

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 98

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING SECTION 18-8602, IDAHO CODE, TO REVISE A DEF-
2 INITIATION AND TO DEFINE TERMS; AMENDING SECTION 18-8603, IDAHO CODE, TO
3 PROVIDE FOR A PENALTY; AMENDING SECTION 18-622, IDAHO CODE, TO PROHIBIT
4 CERTAIN ACTIONS REGARDING CRIMINAL ABORTION, TO PROVIDE FOR AN AFFIR-
5 MATIVE DEFENSE, TO PROVIDE THAT IT SHALL NOT BE AN AFFIRMATIVE DEFENSE
6 THAT AN ABORTION PROVIDER IS LOCATED IN ANOTHER STATE, AND TO AUTHORIZE
7 THE ATTORNEY GENERAL TO PROSECUTE CERTAIN PERSONS; AMENDING SECTION
8 18-8807, IDAHO CODE, TO PROVIDE CERTAIN REQUIREMENTS AND RESTRICTIONS
9 ON A CIVIL ACTION; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY
10 AND PROVIDING AN EFFECTIVE DATE.
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12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 18-8602, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 18-8602. DEFINITIONS.

16 (1) (a) "Human trafficking" means:

- 17 (i) Sex trafficking in which commercial sexual activity is in-
18 duced by force, fraud, or coercion, or in which the person induced
19 to perform such act has not attained eighteen (18) years of age; or
20 (ii) The recruitment, harboring, transportation, provision, or
21 obtaining of a person for labor or services, through the use of
22 force, fraud, or coercion, for the purpose of subjection to invol-
23 untary servitude, peonage, debt bondage, or slavery.

24 (b) Human trafficking may include, but is not limited to, the use of the
25 following types of force, fraud, or coercion:

- 26 (i) Threatening serious harm to, or physical restraint against,
27 that person or a third person;
28 (ii) Destroying, concealing, removing, or confiscating any pass-
29 port, immigration document, or other government-issued identifi-
30 cation document;
31 (iii) Abusing or threatening abuse of the law or legal process
32 against the person or a third person;
33 (iv) Using a condition of a person being a debtor due to a pledge of
34 the debtor's personal services or the personal services of a per-
35 son under the control of the debtor as a security for debt where the
36 reasonable value of the services is not applied toward the liqui-
37 dation of the debt or the length and nature of those services are
38 not respectively limited and defined; ~~or~~
39 (v) Using a condition of servitude by means of any scheme, plan,
40 or pattern intended to cause a reasonable person to believe that
41 if the person did not enter into or continue in a condition of
42 servitude, that person or a third person would suffer serious harm

1 or physical restraint or would be threatened with abuse of legal
2 process-; or

3 (vi) Recruiting, harboring, or transporting a pregnant minor with
4 the intent to deprive the pregnant minor's parent of knowledge
5 of, and to procure, a criminal abortion, as described in section
6 18-622, Idaho Code.

7 (c) "Sex trafficking" includes all forms of commercial sexual activ-
8 ity, which may include the following conduct:

9 (i) Sexual conduct, as defined in section 18-5610(2) (a), Idaho
10 Code;

11 (ii) Sexual contact, as defined in section 18-5610(2) (b), Idaho
12 Code;

13 (iii) Sexually explicit performance;

14 (iv) Prostitution; or

15 (v) Participation in the production of pornography.

16 (2) "Commercial sexual activity" means sexual conduct or sexual con-
17 tact in exchange for anything of value, as defined in section 18-5610(2) (c),
18 Idaho Code, illicit or legal, given to, received by, or promised to any per-
19 son.

20 (3) "Pregnant minor" means a pregnant woman who is less than eighteen
21 (18) years of age.

22 (4) "Criminal abortion" means a violation, an attempted violation, or a
23 threatened violation of section 18-622, Idaho Code.

24 SECTION 2. That Section 18-8603, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 18-8603. PENALTIES. Notwithstanding any other law to the contrary, on
27 and after July 1, 2019, any person who commits the crime of human traffick-
28 ing, as defined in section 18-8602, Idaho Code, shall be punished by impris-
29 onment in the state prison for not more than twenty-five (25) years unless a
30 more severe penalty is otherwise prescribed by law. Provided, however, that
31 any person who commits the crime of human trafficking, as defined in sec-
32 tion 18-8602(1) (b) (vi), Idaho Code, shall be punished by imprisonment in the
33 state prison for not less than two (2) years and not more than five (5) years.

