

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 250

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; PROVIDING LEGISLATIVE FINDINGS; AMENDING SECTION
2 18-617, IDAHO CODE, TO REMOVE LANGUAGE PROVIDING THAT A PHYSICIAN HAS
3 EXAMINED IN PERSON THE WOMAN TO WHOM THE ABORTIFACIENT IS ADMINISTERED
4 TO DETERMINE THE MEDICAL APPROPRIATENESS OF SUCH ADMINISTRATION AND
5 HAS DETERMINED THAT THE ABORTIFACIENT IS SUFFICIENTLY SAFE FOR USE IN
6 THE GESTATIONAL AGE AT WHICH IT WILL BE ADMINISTERED; AMENDING SECTION
7 54-5707, IDAHO CODE, TO REMOVE LANGUAGE PROVIDING THAT NO DRUG MAY BE
8 PRESCRIBED THROUGH TELEHEALTH SERVICES FOR THE PURPOSES OF CAUSING AN
9 ABORTION; AND DECLARING AN EMERGENCY.
10

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

12 SECTION 1. LEGISLATIVE FINDINGS. (1) Exercising its proper legal au-
13 thority, as defended by the U.S. Supreme Court in *Gonzales v. Carhart*, 550
14 U.S. 124, 145 (2007), the Legislature previously found and further finds,
15 and reasserts, that women and girls are best served by an in-person examina-
16 tion and counseling by a qualified physician prior to undergoing a chemical
17 abortion;

18 (2) The Legislature previously found and further finds that the chem-
19 ical abortion procedure presents significant health risks to women and
20 girls undertaking the procedure; evidence presented to the Legislature in
21 2015 showed that the manufacturer of Mifeprex conceded before the U.S. Food
22 and Drug Administration that "nearly all of the women who receive Mifeprex
23 and misoprostol will report adverse reactions, and many can be expected to
24 report more than one such reaction." (See 2004 Mifeprex Final Printed Label-
25 ing);

26 (3) In 2015, the Legislature received evidence that the U.S. Food and
27 Drug Administration published a study in April of 2011 reporting that it had
28 knowledge of 2,207 adverse reactions in treatments using mifepristone to ac-
29 complish a chemical abortion. Those reactions included 14 deaths, 612 hos-
30 pitalizations (58 for ectopic pregnancies), 339 blood transfusions and 256
31 infections. (FDA, Mifepristone U.S. Postmarketing Adverse Events Summary
32 through April 30, 2011);

33 (4) The Legislature, during extensive hearings in the 2015 legisla-
34 tive session, received additional testimony and evidence of a peer-reviewed
35 study finding that the overall occurrence of health problems and com-
36 plications was four times higher for women and girls undergoing chemical
37 abortions as compared to those choosing surgical abortions. (N. Niinimäki
38 et al., Immediate Complications After Medical Compared With Surgical Termi-
39 nation of Pregnancy, *Obstetrics & Gynecology* 114:795, October 2009);

40 (5) The Legislature received evidence that, by the terms of the U.S.
41 Food and Drug Administration's 2004 Final Printed Labeling for Mifeprex,
42 use of the drug to induce a chemical abortion is "contraindicated" if a pa-
43 tient does not have adequate access to medical facilities for the emergency

1 treatment of incomplete abortion, hemorrhaging and other life-threatening
2 complications; further testimony before the Senate and House of Representa-
3 tives State Affairs Committees raised public health concerns about the large
4 portion of Idaho's population residing more than one hour's drive away from
5 medical facilities equipped to deal with such emergencies;

6 (6) During public hearings on HB154 (Chapter 270, 2015 Session Laws),
7 legislators received testimony that Planned Parenthood did not offer chem-
8 ical abortions using the telemedicine method in Idaho, nor did it have plans
9 to do so; moreover, legislators received testimony that Planned Parenthood
10 had not used the telemedicine procedure within the state in the prior 15
11 years during which the RU-486 regimen had been legalized by the U.S. Food and
12 Drug Administration for use as an abortifacient. (House of Representatives
13 State Affairs Committee Minutes, February 23, 2015; Senate State Affairs
14 Committee Minutes, March 16, 2015);

15 (7) And, operating under its constitutional authority, as defended by
16 the U.S. Supreme Court in *Harris v. McRae*, 448 U.S. 297, 325 (1980), the Leg-
17 islature found and further finds that "abortion is inherently different from
18 other medical procedures, because no other procedure involves the purpose-
19 ful termination of a potential life";

20 (8) The Legislature found and further finds that chemical abortions
21 performed via telemedicine methods undermine the creation of a healthy doc-
22 tor-patient relationship;

