

TITLE 39
HEALTH AND SAFETY

CHAPTER 93
IDAHO UNBORN INFANTS DIGNITY ACT

39-9301. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Unborn Infants Dignity Act."

[39-9301, added 2016, ch. 368, sec. 1, p. 1078.]

39-9302. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature of the state of Idaho finds that:

(a) Deceased unborn infants deserve the same respect and dignity as other deceased human beings.

(b) It continues to be the public policy of the state of Idaho to promote live childbirth over abortion. Permitting the sale, transfer, distribution or donation of the bodily remains of aborted infants, particularly for pecuniary gain, and the use of the remains of aborted infants for experimentation undermine that public policy as well as proper ethical standards of medical conduct.

(c) It is contrary to the public policy of the state of Idaho for an individual to become pregnant for the purpose of aborting an unborn infant and thereafter selling, transferring, distributing or donating the unborn infant's bodily remains for experimentation or other use.

(2) Based on the findings in subsection (1) of this section, the purpose of this chapter is to:

(a) Prohibit the sale, transfer, distribution or other unlawful disposition of an unborn infant or the bodily remains of an aborted infant;

(b) Prohibit the use of bodily remains of aborted infants for experimentation;

(c) Ensure that the bodily remains of unborn infants whose death resulted from an occurrence other than abortion are not sold, transferred or distributed for experimentation without the mother's informed, written consent; and

(d) In accordance with the provisions of this chapter, prohibit all Idaho institutions of higher education that receive public moneys from engaging in medical research using organs or tissue, including human embryonic stem cells, obtained from aborted infants.

[39-9302, added 2016, ch. 368, sec. 1, p. 1078.]

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

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

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

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

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

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

(b) Pathological study.

(5) "Fetal death" means the death of an unborn infant prior to expulsion or extraction from the unborn infant's mother, provided that the unborn infant reached a stage of development such that there are cartilaginous structures or fetal or skeletal parts. The unborn infant's death is indicated by the fact that, after such expulsion or extraction, the unborn infant does not breathe or show any other evidence of life such as a heartbeat, pulsation of the umbilical cord or definite movement of voluntary muscles.

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

(7) "Miscarriage" means the spontaneous or accidental death of an unborn infant in utero other than by induced abortion or stillbirth. The infant's death is indicated by the fact that, after the expulsion or extraction of the unborn infant, the infant does not breathe or show any other evidence of life such as a heartbeat, pulsation of the umbilical cord or definite movement of voluntary muscles.

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

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

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

[39-9303, added 2016, ch. 368, sec. 1, p. 1079.]

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

[39-9304, added 2016, ch. 368, sec. 1, p. 1079.]

39-9305. MISCARRIAGE CERTIFICATES. The state registrar of vital statistics shall establish such forms and procedures as are necessary to file miscarriage certificates for unborn infants whose death occurred as a result of miscarriage. The filing of a miscarriage certificate shall be voluntary at the request of the unborn infant's parent or parents and shall be filed only if the miscarriage is certified by a physician, a physician's assistant or an advanced practice registered nurse.

[39-9305, added 2016, ch. 368, sec. 1, p. 1080.]

39-9306. PROHIBITIONS. (1) Except as otherwise provided in this chapter, no person shall knowingly sell, transfer, distribute, donate, accept, use or attempt to use the body or bodily remains of an aborted infant.

(2) Except as otherwise provided in this chapter, no person shall knowingly aid or abet any such sale, transfer, distribution, other unlawful disposition, acceptance, use or attempted use of the body or bodily remains of an aborted infant.

(3) Except as otherwise provided in this chapter, no person or public institution operating in Idaho shall knowingly use an unborn infant or the bodily remains or embryonic stem cells of an aborted infant in animal or human research, experimentation or study, or for transplantation, except:

(a) For diagnostic or remedial procedures that have the purpose of promoting the life or health of the unborn infant or the unborn infant's mother;

(b) For pathological study; or

(c) For the applicable materials used in research projects and grants that were undertaken or made before July 1, 2016.

