

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 374

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING SECTION 18-604, IDAHO CODE, TO REVISE A DEF-  
2 INITION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-622,  
3 IDAHO CODE, TO REVISE THE SECTION CAPTION, TO REMOVE OBSOLETE LAN-  
4 GUAGE, TO PROVIDE THAT CERTAIN ABORTIONS AND ATTEMPTS ARE NOT CRIMINAL  
5 ABORTIONS, TO PROVIDE THAT CERTAIN PERSONS SHALL BE ENTITLED TO RE-  
6 CEIVE A CERTAIN REPORT UPON REQUEST AND TO MAKE A TECHNICAL CORRECTION;  
7 PROVIDING APPLICABILITY; AND DECLARING AN EMERGENCY AND PROVIDING AN  
8 EFFECTIVE DATE.  
9

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

11 SECTION 1. That Section 18-604, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 18-604. DEFINITIONS. As used in this ~~act~~ chapter:

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

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

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

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

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

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

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

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

31 (5) "Fetus" and "unborn child." Each term means an individual organism  
32 of the species Homo sapiens from fertilization until live birth.

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

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

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

42 (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 in the body and commences with fertil-  
 18 ization.

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 becomes viable, and there is hereby created a legal presumption that the sec-  
 25 ond trimester does not end before the commencement of the twenty-fifth week  
 26 of pregnancy, upon which presumption any licensed physician may proceed in  
 27 lawfully aborting a patient pursuant to section 18-608, Idaho Code, in which  
 28 case the same shall be conclusive and un rebuttable in all civil or criminal  
 29 proceedings.

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

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

35 SECTION 2. That Section 18-622, Idaho Code, be, and the same is hereby  
 36 amended to read as follows:

37 18-622. CRIMINAL ABORTION DEFENSE OF LIFE ACT. ~~(1) Notwithstanding~~  
 38 ~~any other provision of law, this section shall become effective thirty (30)~~  
 39 ~~days following the occurrence of either of the following circumstances:~~

40 ~~(a) The issuance of the judgment in any decision of the United States~~  
 41 ~~supreme court that restores to the states their authority to prohibit~~  
 42 ~~abortion; or~~

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

45 ~~(2) Every (1) Except as provided in subsection (2) of this section, ev-~~  
 46 ~~ery person who performs or attempts to perform an abortion as defined in this~~  
 47 ~~chapter commits the crime of criminal abortion. Criminal abortion shall be a~~  
 48 ~~felony punishable by a sentence of imprisonment of no less than two (2) years~~  
 49 ~~and no more than five (5) years in prison. The professional license of any~~

1 health care professional who performs or attempts to perform an abortion or  
 2 who assists in performing or attempting to perform an abortion in violation  
 3 of this subsection shall be suspended by the appropriate licensing board for  
 4 a minimum of six (6) months upon a first offense and shall be permanently re-  
 5 voked upon a subsequent offense.

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

9 (2) The following shall not be considered criminal abortions for pur-  
 10 poses of subsection (1) of this section:

11 (a) ~~(i)~~ The abortion was performed or attempted by a physician as de-  
 12 fined in this chapter, ~~and:~~

13 ~~(ii)~~ (i) The physician determined, in his good faith medical  
 14 judgment and based on the facts known to the physician at the time,  
 15 that the abortion was necessary to prevent the death of the preg-  
 16 nant woman. No abortion shall be deemed necessary to prevent the  
 17 death of the pregnant woman because the physician believes that  
 18 the woman may or will take action to harm herself; and

19 ~~(iii)~~ (ii) The physician performed or attempted to perform the  
 20 abortion in the manner that, in his good faith medical judgment and  
 21 based on the facts known to the physician at the time, provided the  
 22 best opportunity for the unborn child to survive, unless, in his  
 23 good faith medical judgment, termination of the pregnancy in that  
 24 manner would have posed a greater risk of the death of the pregnant  
 25 woman. No such greater risk shall be deemed to exist because the  
 26 physician believes that the woman may or will take action to harm  
 27 herself; or

28 (b) ~~(i)~~ The abortion was performed or attempted by a physician as de-  
 29 fined in this chapter, during the first trimester of pregnancy and:

30 ~~(ii)~~ (i) If the woman is not a minor or subject to a guardianship,  
 31 then, prior to the performance of the abortion, the woman has re-  
 32 ported ~~the act of rape or incest~~ to a law enforcement agency that  
 33 she is the victim of an act of rape or incest and provided a copy of  
 34 such report to the physician who is to perform the abortion, ~~and~~. The  
 35 copy of the report shall remain a confidential part of the woman's  
 36 medical record subject to applicable privacy laws; or

37 ~~(iii)~~ (ii) If the woman is a minor or subject to a guardianship,  
 38 then, prior to the performance of the abortion, the woman or her  
 39 parent or guardian has reported ~~the act of rape or incest~~ to a law  
 40 enforcement agency or child protective services that she is the  
 41 victim of an act of rape or incest and a copy of such report has been  
 42 provided to the physician who is to perform the abortion, ~~and~~. The  
 43 copy of the report shall remain a confidential part of the woman's  
 44 medical record subject to applicable privacy laws.

45 ~~(iv)~~ ~~The physician who performed the abortion complied with the~~  
 46 ~~requirements of paragraph (a) (iii) of this subsection regarding~~  
 47 ~~the method of abortion.~~

48 (3) If a report concerning an act of rape or incest is made to a law en-  
 49 forcement agency or child protective services pursuant to subsection (2) (b)  
 50 of this section, then the person who made the report shall, upon request, be

1 entitled to receive a copy of such report within seventy-two (72) hours of  
2 the report being made, provided that the report may be redacted as necessary  
3 to avoid interference with an investigation.

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

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

11 SECTION 3. Section 2 of this act shall apply retroactively to any pend-  
12 ing claim or defense, whether or not asserted, as of July 1, 2023.

13 SECTION 4. An emergency existing therefor, which emergency is hereby  
14 declared to exist, this act shall be in full force and effect on and after  
15 July 1, 2023.