

IN THE SENATE

SENATE BILL NO. 1349

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO UNBORN INFANTS DIGNITY ACT; AMENDING TITLE 39, IDAHO  
2 CODE, BY THE ADDITION OF A NEW CHAPTER 93, TITLE 39, IDAHO CODE, TO  
3 PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE,  
4 TO DEFINE TERMS, TO PROVIDE FOR FINAL DISPOSITION OF CERTAIN REMAINS,  
5 TO PROVIDE FOR CERTAIN FETAL DEATH CERTIFICATES, TO PROVIDE PROHIBI-  
6 TIONS, TO REQUIRE INFORMED CONSENT FOR EXPERIMENTATION UNDER CERTAIN  
7 CIRCUMSTANCES, TO ESTABLISH CRIMINAL PENALTIES, TO PROVIDE DUTIES OF  
8 THE ATTORNEY GENERAL AND PROSECUTING ATTORNEYS, TO PROVIDE FOR CERTAIN  
9 CIVIL AND ADMINISTRATIVE ACTIONS AND TO PROVIDE FOR STATUTORY CONSTRUC-  
10 TION; AND PROVIDING SEVERABILITY.  
11

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

13 SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended  
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
15 ter 93, Title 39, Idaho Code, and to read as follows:

16 CHAPTER 93

17 IDAHO UNBORN INFANTS DIGNITY ACT

18 39-9301. SHORT TITLE. This chapter shall be known and may be cited as  
19 the "Idaho Unborn Infants Dignity Act."

20 39-9302. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature of the  
21 state of Idaho finds that:

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

24 (b) It continues to be the public policy of the state of Idaho to promote  
25 live childbirth over abortion. Permitting the sale, transfer, distri-  
26 bution or donation of the bodily remains of aborted infants, particu-  
27 larly for pecuniary gain, and the use of the remains of aborted infants  
28 for experimentation undermine that public policy as well as proper eth-  
29 ical standards of medical conduct.

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

32 (a) Prohibit the sale, transfer, distribution or other unlawful dispo-  
33 sition of an infant, an unborn infant or the bodily remains of an aborted  
34 infant;

35 (b) Prohibit the use of bodily remains of aborted infants for experi-  
36 mentation;

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

1 (d) Prohibit all Idaho institutions of higher education that receive  
2 public moneys from engaging in medical research using organs or tissue,  
3 including human embryonic stem cells, obtained from aborted infants.

4 39-9303. DEFINITIONS. As used in this chapter:

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

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

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

12 (4) "Experiment" or "experimentation" means the use of bodily remains,  
13 including embryonic stem cells, in any trial, test, procedure or observation  
14 carried out with the goal of verifying, refuting or establishing the valid-  
15 ity of a hypothesis, but does not include:

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

19 (b) Pathological study.

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

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

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

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

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

39 39-9304. RELEASE OF REMAINS FOR FINAL DISPOSITION. In every instance  
40 of fetal death, regardless of the duration of the pregnancy, the individual  
41 in charge of the institution where the bodily remains of the deceased unborn  
42 infant were expelled or extracted shall notify the mother or the mother's au-  
43 thorized representative that the mother has a right to receive and dispose of  
44 her deceased unborn infant's bodily remains. Upon request by the mother or  
45 her authorized representative, the institution shall make arrangements for  
46 the release of the bodily remains to the mother or her authorized representa-  
47 tive for final disposition in accordance with applicable law.

1           39-9305. FETAL DEATH CERTIFICATES. The state registrar of vital sta-  
2           tistics shall establish such forms and procedures as are necessary to pro-  
3           vide death certificates for unborn infants whose death occurred as a result  
4           of miscarriage and shall issue such a death certificate upon request of the  
5           deceased unborn infant's mother.

6           39-9306. PROHIBITIONS. (1) No person shall knowingly sell, transfer,  
7           distribute, donate, accept, use or attempt to use the body or bodily remains  
8           of an aborted infant.

9           (2) No person shall aid or abet any such sale, transfer, distribution,  
10          other unlawful disposition, acceptance, use or attempted use of the body or  
11          bodily remains of an aborted infant.

12          (3) No person or public institution operating in Idaho shall use an in-  
13          fant or unborn infant, or the bodily remains or embryonic stem cells of an  
14          aborted infant in animal or human research, experimentation or study, or for  
15          transplantation, except:

16          (a) For diagnostic or remedial procedures that have the purpose of pro-  
17          moting the life or health of the infant, unborn infant or the infant or  
18          unborn infant's mother; or

19          (b) For pathological study.

20          (4) No person shall experiment upon an unborn infant who is intended to  
21          be aborted unless the experimentation is therapeutic to the unborn infant.

22          39-9307. INFORMED CONSENT REQUIRED FOR CERTAIN EXPERIMENTATION. Bod-  
23          ily remains of an unborn infant whose death occurred as a result of miscar-  
24          riage or stillbirth may be used for animal or human research, experimenta-  
25          tion, study or transplantation only if the mother of the deceased unborn in-  
26          fant makes a signed, written statement declaring that:

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

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

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

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

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

39          39-9308. CRIMINAL PENALTIES. (1) A person who knowingly violates sec-  
40          tion 39-9306(1) or (2), Idaho Code, shall be guilty of a felony for each vi-  
41          olation and shall be subject to a fine not to exceed ten thousand dollars  
42          (\$10,000), imprisonment in the state prison for a term not to exceed five (5)  
43          years, or both.

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

1 guilty of a violation of section 39-9306(3) or (4), Idaho Code, who previ-  
2 ously has pled guilty to or been found guilty of a violation of either such  
3 subsection, notwithstanding the form of the judgment or withheld judgment,  
4 shall be guilty of a felony and shall be subject to a fine not to exceed ten  
5 thousand dollars (\$10,000), imprisonment in the state prison not to exceed  
6 one (1) year, or both.

7 39-9309. DUTIES OF THE ATTORNEY GENERAL AND PROSECUTORS. The Idaho at-  
8 torney general or the appropriate prosecuting attorney may initiate actions  
9 or proceedings for a violation of any criminal provisions in this chapter.

10 39-9310. CIVIL AND ADMINISTRATIVE ACTIONS. (1) In addition to the  
11 remedies available under the statutory or common laws of Idaho, failure to  
12 comply with the requirements of section 39-9306, Idaho Code, shall provide a  
13 basis for recovery of damages for the parent of an infant or unborn infant or,  
14 if the mother is a minor, for the parent or guardian of the mother of an infant  
15 or unborn infant, for the unlawful disposition of or experimentation on an  
16 infant or unborn infant or on bodily remains.

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

23 39-9311. CONSTRUCTION. Nothing in this chapter shall be construed to  
24 create or recognize a right to abortion.

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