

## 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. RIGHT TO ABORTION UNDER CERTAIN CIRCUMSTANCES

- (1) Notwithstanding any other provision of law, abortion care shall provide no basis for a violation of the provisions of title 18, Idaho Code, by any person in any of the following instances:
  - a. In cases when in the good faith clinical judgment of the pregnant patient's attending physician an abortion is necessary to protect or maintain the pregnant patient's physical health or life, or in the case of a medical emergency. This is determined on a case-by-case basis based on the facts known to the attending physician at the time.
  - b. In cases when in the good faith clinical judgment of the pregnant patient's attending physician the patient has a fetal condition that constitutes a fatal anomaly, the fetus is unlikely to survive outside the womb without extraordinary medical intervention, or if the condition is unlikely to result in a live birth. This is determined on a case-by-case basis based on the facts known to the attending physician at the time.
  - c. In cases when the pregnant patient certifies to the attending physician that the pregnancy resulted from rape as defined in section 18-6101, Idaho Code, or incest as defined in section 18-6601, Idaho Code. Abortion care provided pursuant to this paragraph shall only be permissible when in the good faith clinical judgment of the pregnant patient's attending physician the pregnancy has not achieved fetal viability.
- (2) The state shall not directly or indirectly infringe, burden, or prohibit in any way any person's voluntary exercise of the right to abortion as described in this section 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 abortion under this section unless justified by a compelling state interest achieved by the least restrictive means.
- (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.
- (4) Provided further that:
  - a. The right to abortion 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.
  - b. 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.
  - c. 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 healthcare practice, as set forth in Section 6-1012, Idaho Code, in providing such abortion care.

- d. A health care professional's of conscience pursuant to section 18-611, Idaho Code, shall be preserved.
- (5) 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 a right to abortion as described under this section. 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.
- (6) As used in this section:
- a. "Abortion" or "Abortion care" means the use of any means that are consistent with commonly accepted medical standards necessary for the procedure or treatment to intentionally terminate a pregnancy.
  - b. "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.
  - c. "Health care professional" means any person licensed, certified or registered by the state of Idaho to deliver health care.
  - d. "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. To save the pregnant patient's life, or;
      1. For which a delay may;
      2. Place the health of the pregnant patient in serious jeopardy;
      3. Cause serious impairment to a bodily function, or;
      4. Cause serious dysfunction of any bodily organ or part.
    - ii. 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).
  - e. "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.
- (7) This section shall be in full force and effect on and after January 1, 2027.

## FUNDING SOURCE STATEMENT FOR THE INITIATIVE

Implementation of the initiative 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.