23 (9) The Legislature therefore concludes, and hereby reasserts, that
24 chemical abortions performed by remote teleconferencing methods represent
25 substandard medical care and that women and girls undergoing abortion de-
26 serve and require a higher level of professional medical care;

27 (10) The Legislature has been provided a copy of the Stipulated Facts
28 in *Planned Parenthood of the Great Northwest and the Hawaiian Islands v.*
29 *Lawrence G. Wasden, et al.*, Case No. 1:15-cv-00557-BLW. The Legislature
30 asserts that many of the stipulated facts and characterizations of polit-
31 ical purposes are contrary to the Legislature's actual prior findings and
32 health-care concerns for women and girls. The Stipulated Facts does not
33 reflect or accurately state the testimony before the Senate and House of
34 Representatives State Affairs Committees and is not an accurate reflection
35 of the Legislature's intent and purposes; and

36 (11) Notwithstanding the foregoing, and pursuant to the order continu-
37 ing stay of enforcement entered by Judge B. Lynn Winmill, the Legislature en-
38 acts Sections 2 and 3 of this Act.

39 SECTION 2. That Section 18-617, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 18-617. CHEMICAL ABORTIONS. (1) As used in this section:

42 (a) "Abortifacient" means mifepristone, misoprostol and/or other
43 chemical or drug dispensed with the intent of causing an abortion as de-
44 fined in section 18-604(1), Idaho Code. Nothing in the definition shall
45 apply when used to treat ectopic pregnancy;

46 (b) "Chemical abortion" means the exclusive use of an abortifacient or
47 combination of abortifacients to effect an abortion;

48 (c) "Physician" has the same meaning as provided in section 18-604(11),
49 Idaho Code.

1 (2) No physician shall give, sell, dispense, administer, prescribe or
 2 otherwise provide an abortifacient for the purpose of effecting a chemical
 3 abortion unless the physician:

4 (a) Has the ability to assess the duration of the pregnancy accurately
 5 in accordance with the applicable standard of care for medical practice
 6 in the state;

7 (b) Has determined, if clinically feasible, that the unborn child to be
 8 aborted is within the uterus and not ectopic;

9 (c) Has the ability to provide surgical intervention in cases of incom-
 10 plete abortion or severe bleeding, or, if the physician does not have
 11 admitting privileges at a local hospital, has made and documented in the
 12 patient's medical record plans to provide such emergency care through
 13 other qualified physicians who have agreed in writing to provide such
 14 care;

15 (d) Informs the patient that she may need access to medical facilities
 16 equipped to provide blood transfusions and resuscitation, if neces-
 17 sary, as a result of or in connection with the abortion procedure on a
 18 twenty-four (24) hour basis. If the appropriate medical facility is
 19 other than a local hospital emergency room, the physician shall provide
 20 the patient with the name, address and telephone number of such facility
 21 in writing; and

22 ~~(e) Has examined in person the woman to whom the abortifacient is admin-~~
 23 ~~istered to determine the medical appropriateness of such administra-~~
 24 ~~tion and has determined that the abortifacient is sufficiently safe for~~
 25 ~~use in the gestational age at which it will be administered; and~~

26 ~~(f) Has complied with the informed consent provisions of section~~
 27 ~~18-609, Idaho Code.~~

28 (3) The physician inducing the abortion, or a person acting on behalf of
 29 the physician inducing the abortion, shall make reasonable efforts to ensure
 30 that the patient returns for a follow-up visit so that a physician can con-
 31 firm that the pregnancy has been terminated and assess the patient's medical
 32 condition.

33 SECTION 3. That Section 54-5707, Idaho Code, be, and the same is hereby
 34 amended to read as follows:

35 54-5707. PRESCRIPTIONS. (1) A provider with an established provider-
 36 patient relationship, including a relationship established pursuant to
 37 section 54-5705, Idaho Code, may issue prescription drug orders using tele-
 38 health services within the scope of the provider's license and according to
 39 any applicable laws, rules and regulations, including the Idaho community
 40 standard of care; provided however, that the prescription drug shall not be a
 41 controlled substance unless prescribed in compliance with 21 U.S.C. section
 42 802(54) (A).

43 (2) Nothing in this chapter shall be construed to expand the prescrip-
 44 tive authority of any provider beyond what is authorized by the provider's
 45 licensing board.

46 ~~(3) No drug may be prescribed through telehealth services for the pur-~~
 47 ~~pose of causing an abortion.~~

1 SECTION 4. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after its
3 passage and approval.