

Helene T. Krasnoff
Planned Parenthood Federation of America
1780 Massachusetts Avenue, N.W.
Washington, DC 20036
Telephone: (202) 973-4800

Roger K. Evans
Dara Klassel
Eve C. Gartner
Planned Parenthood Federation of America
810 Seventh Avenue
New York, NY 10019
Telephone: (212) 261-4708

B. Newal Squyres
Cooperating Counsel for American Civil
Liberties Union of Idaho Foundation
Post Office Box 2527
Boise, Idaho 83701
Telephone: (208) 342-5000

Of Counsel:
Louise Melling
Jennifer Dalven
Reproductive Freedom Project
American Civil Liberties Union
125 Broad Street
New York, NY 10004
Telephone: (212) 549-2637

U.S. COURTS

01 APR 27 PM 4:19

REC'D FILED
CLERK AMERON S. BURKE
IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PLANNED PARENTHOOD OF IDAHO,
INC. and GLENN H. WEYHRICH, M.D.,)

Plaintiffs,)

v.)

ALAN G. LANCE, Attorney General of
the State of Idaho, and GREG BOWER,
Ada County Prosecuting Attorney,)

Defendants.)

Case No. CV00-0353-S-MHW

**SECOND AMENDED
COMPLAINT**

11

I. PRELIMINARY STATEMENT

1. This action was brought pursuant to 42 U.S.C. § 1983 to enjoin the enforcement of 2000 Idaho Senate Bill No. 1299, amending Idaho's abortion laws to require a woman to show "positive identification" before obtaining an abortion and to require parental consent before a minor may obtain an abortion. *See* 2000 Idaho Senate Bill No. 1299, amending Chapter 6, Title 18 of the Idaho Code to add new Sections 18-609A and 18-614 and adopted by the Idaho Legislature in February 2000 ("the 2000 Act") (A copy of the 2000 Act was attached to the original Complaint as Exhibit A). Portions of the 2000 Act were enjoined by an order of this Court dated September 1, 2000.

2. In response to this lawsuit and this Court's order, the Idaho legislature enacted 2001 Idaho House Bill No. 340. *See* 2001 Idaho House Bill No. 340, amending Chapter 6, Title 18 of the Idaho Code, Sections 18-605, 18-609A and 18-614 and adopted by the Idaho Legislature in March 2001 ("the 2001 Act") (A copy of the 2001 Act is attached to this Second Amended Complaint as Exhibit A). While the 2001 Act alters some of the claims in this case, it does not cure the constitutional defects in the statute and some of the new provisions violate the constitutional rights of the persons subject to the statute. The 2001 Act is scheduled to take effect July 1, 2001.

3. The 2000 Act, as amended by the 2001 Act, ("the Acts") violate the rights of plaintiffs' minor patients as guaranteed by the fourteenth amendment to the United States Constitution by requiring that a physician obtain parental consent before performing an

abortion on a minor without providing an adequate mechanism to bypass the consent requirement. The bypass is inadequate because it fails to assure that the minor has appropriate access to a confidential and expeditious bypass proceeding with the assistance of legal counsel. The bypass is also ineffective because it requires that minors seeking bypasses trigger criminal investigations relating to their conduct. Further, there is no procedure in place to assure that minors will be able to procure an effective bypass proceeding.

4. The Acts' restrictive medical emergency provisions violate the rights of plaintiffs and their minor patients as guaranteed by the fourteenth amendment to the United States Constitution by failing to make clear and adequate provision for abortions when the woman's health is at risk. The medical emergency provisions of the Acts further violate the due process rights of plaintiffs' patients by requiring post-procedure notification of a parent, including in some cases notification of adult women's parents. This will deter women who need emergency abortions from seeking them and violate the rights of the women of Idaho.

5. The Acts also violate the plaintiff providers' due process rights by imposing strict liability on them with respect to the age of their patients, by failing to give them adequate notice of criminal statutes affecting their conduct, and by exposing them to liability based on an objective standard in the case of a medical emergency. These deficiencies will have the effect of making physicians reluctant to provide abortions in

certain situations, including emergencies. These deficiencies will also have the effect of delaying abortions, thereby increasing the health risks and costs for the women of Idaho.

6. If it goes into effect, the 2001 Act will cause immediate and irreparable harm to the women of Idaho seeking abortions and to Idaho's abortion providers.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because plaintiffs and defendants reside in the District of Idaho.

III. THE PARTIES

9. Plaintiff, Planned Parenthood of Idaho, Inc. ("Planned Parenthood") is a not-for-profit corporation organized under the laws of Idaho and located in Boise. Planned Parenthood provides medical and educational services to women and men. Planned Parenthood's services include pregnancy diagnosis and counseling, contraceptive counseling, provision of all methods of birth control, HIV/AIDS testing and counseling, treatment of minor sexually transmitted infections and uncomplicated urinary tract infections, and cancer screening. Planned Parenthood does not perform abortion services, but provides its patients with referrals to providers of those services. Planned Parenthood sues on behalf of its patients.

10. Plaintiff, Glenn H. Weyhrich, M.D., is a physician licensed to practice medicine in the State of Idaho, and is a board-certified obstetrician and gynecologist who maintains a private ob/gyn practice in Boise. Dr. Weyhrich provides an array of medical

services, including abortions through the sixteenth week of pregnancy as measured from the first day of the woman's last menstrual period ("LMP"). His patients seeking abortions come predominantly from the Boise area, but he also performs abortions on women from all regions of Idaho and a few surrounding states including Nevada and Oregon. Among Dr. Weyhrich's patients seeking abortions, fewer than 10 percent are women under the age of 18. Of these women, an overwhelming majority decide on their own to involve a parent or legal guardian in their decision to obtain an abortion, often bringing that person with them when they get the procedure. Dr. Weyhrich also has minor patients who are mature and/or who he believes would be harmed by a requirement to involve a parent. Dr. Weyhrich sues on his behalf and on behalf of his patients seeking abortions.

