a deviant
40 process or event arising from the performance or completion of an abortion.
41 Such reports shall be completed by the hospital, health care facility or at-
42 tending medical practitioner who treated the woman, signed by the attending
43 medical practitioner and transmitted to the department within ninety (90)
44 days from the last date of treatment or other care or consultation for the
45 complication.

1 (2) Every hospital, licensed health care facility or individual medi-
2 cal practitioner required to submit a complication report shall attempt to
3 ascertain and shall report on the following:

4 (a) The age and race of the woman;

5 (b) The woman's state and county of residence;

6 (c) The number of previous pregnancies, number of live births and num-
7 ber of previous abortions of the woman;

8 (d) The date the abortion was performed and the date that the abor-
9 tion was completed, as well as the gestational age of the fetus preborn
10 child, as defined in section 18-604, Idaho Code, and the methods used;

11 (e) Identification of the physician who performed the abortion, the fa-
12 cility where the abortion was performed and the referring medical prac-
13 titioner, agency or service, if any;

14 (f) The specific complication, as that term is defined in section
15 39-9503(2), Idaho Code, including, where applicable, the location of
16 the complication in the woman's body, the date on which the complication
17 occurred and whether there were any preexisting medical conditions that
18 would potentially complicate pregnancy or the abortion;

19 (g) Whether any post-abortion follow-up visit was scheduled or re-
20 quired by the abortion provider and, if so, whether the woman refused or
21 failed to attend such follow-up visit;

22 (h) Whether the woman was referred to a hospital, emergency department,
23 or urgent care clinic or department for treatment for any item listed in
24 section 39-9503(2), Idaho Code;

25 (i) Any follow-up care, surgery, or aspiration procedure performed be-
26 cause of incomplete abortion or retained tissue; and

27 (j) Whether the woman received treatment from any other medical prac-
28 titioner for the specific complication and, if so, when such previous
29 treatment occurred, and the medical practitioner or practitioners who
30 provided the treatment.

31 (3) Reports required under this section shall not contain:

32 (a) The name of the woman;

33 (b) Common identifiers such as the woman's social security number or
34 motor vehicle operator's license number; or

35 (c) Other information or identifiers that would make it possible to
36 identify, in any manner or under any circumstances, a woman who has
37 obtained an abortion and subsequently suffered an abortion-related
38 complication.

39 (4) The department shall prepare a comprehensive annual statistical
40 report for the legislature based on the data gathered from reports under
41 this section. The statistical report shall not lead to the disclosure of the
42 identity of any medical practitioner, or any person filing a report under
43 this section nor of a woman about whom a report is filed. The aggregate data
44 shall also be made independently available to the public by the department
45 in a downloadable format.

46 (5) The department shall summarize aggregate data from the reports re-
47 quired under this chapter and submit the data to the federal centers for dis-
48 ease control and prevention for the purpose of inclusion in the annual vi-
49 tal statistics report. The aggregate data shall also be made independently
50 available to the public by the department in a downloadable format.

1 (6) Reports filed pursuant to this section shall not be deemed public
2 records and shall remain confidential, except that disclosure may be made to
3 law enforcement officials upon an order of a court after application showing
4 good cause. The court may condition disclosure of the information upon any
5 appropriate safeguards it may impose.

6 (7) Absent a valid court order or judicial subpoena, the department,
7 any other state department, agency or office, or any employees or contrac-
8 tor thereof shall not compare data concerning abortions or abortion compli-
9 cations maintained in an electronic or other information system file with
10 data in any other electronic or other information system, a comparison of
11 which could result in identifying, in any manner or under any circumstances,
12 a woman obtaining or seeking to obtain an abortion.

13 (8) Statistical information that may reveal the identity of a woman ob-
14 taining or seeking to obtain an abortion shall not be maintained by the de-
15 partment, any other state department, agency or office, or any employee or
16 contractor thereof.

17 (9) The department or an employee or contractor of the department shall
18 not disclose to a person or entity outside the department the reports or the
19 contents of the reports required under this section in a manner or fashion
20 that would permit the person or entity to whom the report is disclosed to
21 identify, in any way or under any circumstances, the woman who is the subject
22 of the report.

23 (10) Original copies of all reports filed under this section shall be
24 available to the state board of medicine for use in the performance of its of-
25 ficial duties.

26 (11) The department shall communicate this reporting requirement to
27 all medical professional organizations, medical practitioners, hospitals,
28 emergency departments, abortion facilities, clinics, ambulatory surgical
29 facilities, and other health care facilities operating in the state.

30 SECTION 22. An emergency existing therefor, which emergency is hereby
31 declared to exist, this act shall be in full force and effect on and after
32 July 1, 2024.