

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 421

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO AN INDIVIDUAL'S SEX; PROVIDING LEGISLATIVE INTENT; AMENDING
2 SECTION 73-114, IDAHO CODE, TO DEFINE TERMS AND TO APPLY DEFINITIONS TO
3 STATE RULES AND POLICIES; AMENDING SECTION 18-1506C, IDAHO CODE, TO RE-
4 VISE A DEFINITION; AMENDING SECTION 33-6602, IDAHO CODE, AS ENACTED BY
5 SECTION 1, CHAPTER 120, LAWS OF 2023, TO REVISE A DEFINITION AND TO RE-
6 DESIGNATE THE SECTION; AMENDING SECTION 39-245A, IDAHO CODE, TO REVISE
7 A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; PROVIDING SEVERABIL-
8 ITY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
9

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

11 SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to
12 recognize the following:

- 13 (1) In human beings, there are two, and only two, sexes: male and fe-
14 male;
- 15 (2) Every individual is either male or female;
- 16 (3) An individual's sex can be observed or clinically verified at or be-
17 fore birth;
- 18 (4) Rare disorders of sexual development are not exceptions to the bi-
19 nary nature of sex;
- 20 (5) In no case is an individual's sex determined by stipulation or self-
21 identification;
- 22 (6) There is increasing confusion about the definition of sex as a bio-
23 logical truth and its relationship to concepts and terms, including but not
24 limited to gender, gender identity, gender role, gender expression, and ex-
25 perience gender;
- 26 (7) Confusion and ambiguities surrounding the definitions of sex,
27 male, female, and related terms can hinder individual efforts to enjoy equal
28 treatment under the law;
- 29 (8) Legal equality of the two sexes does not imply that the sexes are
30 identical to each other or are the same in every respect;
- 31 (9) With respect to the two sexes, separate facilities, housing or
32 sleeping arrangements, or sports teams, programs, or leagues established
33 because of or organized according to physical differences between the sexes
34 does not constitute unequal treatment under the law; and
- 35 (10) Physical differences between males and females are enduring, and
36 the two sexes are not fungible.

37 SECTION 2. That Section 73-114, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 73-114. STATUTORY TERMS DEFINED. (1) Unless otherwise defined for
40 purposes of a specific statute:

1 (a) Words used in these compiled laws in the present tense, include the
2 future as well as the present;

3 (b) Words used in the masculine gender, include the feminine and
4 neuter;

5 (c) The singular number includes the plural and the plural the singu-
6 lar;

7 (d) The word "person" includes a corporation as well as a natural per-
8 son;

9 (e) Writing includes printing;

10 (f) Oath includes affirmation or declaration, and every mode of oral
11 statement, under oath or affirmation, is embraced by the term "tes-
12 tify," and every written one in the term "depose";

13 (g) Signature or subscription includes mark, when the person cannot
14 write, his name being written near it, and witnessed by a person who
15 writes his own name as a witness.

16 (2) The following words have, in the compiled laws and rules and poli-
17 cies of the state of Idaho, the signification attached to them in this sec-
18 tion, unless otherwise apparent from the context:

19 (a) "Boy" means a minor human male.

20 (b) "Father" means a male parent.

21 (c) "Female" means an individual who has, had, will have, or, but for a
22 developmental or genetic anomaly or historical accident, would have the
23 reproductive system that at some point produces, transports, and uti-
24 lizes eggs for fertilization.

25 (d) "Gender," when used to refer to males, females, or the natural
26 differences between males and females, shall be considered a synonym
27 for "sex" and shall not be considered a synonym for gender identity, an
28 internal sense of gender, experienced gender, gender expression, or
29 gender role. This definition shall not apply when the term "gender" is
30 used in conjunction with other words or as an adjective to modify other
31 words.

32 (e) "Girl" means a minor human female.

