

IN THE SENATE

SENATE BILL NO. 1404, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO UNBORN INFANTS DIGNITY ACT; AMENDING TITLE 39, IDAHO
2 CODE, BY THE ADDITION OF A NEW CHAPTER 93, TITLE 39, IDAHO CODE, TO PRO-
3 VIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSE, TO DE-
4 FINE TERMS, TO PROVIDE FOR FINAL DISPOSITION OF CERTAIN REMAINS, TO PRO-
5 VIDE FOR MISCARRIAGE CERTIFICATES, TO PROVIDE PROHIBITIONS, TO REQUIRE
6 INFORMED CONSENT FOR EXPERIMENTATION UNDER CERTAIN CIRCUMSTANCES, TO
7 ESTABLISH CRIMINAL PENALTIES, TO PROVIDE DUTIES OF THE ATTORNEY GENERAL
8 AND PROSECUTING ATTORNEYS, TO PROVIDE FOR CERTAIN CIVIL AND ADMINISTRA-
9 TIVE ACTIONS AND TO PROVIDE FOR STATUTORY CONSTRUCTION; AND PROVIDING
10 SEVERABILITY.
11

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

13 SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
15 ter 93, Title 39, Idaho Code, and to read as follows:

16 CHAPTER 93

17 IDAHO UNBORN INFANTS DIGNITY ACT

18 39-9301. SHORT TITLE. This chapter shall be known and may be cited as
19 the "Idaho Unborn Infants Dignity Act."

20 39-9302. LEGISLATIVE FINDINGS AND PURPOSE. (1) The legislature of the
21 state of Idaho finds that:

22 (a) Deceased unborn infants deserve the same respect and dignity as
23 other deceased human beings.

24 (b) It continues to be the public policy of the state of Idaho to promote
25 live childbirth over abortion. Permitting the sale, transfer, distri-
26 bution or donation of the bodily remains of aborted infants, particu-
27 larly for pecuniary gain, and the use of the remains of aborted infants
28 for experimentation undermine that public policy as well as proper eth-
29 ical standards of medical conduct.

30 (c) It is contrary to the public policy of the state of Idaho for an in-
31 dividual to become pregnant for the purpose of aborting an unborn infant
32 and thereafter selling, transferring, distributing or donating the un-
33 born infant's bodily remains for experimentation or other use.

34 (2) Based on the findings in subsection (1) of this section, the purpose
35 of this chapter is to:

36 (a) Prohibit the sale, transfer, distribution or other unlawful dispo-
37 sition of an unborn infant or the bodily remains of an aborted infant;

38 (b) Prohibit the use of bodily remains of aborted infants for experi-
39 mentation;

1 (c) Ensure that the bodily remains of unborn infants whose death re-
2 sulted from an occurrence other than abortion are not sold, transferred
3 or distributed for experimentation without the mother's informed,
4 written consent; and

5 (d) In accordance with the provisions of this chapter, prohibit all
6 Idaho institutions of higher education that receive public moneys from
7 engaging in medical research using organs or tissue, including human
8 embryonic stem cells, obtained from aborted infants.

9 39-9303. DEFINITIONS. As used in this chapter:

10 (1) "Aborted infant" means a deceased unborn infant whose death was
11 caused by abortion.

12 (2) "Abortion" has the same meaning as provided in section 18-604,
13 Idaho Code.

14 (3) "Bodily remains" means the physical remains, body parts or tissue
15 of a deceased unborn infant who has been expelled or extracted from the in-
16 fant's mother.

17 (4) "Experiment" or "experimentation" means the use of bodily remains,
18 including embryonic stem cells, or the use of an unborn infant intended to be
19 aborted, in any trial, test, procedure or observation carried out with the
20 goal of verifying, refuting or establishing the validity of a hypothesis,
21 but does not include:

22 (a) Diagnostic or remedial tests, procedures or observations that have
23 the purpose of promoting the life or health of an unborn infant or of the
24 mother of an unborn infant; or

25 (b) Pathological study.

26 (5) "Fetal death" means the death of an unborn infant prior to expulsion
27 or extraction from the unborn infant's mother, provided that the unborn in-
28 fant reached a stage of development such that there are cartilaginous struc-
29 tures or fetal or skeletal parts. The unborn infant's death is indicated by
30 the fact that, after such expulsion or extraction, the unborn infant does not
31 breathe or show any other evidence of life such as a heartbeat, pulsation of
32 the umbilical cord or definite movement of voluntary muscles.

33 (6) "Final disposition" means the burial, cremation or other legal dis-
34 position of a deceased unborn infant.

35 (7) "Miscarriage" means the spontaneous or accidental death of an un-
36 born infant in utero other than by induced abortion or stillbirth. The in-
37 fant's death is indicated by the fact that, after the expulsion or extrac-
38 tion of the unborn infant, the infant does not breathe or show any other ev-
39 idence of life such as a heartbeat, pulsation of the umbilical cord or defi-
40 nite movement of voluntary muscles.

41 (8) "Pathological" means the examination of body tissue for diagnostic
42 or forensic purposes and any related activities necessary to perform such a
43 study. The term "study" includes any study or test, genetic or otherwise, to
44 determine paternity or the cause of death.

45 (9) "Stillbirth" has the same meaning as provided in section 39-241,
46 Idaho Code.

47 (10) "Unborn infant" has the same meaning as "fetus" and "unborn child"
48 as provided in section 18-604, Idaho Code.

