

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 242, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ABORTION; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE AD-  
2 DITION OF A NEW SECTION 18-623, IDAHO CODE, TO PROVIDE FOR THE CRIME OF  
3 ABORTION TRAFFICKING, TO PROVIDE FOR AN AFFIRMATIVE DEFENSE, TO PROVIDE  
4 THAT IT SHALL NOT BE AN AFFIRMATIVE DEFENSE THAT AN ABORTION PROVIDER  
5 IS LOCATED IN ANOTHER STATE, TO AUTHORIZE THE ATTORNEY GENERAL TO  
6 PROSECUTE CERTAIN PERSONS, AND TO PROVIDE A PENALTY; AMENDING SECTION  
7 18-8807, IDAHO CODE, TO PROVIDE CERTAIN REQUIREMENTS AND RESTRICTIONS  
8 ON A CIVIL ACTION; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY  
9 AND PROVIDING AN EFFECTIVE DATE.  
10

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. As used  
21 in this subsection, the terms "procure" and "obtain" shall not include the  
22 providing of information regarding a health benefit plan.

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

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

29 (4) The Idaho attorney general has the authority, at the attorney gen-  
30 eral's sole discretion, to prosecute a person for a criminal violation of  
31 this section if the prosecuting attorney authorized to prosecute criminal  
32 violations of this section refuses to prosecute violations of any of the pro-  
33 visions of this section by any person without regard to the facts or circum-  
34 stances.

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

39 SECTION 2. That Section 18-8807, Idaho Code, be, and the same is hereby  
40 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)~~ (3) Notwithstanding any other provision of law, including chapter  
20 1, 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)~~ (4) The civil causes of action provided for in this section exist  
25 independently of any criminal action commenced pursuant to this chapter. A  
26 civil cause of action may be pursued under the provisions of this chapter  
27 even if a criminal prosecution is not pursued.

28 ~~(6)~~ (5) Notwithstanding any other provision of law, including chap-  
29 ters 14, 17, and 18, title 54, Idaho Code, the requirements of this section  
30 shall be enforced exclusively through the private civil causes of action  
31 described. No enforcement of this section may be taken or threatened against  
32 any person by this state, a political subdivision of this state, a prosecut-  
33 ing attorney, or an executive or administrative officer or employee of this  
34 state or a political subdivision of this state.

35 ~~(7)~~ (6) Notwithstanding any other provision of law, this state, a state  
36 official, or a prosecuting attorney may not intervene in an action brought  
37 under 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)~~ (7) Nothing in this section shall be deemed to affect any familial  
40 rights or responsibilities or any proceedings conducted under Idaho law.

41 (8) 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 (9) Notwithstanding any other law to the contrary, a civil action may  
46 not be brought under this section by a person who, through an act of rape,  
47 sexual assault, incest, or other criminal conduct, impregnated the pregnant  
48 woman seeking an abortion in violation of this chapter.

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

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

3       (b) Ignorance or mistake of law;

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

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

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

9       (f) Contributory or comparative negligence;

10       (g) Assumption of risk; or

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

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

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

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

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

26       (12) The provisions of this section shall not be construed to impose li-  
27       ability on speech or conduct protected by the first amendment of the United  
28       States constitution or by section 9, article I of the constitution of the  
29       state of Idaho.

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

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