

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 17

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PUBLIC FUNDS FOR ABORTION; AMENDING TITLE 39, IDAHO CODE, BY THE
2 ADDITION OF A NEW CHAPTER 97, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT
3 TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE, TO DEFINE TERMS,
4 TO PROHIBIT GOVERNMENT CONTRACTS WITH ABORTION PROVIDERS OR THEIR AF-
5 FILIATES, TO PROHIBIT CONTRACTS FOR ABORTION PROCEDURES, TO PROHIBIT
6 THE USE OF PUBLIC FUNDS FOR ABORTION, TO PROHIBIT THE USE OF SCHOOL TU-
7 TION AND FEES FOR ABORTION, TO PROHIBIT ABORTION-RELATED ACTIVITIES
8 IN SCHOOL-BASED HEALTH CLINICS, TO PROHIBIT THE USE OF PUBLIC FACILI-
9 TIES AND ASSETS FOR ABORTION, TO PROVIDE CONSTRUCTION, TO PROVIDE FOR
10 A RIGHT OF INTERVENTION, AND TO PROVIDE SEVERABILITY; AND DECLARING AN
11 EMERGENCY.
12

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

14 SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended
15 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
16 ter 97, Title 39, Idaho Code, and to read as follows:

17 CHAPTER 97

18 NO PUBLIC FUNDS FOR ABORTION ACT

19 39-9701. SHORT TITLE. This chapter shall be known and may be cited as
20 the "No Public Funds for Abortion Act."

21 39-9702. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature finds
22 that when a state appropriates public funds to establish a program, it is en-
23 titled to define the limits of that program, *Rust v. Sullivan*, 500 U.S. 173,
24 194 (1991);

25 (2) The decision not to fund abortion or abortion providers places no
26 governmental obstacle in the path of a woman who chooses to terminate her
27 pregnancy, *Rust v. Sullivan*, 500 U.S. 173, 201 (1991);

28 (3) The state of Idaho may rationally distinguish between abortion and
29 other medical procedures because "no other procedure involves the purpose-
30 ful termination of a potential life," *Harris v. McRae*, 448 U.S. 297, 325
31 (1980);

32 (4) It is permissible for the state of Idaho to engage in unequal sub-
33 sidization of abortion and other medical services to encourage alternative
34 activity deemed in the public interest, *Rust v. Sullivan*, 500 U.S. 173, 201
35 (1991); and

36 (5) It is the purpose of this chapter is to ensure that public funds are
37 not used to directly or indirectly subsidize abortion or abortion providers.

38 39-9703. DEFINITIONS. As used in this chapter:

1 (1) "Abortion" means the act of using or prescribing any instrument,
2 medicine, drug, or any other substance, device, or means with the intent to
3 terminate the clinically diagnosable pregnancy of a woman with knowledge
4 that the termination by those means will, with reasonable likelihood, cause
5 the death of the unborn child. Such use, prescription, or means is not an
6 abortion if done with the intent to save the life or preserve the health of
7 the unborn child, remove a dead unborn child caused by spontaneous abortion,
8 or remove an ectopic pregnancy.

9 (2) "Affiliate" means a company, organization, business concern, or
10 individual person that shares resources, interests, or business dealings
11 with another company, organization, business concern, or individual person;
12 is directly or indirectly controlled by a third party or another company, or-
13 ganization, or business concern; is fully or partially controlled by a third
14 party or another company, organization, business concern, or individual
15 person; or is under the common control of a third party or another company,
16 organization, business concern, or individual person.

17 (3) "Facility" or "health care facility" means any public or private
18 hospital, clinic, center, medical school, medical training institution,
19 health care facility, physician's office, infirmary, dispensary, ambula-
20 tory surgical treatment center, or other institution or location wherein
21 medical care is provided to any person.