1 39-9304. RELEASE OF REMAINS FOR FINAL DISPOSITION. In every instance
2 of fetal death involving miscarriage or stillbirth, the individual in charge
3 of the institution where the bodily remains of the deceased unborn infant
4 were expelled or extracted, or the individual's designee, shall notify the
5 mother or the mother's authorized representative that the mother has a right
6 to direct the receipt and disposition of her deceased unborn infant's bodily
7 remains. Upon request by the mother or her authorized representative, the
8 institution shall make arrangements for the release of the bodily remains to
9 the mother or her authorized representative for final disposition in accor-
10 dance with applicable law.

11 39-9305. MISCARRIAGE CERTIFICATES. The state registrar of vital sta-
12 tistics shall establish such forms and procedures as are necessary to file
13 miscarriage certificates for unborn infants whose death occurred as a result
14 of miscarriage. The filing of a miscarriage certificate shall be voluntary
15 at the request of the unborn infant's parent or parents and shall be filed
16 only if the miscarriage is certified by a physician, a physician's assistant
17 or an advanced practice registered nurse.

18 39-9306. PROHIBITIONS. (1) Except as otherwise provided in this chap-
19 ter, no person shall knowingly sell, transfer, distribute, donate, accept,
20 use or attempt to use the body or bodily remains of an aborted infant.

21 (2) Except as otherwise provided in this chapter, no person shall know-
22 ingly aid or abet any such sale, transfer, distribution, other unlawful dis-
23 position, acceptance, use or attempted use of the body or bodily remains of
24 an aborted infant.

25 (3) Except as otherwise provided in this chapter, no person or public
26 institution operating in Idaho shall knowingly use an unborn infant or the
27 bodily remains or embryonic stem cells of an aborted infant in animal or hu-
28 man research, experimentation or study, or for transplantation, except:

29 (a) For diagnostic or remedial procedures that have the purpose of pro-
30 moting the life or health of the unborn infant or the unborn infant's
31 mother;

32 (b) For pathological study; or

33 (c) For the completion of research projects and grants that were under-
34 taken or made before July 1, 2016. Such projects and grants shall not be
35 extended or renewed.

36 (4) Except as otherwise provided in this chapter, no person shall know-
37 ingly experiment upon an unborn infant who is intended to be aborted unless
38 the experimentation is therapeutic to the unborn infant.

39 (5) The terms "transfer," "accept" and "acceptance" as used in this
40 section do not apply to the transfer or acceptance of the body or bodily re-
41 mains of an aborted infant for the sole purpose of lawfully disposing of the
42 body or bodily remains of the aborted infant.

43 39-9307. INFORMED CONSENT REQUIRED FOR CERTAIN EXPERIMENTATION. Bod-
44 ily remains of an unborn infant whose death occurred as a result of miscar-
45 riage or stillbirth may be used for animal or human research, experimenta-
46 tion, study or transplantation only if the mother of the deceased unborn in-
47 fant makes a signed, written statement declaring that:

1 (1) The mother donates the specific bodily remains for animal or human
2 research, experimentation, study or transplantation;

3 (2) The donation is made without any restriction regarding the identity
4 of individuals who may be the recipients of transplantations of any bodily
5 remains;

6 (3) The mother has not been informed of the identity of any individuals
7 who may be recipients of transplantations of bodily remains;

8 (4) The mother understands her right to obtain the bodily remains for
9 final disposition in accordance with the provisions of this act; and

10 (5) Full disclosure has been provided to the mother with regard to the
11 attending physician's interest, if any, in the research, experimentation,
12 study or transplantation to be conducted with specific bodily remains.

13 39-9308. CRIMINAL PENALTIES. (1) A person who violates section
14 39-9306(1) or (2), Idaho Code, shall be guilty of a felony for each violation
15 and shall be subject to a fine not to exceed ten thousand dollars (\$10,000),
16 imprisonment in the state prison for a term not to exceed five (5) years, or
17 both.

18 (2) A person who violates section 39-9306(3) or (4), Idaho Code, shall
19 be guilty of a misdemeanor and shall be subject to a fine not to exceed one
20 thousand dollars (\$1,000), imprisonment in a county jail not to exceed six
21 (6) months, or both. Any person who pleads guilty to or is found guilty of
22 a violation of section 39-9306(3) or (4), Idaho Code, who previously has
23 pled guilty to or been found guilty of a violation of either such subsection,
24 notwithstanding the form of the judgment or withheld judgment, shall be
25 guilty of a felony and shall be subject to a fine not to exceed ten thousand
26 dollars (\$10,000), imprisonment in the state prison not to exceed one (1)
27 year, or both.

28 39-9309. DUTIES OF THE ATTORNEY GENERAL AND PROSECUTORS. The Idaho at-
29 torney general or the appropriate prosecuting attorney may initiate actions
30 or proceedings for a violation of any criminal provisions in this chapter.

31 39-9310. CIVIL AND ADMINISTRATIVE ACTIONS. (1) In addition to the
32 remedies available under the statutory or common laws of Idaho, failure to
33 comply with the requirements of section 39-9306, Idaho Code, shall provide
34 a basis for recovery of damages for the parent of an unborn infant or, if the
35 mother is a minor, for the parent or guardian of the mother of an unborn in-
36 fant, for the unlawful disposition of or experimentation on an unborn infant
37 or on bodily remains.

38 (2) Any conviction of a health care provider for failure to comply with
39 the requirements of section 39-9306, Idaho Code, shall result in the suspen-
40 sion of such provider's license for a period of at least one (1) year, and
41 such license shall be reinstated after that time only under such conditions
42 as the Idaho board of medicine shall require to ensure compliance with this
43 chapter.

44 39-9311. CONSTRUCTION. Nothing in this chapter shall be construed to
45 create or recognize a right to abortion.

1 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
2 to be severable and if any provision of this act or the application of such
3 provision to any person or circumstance is declared invalid for any reason,
4 such declaration shall not affect the validity of the remaining portions of
5 this act.