33 ~~(a)~~ (f) "Intellectual disability" means significantly subaverage
34 general intellectual functioning that is accompanied by significant
35 limitations in adaptive functioning in at least two (2) of the fol-
36 lowing skill areas: communication, self-care, home living, social
37 or interpersonal skills, use of community resources, self-direction,
38 functional academic skills, work, leisure, health and safety. The on-
39 set of significantly subaverage general intelligence functioning and
40 significant limitations in adaptive functioning must occur before age
41 eighteen (18) years.

42 (g) "Male" means an individual who has, had, will have, or, but for a
43 developmental or genetic anomaly or historical accident, would have the
44 reproductive system that at some point produces, transports, and uti-
45 lizes sperm for fertilization.

46 ~~(b)~~ (h) "Month" means a calendar month, unless otherwise expressed.

47 (i) "Mother" means a female parent.

48 ~~(e)~~ (j) "Personal property" includes money, goods, chattels, things in
49 action, evidences of debt and general intangibles as defined in the uni-
50 form commercial code -- secured transactions.

- 1 ~~(d)~~ (k) "Property" includes both real and personal property.
 2 ~~(e)~~ (l) "Real property" is coextensive with lands, tenements and
 3 hereditaments, possessory rights and claims.
 4 ~~(f)~~ (m) "Registered mail" includes certified mail.
 5 (n) "Sex" means an individual's biological sex, either male or female.
 6 ~~(g)~~ (o) "State," when applied to the different parts of the United
 7 States, includes the District of Columbia and the territories; and the
 8 words "United States" may include the District of Columbia and territo-
 9 ries.
 10 ~~(h)~~ (p) "Will" includes codicils.
 11 ~~(i)~~ (q) "Writ" signifies an order or precept in writing, issued in
 12 the name of the people, or of a court or judicial officer, and the word
 13 "process," a writ or summons issued in the course of judicial proceed-
 14 ings.

15 SECTION 3. That Section 18-1506C, Idaho Code, be, and the same is hereby
 16 amended to read as follows:

17 18-1506C. VULNERABLE CHILD PROTECTION. (1) This section shall be
 18 known and may be cited as the "Vulnerable Child Protection Act."

19 (2) As used in this section:

20 (a) "Child" means any person under eighteen (18) years of age; and

21 (b) ~~"Sex" means the immutable biological and physiological charac-~~
 22 ~~teristics, specifically the chromosomes and internal and external~~
 23 ~~reproductive anatomy, genetically determined at conception and gener-~~
 24 ~~ally recognizable at birth, that define an individual as male or female~~
 25 is as defined in section 73-114, Idaho Code.

26 (3) A medical provider shall not engage in any of the following prac-
 27 tices upon a child for the purpose of attempting to alter the appearance of or
 28 affirm the child's perception of the child's sex if that perception is incon-
 29 sistent with the child's biological sex:

30 (a) Performing surgeries that sterilize or mutilate, or artificially
 31 construct tissue with the appearance of genitalia that differs from the
 32 child's biological sex, including castration, vasectomy, hysterecto-
 33 my, oophorectomy, metoidioplasty, orchiectomy, penectomy, phal-
 34 loplasty, clitoroplasty, vaginoplasty, vulvoplasty, ovariectomy, or
 35 reconstruction of the fixed part of the urethra with or without metoid-
 36 ioplasty, phalloplasty, scrotoplasty, or the implantation of erection
 37 or testicular prostheses;

38 (b) Performing a mastectomy;

39 (c) Administering or supplying the following medications that induce
 40 profound morphologic changes in the genitals of a child or induce tran-
 41 sient or permanent infertility:

42 (i) Puberty-blocking medication to stop or delay normal puberty;

43 (ii) Supraphysiological doses of testosterone to a female; or

44 (iii) Supraphysiological doses of estrogen to a male; or

45 (d) Removing any otherwise healthy or nondiseased body part or tissue.

