

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 242

BY STATE AFFAIRS COMMITTEE

AN ACT

1
2 RELATING TO ABORTION; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE AD-
3 DITION OF A NEW SECTION 18-623, IDAHO CODE, TO PROVIDE FOR THE CRIME OF
4 ABORTION TRAFFICKING, TO PROVIDE FOR AN AFFIRMATIVE DEFENSE, TO PROVIDE
5 THAT IT SHALL NOT BE AN AFFIRMATIVE DEFENSE THAT AN ABORTION PROVIDER
6 IS LOCATED IN ANOTHER STATE, TO AUTHORIZE THE ATTORNEY GENERAL TO
7 PROSECUTE CERTAIN PERSONS, AND TO PROVIDE A PENALTY; 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.

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

12 SECTION 1. That Chapter 6, Title 18, Idaho Code, be, and the same is
13 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
14 ignated as Section 18-623, Idaho Code, and to read as follows:

15 18-623. ABORTION TRAFFICKING. (1) An adult who, with the intent to
16 conceal an abortion from the parents or guardian of a pregnant, unemanci-
17 pated minor, either procures an abortion, as described in section 18-604,
18 Idaho Code, or obtains an abortion-inducing drug for the pregnant minor to
19 use for an abortion by recruiting, harboring, or transporting the pregnant
20 minor within this state commits the crime of abortion trafficking.

21 (2) It shall be an affirmative defense to a prosecution under subsec-
22 tion (1) of this section that a parent or guardian of the pregnant minor con-
23 sented to trafficking of the minor.

24 (3) It shall not be an affirmative defense to a prosecution under sub-
25 section (1) of this section that the abortion provider or the abortion-in-
26 ducing drug provider is located in another state.

27 (4) The Idaho attorney general has the authority, at the attorney gen-
28 eral's sole discretion, to prosecute a person for a criminal violation of
29 this section or section 18-622, Idaho Code, if the prosecuting attorney au-
30 thorized to prosecute criminal violations of this section or section 18-622,
31 Idaho Code, refuses to prosecute violations of any of the provisions of this
32 section or section 18-622, Idaho Code, by any person without regard to the
33 facts or circumstances.

34 (5) Any person who commits the crime of abortion trafficking, as pro-
35 vided in subsection (1) of this section, shall be punished by imprisonment
36 in the state prison for no less than two (2) years and no more than five (5)
37 years.

38 SECTION 2. That Section 18-8807, Idaho Code, be, and the same is hereby
39 amended to read as follows:

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

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

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

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

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

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

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

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

28 (6) Notwithstanding any other provision of law, including chapters 14,
29 17, and 18, title 54, Idaho Code, the requirements of this section shall be
30 enforced exclusively through the private civil causes of action described.
31 No enforcement of this section may be taken or threatened against any person
32 by this state, a political subdivision of this state, a prosecuting attor-
33 ney, or an executive or administrative officer or employee of this state or a
34 political subdivision of this state.

35 (7) Notwithstanding any other provision of law, this state, a state of-
36 ficial, or a prosecuting attorney may not intervene in an action brought un-
37 der this section. Nothing in this subsection shall prohibit a person de-
38 scribed in this subsection from filing an amicus curiae brief in the action.

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

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

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

47 (a) Paid for, or reimbursed by, an insurance policy, except to the ex-
48 tent that the person against whom the damage award is assessed has in-
49 sufficient personal assets to pay the total damage award; and

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

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

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

7 (a) That the pregnant woman or, if the pregnant woman is a minor, a par-
8 ent or guardian consented to an unlawful abortion;

9 (b) Ignorance or mistake of law;

10 (c) A person's belief that any provision of this section is or was un-
11 constitutional;

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

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

15 (f) Contributory or comparative negligence;

16 (g) Assumption of risk; or

17 (h) A claim that an action brought under the section will violate a con-
18 stitutional right of a third party.

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

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

23 (b) Not award attorney's fees or costs to a person who prevails in
24 challenging the constitutionality of this section under state law, un-
25 less the defense of this section is frivolous, without foundation, or
26 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
28 the constitutionality of this section under state law, even though the
29 challenge to the constitutionality of this section was not frivolous,
30 without foundation, or brought in bad faith or for the sole reason for
31 delay.

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

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

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

43 SECTION 4. An emergency existing therefor, which emergency is hereby
44 declared to exist, this act shall be in full force and effect thirty days af-
45 ter its passage and approval.