(4) Except as otherwise provided in this chapter, no person shall knowingly experiment upon an unborn infant who is intended to be aborted unless the experimentation is therapeutic to the unborn infant.

(5) The terms "transfer," "accept" and "acceptance" as used in this section do not apply to the transfer or acceptance of the body or bodily remains of an aborted infant for the sole purpose of lawfully disposing of the body or bodily remains of the aborted infant.

[39-9306, added 2016, ch. 368, sec. 1, p. 1080; am. 2017, ch. 298, sec. 1, p. 796.]

39-9307. INFORMED CONSENT REQUIRED FOR CERTAIN EXPERIMENTATION. Bodily remains of an unborn infant whose death occurred as a result of miscarriage or stillbirth may be used for animal or human research, experimentation, study or transplantation only if the mother of the deceased unborn infant makes a signed, written statement declaring that:

(1) The mother donates the specific bodily remains for animal or human research, experimentation, study or transplantation;

(2) The donation is made without any restriction regarding the identity of individuals who may be the recipients of transplantations of any bodily remains;

(3) The mother has not been informed of the identity of any individuals who may be recipients of transplantations of bodily remains;

(4) The mother understands her right to obtain the bodily remains for final disposition in accordance with the provisions of this act; and

(5) Full disclosure has been provided to the mother with regard to the attending physician's interest, if any, in the research, experimentation, study or transplantation to be conducted with specific bodily remains.

[39-9307, added 2016, ch. 368, sec. 1, p. 1080.]

39-9308. CRIMINAL PENALTIES. (1) A person who violates section 39-9306(1) or (2), Idaho Code, shall be guilty of a felony for each violation and shall be subject to a fine not to exceed ten thousand dollars (\$10,000), imprisonment in the state prison for a term not to exceed five (5) years, or both.

(2) A person who violates section 39-9306(3) or (4), Idaho Code, shall be guilty of a misdemeanor and shall be subject to a fine not to exceed one thousand dollars (\$1,000), imprisonment in a county jail not to exceed six (6) months, or both. Any person who pleads guilty to or is found guilty of a violation of section 39-9306(3) or (4), Idaho Code, who previously has

pled guilty to or been found guilty of a violation of either such subsection, notwithstanding the form of the judgment or withheld judgment, shall be guilty of a felony and shall be subject to a fine not to exceed ten thousand dollars (\$10,000), imprisonment in the state prison not to exceed one (1) year, or both.

[39-9308, added 2016, ch. 368, sec. 1, p. 1081.]

39-9309. DUTIES OF THE ATTORNEY GENERAL AND PROSECUTORS. The Idaho attorney general or the appropriate prosecuting attorney may initiate actions or proceedings for a violation of any criminal provisions in this chapter.

[39-9309, added 2016, ch. 368, sec. 1, p. 1081.]

39-9310. CIVIL AND ADMINISTRATIVE ACTIONS. (1) In addition to the remedies available under the statutory or common laws of Idaho, failure to comply with the requirements of section 39-9306, Idaho Code, shall provide a basis for recovery of damages for the parent of an unborn infant or, if the mother is a minor, for the parent or guardian of the mother of an unborn infant, for the unlawful disposition of or experimentation on an unborn infant or on bodily remains.

(2) Any conviction of a health care provider for failure to comply with the requirements of section 39-9306, Idaho Code, shall result in the suspension of such provider's license for a period of at least one (1) year, and such license shall be reinstated after that time only under such conditions as the Idaho board of medicine shall require to ensure compliance with this chapter.

[39-9310, added 2016, ch. 368, sec. 1, p. 1081.]

39-9311. CONSTRUCTION. Nothing in this chapter shall be construed to create or recognize a right to abortion.

[39-9311, added 2016, ch. 368, sec. 1, p. 1081.]