34 SECTION 3. That Section 18-622, Idaho Code, be, and the same is hereby
35 amended to read as follows:

36 18-622. CRIMINAL ABORTION. (1) Notwithstanding any other provision of
37 law, this section shall become effective thirty (30) days following the oc-
38 currence of either of the following circumstances:

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

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

44 (2) Every person who performs or attempts to perform an abortion as de-
45 fined in this chapter commits the crime of criminal abortion. Criminal abor-
46 tion shall be a felony punishable by a sentence of imprisonment of no less
47 than two (2) years and no more than (5) years in prison. The professional li-

1 cense of any health care professional who performs or attempts to perform an
2 abortion or who assists in performing or attempting to perform an abortion in
3 violation of this subsection shall be suspended by the appropriate licensing
4 board for a minimum of six (6) months upon a first offense and shall be perma-
5 nently revoked 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 (a) (i) The abortion was performed or attempted by a physician as
10 defined in this chapter;

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

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

26 (b) (i) The abortion was performed or attempted by a physician as
27 defined in this chapter;

28 (ii) If the woman is not a minor or subject to a guardianship,
29 then, prior to the performance of the abortion, the woman has re-
30 ported the act of rape or incest to a law enforcement agency and
31 provided a copy of such report to the physician who is to perform
32 the abortion;

33 (iii) If the woman is a minor or subject to a guardianship, then,
34 prior to the performance of the abortion, the woman or her parent
35 or guardian has reported the act of rape or incest to a law enforce-
36 ment agency or child protective services and a copy of such report
37 has been provided to the physician who is to perform the abortion;
38 and

39 (iv) The physician who performed the abortion complied with the
40 requirements of paragraph (a) (iii) of this subsection regarding
41 the method of abortion.

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

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

49 (6) An adult who, with the intent to conceal an unlawful abortion from
50 the parents or guardian of a minor, either procures a criminal abortion,

1 as described in this section, or obtains an abortion-inducing drug for the
2 pregnant minor to use for a criminal abortion by recruiting, harboring, or
3 transporting a pregnant minor within this state, commits human trafficking
4 as defined in section 18-8602(1) (b) (vi), Idaho Code.

5 (7) It shall be an affirmative defense to a prosecution under subsec-
6 tion (6) of this section that a parent or guardian of the pregnant minor con-
7 sented to trafficking of the minor.

8 (8) It shall not be an affirmative defense to a prosecution under sub-
9 section (6) of this section that the abortion provider or the abortion-in-
10 ducing drug provider is located in another state.

11 (9) The Idaho attorney general has the authority, at the attorney gen-
12 eral's sole discretion, to prosecute a person for a criminal violation of
13 this section if the prosecuting attorney authorized to prosecute criminal
14 violations of this section refuses to prosecute violations of any of the pro-
15 visions of this section by any person without regard to the facts or circum-
16 stances.

17 SECTION 4. That Section 18-8807, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 18-8807. CIVIL CAUSES OF ACTION. (1) Any female upon whom an abortion
20 has been attempted or performed, the father of the preborn child, a grandpar-
21 ent of the preborn child, a sibling of the preborn child, or an aunt or uncle
22 of the preborn child may maintain an action for:

23 (a) All damages from the medical professionals who knowingly or reck-
24 lessly attempted, performed, or induced the abortion in violation of
25 this chapter;

26 (b) Notwithstanding any other provision of law, statutory damages in an
27 amount not less than twenty thousand dollars (\$20,000) from the medical
28 professionals who knowingly or recklessly attempted, performed, or in-
29 duced an abortion in violation of this chapter; and

30 (c) Costs and attorney's fees. [8803 8804]

31 (2) Notwithstanding any other provision of law, a person may bring an
32 action under this section not later than four (4) years following the date
33 the cause of action accrues.

34 (3) Notwithstanding any other provision of law, a civil cause of action
35 under this section may not be brought by a person who impregnated the mother
36 through an act of rape or incest.