46 (4) A surgical operation or medical intervention shall not be a viola-
 47 tion of this section if the operation or intervention is:

48 (a) Necessary to the health of the person on whom it is performed and is
 49 performed by a person licensed in the place of its performance as a med-

1 ical practitioner, except that a surgical operation or medical inter-
 2 vention is never necessary to the health of the child on whom it is per-
 3 formed if it is for the purpose of attempting to alter the appearance of
 4 or affirm the child's perception of the child's sex if that perception
 5 is inconsistent with the child's biological sex;

6 (b) For the treatment of any infection, injury, disease, or disorder
 7 that has been caused or exacerbated by the performance of gender transi-
 8 tion procedures, whether or not the procedures were performed in accor-
 9 dance with state and federal law; or

10 (c) Performed in accordance with the good faith medical decision of a
 11 parent or guardian of a child born with a medically verifiable genetic
 12 disorder of sex development, including:

13 (i) A child with external biological sex characteristics that
 14 are ambiguous and irresolvable, such as a child born having 46, XX
 15 chromosomes with virilization, 46, XY chromosomes with underviril-
 16 ization, or with both ovarian and testicular tissue; or

17 (ii) When a physician has otherwise diagnosed a disorder of sex-
 18 ual development in which the physician has determined through ge-
 19 netic testing that the child does not have the normal sex chro-
 20 mosome structure, sex steroid hormone production, or sex steroid
 21 hormone action for a male or female.

22 (5) Any medical professional convicted of a violation of this section
 23 shall be guilty of a felony and shall be imprisoned in the state prison for a
 24 term of not more than ten (10) years.

25 (6) The provisions of this act are hereby declared to be severable,
 26 and if any provision of this act or the application of such provision to any
 27 person or circumstance is declared invalid for any reason, such declaration
 28 shall not affect the validity of the remaining portions of this section.

29 SECTION 4. That Section 33-6602, Idaho Code, as enacted by Section 1,
 30 Chapter 120, Laws of 2023, be, and the same is hereby amended to read as fol-
 31 lows:

32 ~~33-6602.~~ 33-6702. DEFINITIONS. For the purposes of this chapter:

33 (1) "Changing facility" means a facility in which a person may be in a
 34 state of undress in the presence of others, including a locker room, changing
 35 room, or shower room.

36 (2) "Public school" means any public school teaching K-12 students
 37 within an Idaho school district or charter school.

38 (3) "~~Sex~~" ~~means the immutable biological and physiological character-~~
 39 ~~istics, specifically the chromosomes and internal and external reproductive~~
 40 ~~anatomy, genetically determined at conception and generally recognizable at~~
 41 ~~birth, that define an individual as male or female~~ is as defined in section
 42 73-114, Idaho Code.

43 SECTION 5. That Section 39-245A, Idaho Code, be, and the same is hereby
 44 amended to read as follows:

45 39-245A. CERTIFICATES OF BIRTH -- MATERIAL FACTS INCLUDED -- AMEND-
 46 MENTS.

47 (1) (a) The legislature finds that:

1 (i) There is a compelling interest in maintaining accurate, quan-
2 titative, biology-based material facts on Idaho certificates of
3 birth that provide material facts fundamental to the performance
4 of government functions that secure the public health and safety,
5 including but not limited to identifying public health trends,
6 assessing risks, conducting criminal investigations, and helping
7 individuals determine their biological lineage, citizenship, or
8 susceptibility to genetic disorders;

9 (ii) The equal protection clause of the fourteenth amendment to
10 the United States constitution prohibits purposeful discrimina-
11 tion, not facially neutral laws of general applicability, such as
12 a biology-based definition of sex that has been consistently ap-
13 plied since our nation's founding;

14 (iii) Decades of court opinion have upheld the argument that bio-
15 logical distinctions between male and female are a matter of sci-
16 entific fact, and biological sex is an objectively defined cate-
17 gory that has obvious, immutable, and distinguishable character-
18 istics;