22 (4) "Health care provider" means any person or individual who may be or
23 is asked to participate in any way in any health care service. This includes
24 but is not limited to doctors, nurse practitioners, physician assistants,
25 nurses, nurses' aides, allied health professionals, medical assistants,
26 hospital employees, clinic employees, nursing home employees, pharmacists,
27 pharmacy technicians and employees, medical school faculty and students,
28 nursing school faculty and students, psychology and counseling faculty and
29 students, medical researchers, laboratory technicians, counselors, social
30 workers, or any other person who facilitates or participates in the provi-
31 sion of health care services to any person.

32 (5) "Public funds" means the funds of every political subdivision of
33 the state wherein taxes are levied or fees are collected for any purpose and
34 also refers to:

35 (a) The revenue or money of a government, state, or municipal corpora-
36 tion;

37 (b) The bonds, stock, or other securities of a national or state govern-
38 ment; and

39 (c) Government spending for acquisition of goods and services for cur-
40 rent use to directly satisfy individual or collective needs of the mem-
41 bers of the community.

42 39-9704. GOVERNMENT CONTRACTS WITH ABORTION PROVIDERS OR THEIR AF-
43 FILIATES PROHIBITED. (1) The state, a county, city, public health district,
44 public school district, or any local political subdivision thereof may not
45 enter into any contract or commercial transaction with an abortion provider
46 or an affiliate of an abortion provider.

47 (2) Subsection (1) of this section shall not apply to:

48 (a) A contract or commercial transaction that is subject to a federal
49 law that is in conflict with subsection (1) of this section; or

1 (b) A hospital, as defined in section 39-1301, Idaho Code.

2 39-9705. CONTRACTS FOR ABORTION PROCEDURES PROHIBITED. (1) No health
3 care facility owned or operated by the state, a county, city, public health
4 district, or any political subdivision or agency thereof shall enter into
5 any contract or commercial transaction with any health care provider or
6 health care facility under the terms of which such health care provider or
7 health care facility agrees to provide, perform, or induce an abortion,
8 except when the life of the mother is endangered by a physical disorder,
9 physical illness, or physical injury, including a life-endangering physical
10 condition caused by or arising from the pregnancy itself.

11 (2) Subsection (1) of this section shall not apply to:

12 (a) A contract or commercial transaction that is subject to a federal
13 law that is in conflict with subsection (1) of this section; or

14 (b) A hospital, as defined in section 39-1301, Idaho Code.

15 39-9706. USE OF PUBLIC FUNDS FOR ABORTION PROHIBITED. (1) No public
16 funds made available by the state, a county, city, public health district,
17 public school district, or any local political subdivision or agency thereof
18 and distributed by any institution, board, commission, department, agency,
19 official, or employee of the state, a county, city, public health district,
20 public school district, or any local political subdivision or agency thereof
21 shall be used in any way to provide, perform, or induce an abortion; assist
22 in the provision or performance of an abortion; promote abortion; counsel in
23 favor of abortion; refer for abortion; or provide facilities for an abortion
24 or for training to provide or perform an abortion.

25 (2) No person, agency, organization, or any other party that receives
26 funds authorized by the state, a county, city, public health district, pub-
27 lic school district, or any local political subdivision or agency thereof
28 may use those funds to perform or promote abortion, provide counseling in fa-
29 vor of abortion, make referral for abortion, or provide facilities for abor-
30 tion or for training to provide or perform abortion.

31 (3) No fund or committee authorized by Idaho Code for the special pro-
32 tection of women or children shall be authorized to use or distribute public
33 funds for payment for abortion, abortion referrals, abortion counseling, or
34 abortion-related medical or social services.

35 (4) The provisions of subsections (1), (2), and (3) of this section
36 shall not apply to:

37 (a) An abortion performed when the life of the mother is endangered by
38 a physical disorder, physical illness, or physical injury, including a
39 life-endangering physical condition caused by or arising from the preg-
40 nancy itself;

41 (b) A hospital, as defined in section 39-1301, Idaho Code; or

42 (c) Any provision of this section found to be in conflict with federal
43 law.