37 (4) Notwithstanding any other provision of law, including chapter 1,
38 title 12, Idaho Code, a court may not award costs or attorney's fees to a
39 defendant in an action brought under this section unless the defendant has
40 complied with the applicable requirements of sections 18-8803 and 18-8804,
41 Idaho Code.

42 (5) The civil causes of action provided for in this section exist inde-
43 pendently of any criminal action commenced pursuant to this chapter. A civil
44 cause of action may be pursued under the provisions of this chapter even if a
45 criminal prosecution is not pursued.

46 (6) Notwithstanding any other provision of law, including chapters 14,
47 17, and 18, title 54, Idaho Code, the requirements of this section shall be
48 enforced exclusively through the private civil causes of action described.
49 No enforcement of this section may be taken or threatened against any person

1 by this state, a political subdivision of this state, a prosecuting attorney,
2 ney, or an executive or administrative officer or employee of this state or a
3 political subdivision of this state.

4 (7) Notwithstanding any other provision of law, this state, a state official,
5 or a prosecuting attorney may not intervene in an action brought under
6 this section. Nothing in this subsection shall prohibit a person described
7 in this subsection from filing an amicus curiae brief in the action.

8 (8) Nothing in this section shall be deemed to affect any familial
9 rights or responsibilities or any proceedings conducted under Idaho law.

10 (9) In an action brought under this section, a court may not award compensatory or punitive damages if a person demonstrates that the person paid, or has been ordered to pay, compensatory or punitive damages, respectively, in a previous civil action for that particular violation of this chapter.

11 (10) Notwithstanding any other law to the contrary, a damage award in an action brought under this section may not be:

12 (a) Paid for, or reimbursed by, an insurance policy, except to the extent that the person against whom the damage award is assessed has insufficient personal assets to pay the total damage award; and

13 (b) Subject to any limitations on medical malpractice awards.

14 (11) Notwithstanding any other law to the contrary, a civil action may not be brought under this section by a person who, through an act of rape, sexual assault, incest, or other criminal conduct, impregnated the pregnant woman seeking an abortion in violation of this chapter.

15 (12) Notwithstanding any other law to the contrary, the following shall not be defenses to an action brought under this section:

16 (a) That the pregnant woman or, if the pregnant woman is a minor, a parent or guardian consented to an unlawful abortion;

17 (b) Ignorance or mistake of law;

18 (c) A person's belief that any provision of this section is or was unconstitutional;

19 (d) A person's reliance on a state or federal court decision that is not binding on the court in which the action has been brought;

20 (e) Non-mutual issue preclusion or non-mutual claim preclusion;

21 (f) Contributory or comparative negligence;

22 (g) Assumption of risk; or

23 (h) A claim that an action brought under the section will violate a constitutional right of a third party.

24 (13) Notwithstanding any other law to the contrary, a court may:

25 (a) Not award attorney's fees or costs to a person subject to an action brought under this section unless the action is frivolous, without foundation, or brought in bad faith or for the sole reason for delay;

26 (b) Not award attorney's fees or costs to a person who prevails in challenging the constitutionality of this section under state law, unless the defense of this section is frivolous, without foundation, or brought in bad faith or for the sole reason for delay; and

27 (c) Award attorney's fees or costs to a person who prevails in defending the constitutionality of this section under state law, even though the challenge to the constitutionality of this section was not frivolous, without foundation, or brought in bad faith or for the sole reason for delay.

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1 (14) The provisions of this section shall not be construed to impose li-
2 ability on speech or conduct protected by the first amendment of the United
3 States constitution or by section 9, article I of the constitution of the
4 state of Idaho.

5 (15) Notwithstanding any other law to the contrary, a person may bring
6 an action not later than six (6) years after the date the action accrues.

7 SECTION 5. SEVERABILITY. The provisions of this act are hereby declared
8 to be severable and if any provision of this act or the application of such
9 provision to any person or circumstance is declared invalid for any reason,
10 such declaration shall not affect the validity of the remaining portions of
11 this act.

12 SECTION 6. An emergency existing therefor, which emergency is hereby
13 declared to exist, this act shall be in full force and effect thirty days af-
14 ter its passage and approval.