

IN THE SENATE

SENATE BILL NO. 1102

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING SECTION 18-604, IDAHO CODE, TO DEFINE TERMS;
2 AMENDING SECTION 18-608, IDAHO CODE, TO PROVIDE THAT ABORTIONS SHALL
3 ONLY BE LAWFUL WHEN PERFORMED BY A PHYSICIAN WITH ADMITTING PRIVILEGES
4 AT A HOSPITAL WITHIN THIRTY MILES OF WHERE THE PHYSICIAN PERFORMS SUR-
5 GICAL ABORTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
6 18-608A, IDAHO CODE, TO PROVIDE THAT A PHYSICIAN WHO PERFORMS ABORTIONS
7 MUST HAVE ADMITTING PRIVILEGES AT A HOSPITAL WITHIN THIRTY MILES OF
8 WHERE THE PHYSICIAN PERFORMS SURGICAL ABORTIONS; AND PROVIDING SEVER-
9 ABILITY.
10

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

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

14 18-604. DEFINITIONS. As used in this act:

15 (1) "Abortion" means the use of any means to intentionally terminate
16 the clinically diagnosable pregnancy of a woman with knowledge that the ter-
17 mination by those means will, with reasonable likelihood, cause the death
18 of the unborn child except that, for the purposes of this chapter, abortion
19 shall not mean the use of an intrauterine device or birth control pill to in-
20 hibit or prevent ovulations, fertilization or the implantation of a fertil-
21 ized ovum within the uterus.

22 (2) "Admitting privileges" means the right of a physician, by virtue of
23 membership as a hospital's medical staff, to admit patients to a particular
24 hospital for providing specific diagnostic or therapeutic services to such
25 patient in that hospital.

26 (3) "Department" means the Idaho department of health and welfare.

27 (34) "Emancipated" means any minor who has been married or is in active
28 military service.

29 (45) "Fetus" and "unborn child." Each term means an individual organism
30 of the species homo sapiens from fertilization until live birth.

31 (56) "First trimester of pregnancy" means the first thirteen (13) weeks
32 of a pregnancy.

33 (67) "Hospital" means an acute care, general hospital in this state,
34 licensed as provided in chapter 13, title 39, Idaho Code.

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

40 (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 which can be understood
 8 by the person making the decision, with consideration of age, level of matu-
 9 rity and intellectual capability.

10 (~~89~~) "Medical emergency" means a condition which, 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 (~~910~~) "Minor" means a woman less than eighteen (18) years of age.

16 (~~101~~) "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 (~~112~~) "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 (~~123~~) "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~~) "Surgical abortion" means the use of a surgical instrument or a
 31 machine to terminate the clinically diagnosable pregnancy of a woman with
 32 knowledge that the termination by those means will cause, with reasonable
 33 likelihood, the death of the unborn child. Surgical abortion does not in-
 34 clude the use of any means to increase the probability of a live birth, to
 35 preserve the life or health of the child after a live birth, to terminate
 36 an ectopic pregnancy or to remove a dead fetus. Surgical abortion does not
 37 include patient care incidental to the procedure.

38 (~~135~~) "Third trimester of pregnancy" means that portion of a pregnancy
 39 from and after the point in time when the fetus becomes viable.

40 (~~146~~) Any reference to a viable fetus shall be construed to mean a fetus
 41 potentially able to live outside the mother's womb, albeit with artificial
 42 aid.

43 SECTION 2. That Section 18-608, Idaho Code, be, and the same is hereby
 44 amended to read as follows:

45 18-608. CERTAIN ABORTIONS PERMITTED -- CONDITIONS AND GUIDELINES. The
 46 provisions of sections 18-605 and 18-606, Idaho Code, shall not apply to and
 47 neither this act, nor other controlling rule of Idaho law, shall be deemed to
 48 make unlawful an abortion performed by a physician if:

1 (1) When performed upon a woman who is in the first trimester of
2 pregnancy, the same is performed following the attending physician's con-
3 sultation with the pregnant patient and a determination by the physician
4 that such abortion is appropriate in consideration of such factors as in his
5 medical judgment he deems pertinent, including, but not limited to, physi-
6 cal, emotional, psychological and/or familial factors, that the child would
7 be born with some physical or mental defect, that the pregnancy resulted
8 from rape, incest or other felonious intercourse, and a legal presumption
9 is hereby created that all illicit intercourse with a girl below the age of
10 sixteen (16) years shall be deemed felonious for purposes of this section,
11 the patient's age and any other consideration relevant to her well-being or
12 directly or otherwise bearing on her health and, in addition to medically
13 diagnosable matters, including, but not limited to, such factors as the
14 potential stigma of unwed motherhood, the imminence of psychological harm
15 or stress upon the mental and physical health of the patient, the potential
16 stress upon all concerned of an unwanted child or a child brought into a
17 family already unable, psychologically or otherwise, to care for it, and/or
18 the opinion of the patient that maternity or additional offspring probably
19 will force upon her a distressful life and future; the emotional or psycho-
20 logical consequences of not allowing the pregnancy to continue, and the aid
21 and assistance available to the pregnant patient if the pregnancy is allowed
22 to continue; provided, in consideration of all such factors, the physician
23 may rely upon the statements of and the positions taken by the pregnant
24 patient, and the physician shall not be deemed to have held himself out as
25 possessing special expertise in such matters nor shall he be held liable,
26 civilly or otherwise, on account of his good faith exercise of his medical
27 judgment, whether or not influenced by any such nonmedical factors. Abor-
28 tions permitted by this subsection shall only be lawful if and when performed
29 in a hospital or in a physician's regular office or a clinic which office
30 or clinic is properly staffed and equipped for the performance of such pro-
31 cedures and respecting which the responsible physician or physicians have
32 ~~made satisfactory arrangements~~ admitting privileges with one (1) or more
33 acute care hospitals within ~~reasonable proximity thereof~~ thirty (30) miles
34 of where the physician performs surgical abortions providing for the prompt
35 availability of hospital care as may be required due to complications or
36 emergencies that might arise.

37 (2) When performed upon a woman who is in the second trimester of preg-
38 nancy, the same is performed in a hospital and is, in the judgment of the at-
39 tending physician, in the best medical interest of such pregnant woman, con-
40 sidering those factors enumerated in subsection (1) of this section and such
41 other factors as the physician deems pertinent.

42 (3) When performed upon a woman who is in the third trimester of preg-
43 nancy the same is performed in a hospital and, in the judgment of the at-
44 tending physician, corroborated by a like opinion of a consulting physician
45 concurring therewith, either is necessary for the preservation of the life
46 of such woman or, if not performed, such pregnancy would terminate in birth
47 or delivery of a fetus unable to survive. Third trimester abortions under-
48 taken for preservation of the life of a pregnant patient, as permitted by
49 this subsection, shall, consistent with accepted medical practice and with
50 the well-being and safety of such patient, be performed in a manner consis-

1 tent with preservation of any reasonable potential for survival of a viable
2 fetus.

3 SECTION 3. That Section 18-608A, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 18-608A. PERSONS AUTHORIZED TO PERFORM ABORTIONS. It is unlawful for
6 any person to perform a surgical abortion other than a physician ~~to cause~~
7 ~~or perform an~~ who has admitting privileges at a hospital within thirty (30)
8 miles of where the physician performs a surgical abortion.

9 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared
10 to be severable and if any provision of this act or the application of such
11 provision to any person or circumstance is declared invalid for any reason,
12 such declaration shall not affect the validity of the remaining portions of
13 this act.