44 39-9707. USE OF SCHOOL TUITION AND FEES FOR ABORTION PROHIBITED. No
45 part of any tuition or fees paid to a public institution of higher education
46 shall be used in any way to pay for an abortion, provide or perform an abor-
47 tion, provide counseling in favor of abortion, make a referral for abortion,

1 or provide facilities for an abortion or for training to provide or perform
2 abortion.

3 39-9708. ABORTION-RELATED ACTIVITIES PROHIBITED IN SCHOOL-BASED
4 HEALTH CLINICS. (1) No facility operated at a public institution of higher
5 education or operated by a public school district shall provide any of the
6 following services to any person:

7 (a) Providing or performing an abortion;
8 (b) Counseling in favor of abortion;
9 (c) Referring for abortion; or
10 (d) Dispensing a drug classified as "emergency contraception" by the
11 food and drug administration (FDA), except in the case of rape as de-
12 fined in section 18-6101, Idaho Code.

13 (2) No employee of a public institution of higher education or public
14 school, acting within the scope of such person's employment, shall provide
15 any of the following services to any person:

16 (a) Providing or performing an abortion;
17 (b) Counseling in favor of abortion;
18 (c) Referring for abortion; or
19 (d) Dispensing a drug classified as "emergency contraception" by the
20 FDA, except in the case of rape as defined in section 18-6101, Idaho
21 Code.

22 (3) The state department of education, state board of education, or
23 other state agency and local units of administration are prohibited from
24 using state funds to provide or procure an abortion or distribute drugs clas-
25 sified as "emergency contraception" by the FDA, except in the case of rape as
26 defined in section 18-6101, Idaho Code.

27 39-9709. USE OF PUBLIC FACILITIES AND ASSETS FOR ABORTION PROHIB-
28 ITED. (1) No public institution, public facility, public equipment, or
29 other physical asset owned, leased, or controlled by this state, a county,
30 city, public health district, public school district, or any local political
31 subdivision or agency thereof shall be used for the purpose of providing,
32 performing, or participating in an abortion.

33 (2) No public institution or facility shall lease, sell, or permit the
34 subleasing of its facilities or property to any physician or health care fa-
35 cility for use in the provision or performance of abortion.

36 (3) The provisions of subsections (1) and (2) of this section shall not
37 apply to:

38 (a) An abortion performed when the life of the mother is endangered by
39 a physical disorder, physical illness, or physical injury, including a
40 life-endangering physical condition caused by or arising from the preg-
41 nancy itself;
42 (b) A hospital, as defined in section 39-1301, Idaho Code; or
43 (c) Any provision of this section found to be in conflict with federal
44 law.

45 39-9710. CONSTRUCTION. Nothing in this chapter shall be construed as
46 creating or recognizing a right to abortion. Nothing in this chapter shall

1 be construed as creating or recognizing a right to federal or state funds for
2 abortion.

3 39-9711. RIGHT OF INTERVENTION. The Idaho legislature, by joint reso-
4 lution, may appoint one (1) or more of its members who sponsored or co-spon-
5 sored this chapter in his official capacity to intervene as a matter of right
6 in any case in which the constitutionality of this law is challenged.

7 39-9712. SEVERABILITY. Any provision of this chapter held to be in-
8 valid or unenforceable by its terms, or as applied to any person or circum-
9 stance, shall be construed so as to give it the maximum effect permitted by
10 law, unless such holding shall be one of utter invalidity or unenforceabil-
11 ity, in which event such provision shall be deemed severable herefrom and
12 shall not affect the remainder hereof or the application of such provision to
13 other persons not similarly situated or to other dissimilar circumstances.

14 SECTION 2. An emergency existing therefor, which emergency is hereby
15 declared to exist, this act shall be in full force and effect on and after its
16 passage and approval.