

## FULL TEXT OF INITIATIVE

Be it enacted by the people of the State of Idaho:

SECTION 1. That Chapter 8, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-801, Idaho Code, and to read as follows:

### 39-801. REPRODUCTIVE FREEDOM AND PRIVACY ACT

- (1) Notwithstanding any other provision of law:
  - a. Every person has the right to reproductive freedom and privacy, which entails the right to make and carry out one's own reproductive decisions, including but not limited to decisions on:
    - i. Pregnancy;
    - ii. Contraception;
    - iii. Fertility Treatment;
    - iv. Prenatal and Postpartum care;
    - v. Childbirth;
    - vi. Continuing one's own pregnancy;
    - vii. Miscarriage care; and,
    - viii. Abortion care.
- (2) The state shall not directly or indirectly infringe, burden, or prohibit in any way any person's voluntary exercise of the right to reproductive freedom and privacy nor infringe, burden, or prohibit any acts or omissions taken by a person or entity to assist or facilitate an individual's exercise of the right to reproductive freedom and privacy unless justified by a compelling state interest achieved by the least restrictive means.
  - a. Pursuant to the right guaranteed by this section, the state shall not infringe, burden, or prohibit abortion care prior to fetal viability.
  - b. It shall not be a violation of the right to reproductive freedom and privacy for the state to regulate abortion care after fetal viability, except in cases of a medical emergency.
- (3) For purposes of this section, the state's compelling interest is limited to the purpose of improving or maintaining the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine and does not infringe on that individual's autonomous decision-making.
  - a. Provided further that:
    - i. The right to reproductive freedom and privacy guaranteed by this section shall apply to a person's voluntary exercise of this right as well as to any person or entity that assists an individual in exercising this right.

- ii. In no case may abortion care provided consistent with this section provide a basis for professional discipline proceedings or for any civil or criminal liability against a health care professional solely for providing abortion care consistent with this section.
- iii. Nothing in this section will be deemed to bar or otherwise apply to any claim of medical malpractice against a health care professional for failing to comply with the applicable community standard of health care practice, as set forth in Section 6-1012, Idaho Code, in providing such abortion care.
- iv. A health care professional's freedom of conscience pursuant to Section 18-611, Idaho Code, shall be preserved.

(4) The provisions of this section are intended to control over any other section of Idaho Code and are to be liberally construed in favor of reproductive freedom and privacy. The provisions of this section are also hereby declared to be severable and if any provision of this section or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this section.

(5) As used in this section:

- a. "Abortion" or "Abortion care" means the use of any means that are consistent with widely accepted medical standards necessary for the procedure or treatment to intentionally terminate a pregnancy.
- b. "Contraception" means an action taken to prevent pregnancy including any drug, device, procedure or biological product intended for use in the prevention of pregnancy.
- c. "Fetal viability" means the point in a pregnancy when in the good faith judgment of an attending health care professional and based on the particular facts of the case known to the health care professional at the time, the fetus has a significant likelihood of sustained survival outside of the uterus without the application of extraordinary medical measures.
- d. "Fertility Treatment" means medications and procedures consistent with established medical practices in the treatment of infertility by a licensed health care professional, including assisted reproductive technology including but not limited to in vitro fertilization.
- e. "Health care professional" means any person licensed, certified or registered by the state of Idaho to deliver health care.
- f. "Medical emergency" means a physical medical condition that, on the basis of the attending physician's good faith clinical judgment, so complicates the medical condition of a pregnant patient as to warrant an abortion:
  - i. Save a pregnant patient's life, or;
  - ii. For which a delay may:

1. Place the health of the pregnant patient in serious jeopardy;
  2. Cause serious impairment to a bodily function, or;
  3. Cause serious dysfunction of any bodily organ or part.
- iii. A medical emergency is determined on a case-by-case basis based on the facts known to the attending physician at the time and is intended to be interpreted consistent with the definition provided in title 42, U.S. code, chapter 7, section 1395dd(e)(1).
  - g. “Miscarriage Care” means treatments and procedures consistent with established medical practices in the treatment of a complete or incomplete spontaneous miscarriage by a licensed health care professional.
  - h. “Physician” means a person licensed to practice medicine and/or surgery or osteopathic medicine and surgery in this state as provided in chapter 18, title 54, Idaho Code.
- (6) This section shall be in full force and effect on and after January 1, 2027.

## FUNDING SOURCE STATEMENT FOR THE REPRODUCTIVE FREEDOM ACT

Implementation of the Reproductive Freedom and Privacy Act will not require the expenditure of state or local funds beyond normal expenses associated with the initiative process. The state general fund, the attorney general's budget, and legislative legal defense funds may see cost savings due to a reduction in litigation expenses related to defending abortion prohibitions. It is proposed that these expenses be funded by use or augmentation of existing state expenditures.