19 (iv) Identification of biological sex on a birth certificate im-
20 pacts the health and safety of all individuals. For example, the
21 society for evidence-based gender medicine has declared that the
22 conflation of sex and gender in health care is alarming, subjects
23 hundreds of thousands of individuals to the risk of unintended
24 medical harm, and will greatly impede medical research;

25 (v) Vital statistics are defined in section 39-241(21), Idaho
26 Code, as data, being the plural of datum, which is a known fact;

27 (vi) Idaho certificates of birth are of an evidentiary character
28 and prima facie evidence of the facts recited therein, according
29 to section 39-274, Idaho Code;

30 (vii) Age and sex, unlike the names of natural parents whose rights
31 have been terminated, are legally applicable facts fundamental to
32 the performance of public and private policies and contracts;

33 (viii) The failure to maintain accurate, quantitative vital statis-
34 tistics and legal definitions upon which the government and others
35 may with confidence rely constitutes a breach of the public trust;
36 and

37 (ix) The government has a compelling interest in maintaining the
38 public trust and confidence and a duty to fulfill, to the best of
39 its ability, those functions that rely on accurate vital statis-
40 tics.

41 (b) Based on the findings in paragraph (a) of this subsection, the leg-
42 islature directs that an Idaho certificate of birth shall document spe-
43 cific quantitative, material facts at the time of birth, as provided in
44 subsection (2) of this section.

45 (2) Any certificate of birth issued under the provisions of this chap-
46 ter shall include the following quantitative statistics and material facts
47 specific to that birth: time of birth, date of birth, sex, birth weight,
48 birth length, and place of birth.

49 (3) For purposes of this chapter, "sex" ~~means the immutable biological~~
50 ~~and physiological characteristics, specifically the chromosomes and inter-~~

1 ~~nal and external reproductive anatomy, genetically determined at conception~~
2 ~~and generally recognizable at birth, that define an individual as male or fe-~~
3 ~~male is as defined in section 73-114, Idaho Code.~~

4 (4) The quantitative statistics and material facts identified in sub-
5 section (2) of this section may be amended within one (1) year of the filing
6 of the certificate by submitting to the registrar a notarized affidavit of
7 correction that:

8 (a) Is on a form prescribed by the registrar;

9 (b) Is signed by:

10 (i) The parents identified on the certificate of birth; or

11 (ii) The child's legal guardian;

12 (c) Is signed by the physician or other person in attendance who pro-
13 vided the medical information and certified to the facts of birth; and

14 (d) Declares that the information contained on the certificate of birth
15 incorrectly represents a material fact at the time of birth.

16 After one (1) year, the quantitative statistics and material facts
17 identified in subsection (2) of this section may be challenged in court only
18 on the basis of fraud, duress, or material mistake of fact, with the burden of
19 proof upon the party challenging the acknowledgment.

20 (5) In those instances in which an individual suffers from a physiolog-
21 ical disorder of sexual development and the individual's biological sex can-
22 not be recognized at birth as male or female based upon externally observable
23 reproductive anatomy, the physician shall make a presumptive determination
24 of the individual's sex, which may thereafter be amended based on the appro-
25 priate combination of genetic analysis and evaluation of the individual's
26 naturally occurring internal and external reproductive anatomy as provided
27 in subsection (4) of this section.

28 (6) Notwithstanding any provision of this section to the contrary, a
29 hospital may correct a birth certificate for a clerical or data entry error
30 at any time by submitting a notarized affidavit on a form specified by the
31 registrar with any appropriate supporting documentation.

32 SECTION 6. SEVERABILITY. The provisions of this act are hereby declared
33 to be severable and if any provision of this act or the application of such
34 provision to any person or circumstance is declared invalid for any reason,
35 such declaration shall not affect the validity of the remaining portions of
36 this act.

37 SECTION 7. An emergency existing therefor, which emergency is hereby
38 declared to exist, this act shall be in full force and effect on and after
39 July 1, 2024.