11. Defendant Alan G. Lance is the Attorney General of the State of Idaho. He is the chief legal officer for the state and is charged by law with enforcement of the Acts, supervision of all county attorneys and defense of the constitutionality of the laws of Idaho. Defendant Lance, whose office is in Boise, is sued in his official capacity, as are his agents and successors in office.

12. Defendant Greg Bower is the Ada County Prosecuting Attorney. He is charged by law with enforcement of the Acts. He is sued in his official capacity, as are his agents and successors in office.

IV. STATUTORY FRAMEWORK

13. The Acts provide in relevant part that:

No person shall knowingly cause or perform an abortion upon a minor unless . . . [t]he attending physician has secured the written informed consent of the minor and the written informed consent of the minor's parent.

Idaho Code § 18-609A(1)(a). The parental consent requirement is waived if the minor is emancipated and the attending physician has received written proof of emancipation; the minor is found by a court to be mature, of sound mind and having sufficient intellectual capacity to consent to the abortion for herself (as described in Idaho Code § 18-609A(1)(b)); or a court has found that causing or performing the abortion, despite the absence of informed consent by a parent, is in the best interests of the minor and issued an order granting permission for the abortion (as described in Idaho Code § 18-609A(1)(b)). Idaho Code § 18-609A(1)(a)(ii) – (iv). The Acts also waive the parental consent requirement before an abortion when there is a medical emergency; however, the physician must immediately notify a parent after the procedure. Idaho Code § 18-609A(1)(a)(v).

A. Judicial Bypass

14. Subsection (1)(b) of Idaho Code § 18-609A purports to provide for a proceeding by which a court may grant an order allowing a minor who is determined to have sufficient maturity to “self-consent” to the abortion or giving judicial consent to the abortion because it is in her best interests. The Acts require that the minor file a petition under this subsection in “the county where the minor resides or the county where the

abortion is caused or performed.” Idaho Code § 18-609A(1)(b)(i). The petition must include “[t]he name and address of each parent, guardian, or, if the minor’s parents are deceased or the minor is abandoned and no guardian ad litem has been appointed, the name and address of any other person standing in loco parentis of the minor.” Idaho Code § 18-609A(1)(b)(ii).

15. The Acts provide that a guardian ad litem may assist the minor in preparing the petition, but only requires that the court “ensure that the minor is given assistance in filing the petition if the minor so desires a guardian ad litem but no qualified guardian ad litem is available.” Idaho Code § 18-609A(1)(b)(i). If a minor requests a guardian ad litem and none is available, “the court may appoint some other person to act in the capacity of a guardian ad litem.” Idaho Code § 18-609A(1)(b)(iii). There is no provision in the Acts that guarantees the minor the right to counsel.

16. The Acts require that a hearing on the merits of the minor’s petition be held no later than five days from the filing of the petition and that the court enter an order no later than five days after the conclusion of the hearing. Idaho Code § 18-609A(1)(b)(iii), (iv). A notice of appeal from an order issued by the court must be filed within two days of the issuance of the order. Idaho Code § 18-609A(1)(c). The record on appeal must be completed and the appeal must be perfected by no later than five days from the filing of notice of appeal. *Id.* The Acts also provide, however, that “[e]xcept for the time for filing a notice of appeal, a court may enlarge the times set forth pursuant to this subsection upon the request of the minor or upon other good cause appearing.” Idaho

Code § 18-609A(1)(d). The Acts state that appeals pursuant to this subsection “shall receive expedited appellate review,” but do not provide any specific time limits within which the appeal must be resolved. *See* Idaho Code § 18-609A(1)(c).

17. The Acts require that “[i]f, in hearing the petition, the court becomes aware of allegations which, if true, would constitute a violation of any section of Title 18, Idaho Code, by a person other than the petitioner ... the court shall order, upon entry of final judgment in the proceeding under this subsection, that an appropriate investigation be initiated or an appropriate information, complaint or petition be filed.” Idaho Code § 18-609A(1)(b)(iv). The Acts state that “[s]uch allegations shall be forwarded by the court with due consideration for the confidentiality of the proceedings under this section.” *Id.*

18. The Acts state that “[a]ll records contained in court files of judicial [bypass] proceedings ... shall be confidential and exempt from disclosure pursuant to Section 9-340G, Idaho Code.” Idaho Code § 18-609A(1)(g). The Acts further provide that “[d]ockets and other court records shall be maintained and court proceedings undertaken so that the names of the parties to actions brought ... will not be disclosed to the public.” *Id.* The Acts state that a hearing on a minor’s bypass petition “shall be heard by a district judge on the record in a closed session of the court.” There is no similar provision with respect to the appeal of a denial of a bypass petition.

B. Medical Emergency Exception

19. The Acts provide in relevant part that:

No person shall knowingly cause or perform an abortion upon a minor unless . . . [a] medical emergency exists for the minor so urgent that there is insufficient time for the physician to obtain the informed consent of a parent or a court order and the attending physician certifies such in the pregnant minor's medical records.

Idaho Code § 18-609A(1)(a)(v).

20. The Acts define "medical emergency" as:

[A] sudden and unexpected physical condition which, in the reasonable medical judgment of any ordinarily prudent physician acting under the circumstances and conditions then existing, is abnormal and so complicates the medical condition of the pregnant minor as to necessitate the immediate causing or performing of an abortion: 1. To prevent her death; or 2. Because a delay in causing or performing an abortion will create serious risk of immediate, substantial and irreversible impairment of a major physical bodily function of the patient.

Idaho Code § 18-609A(5)(c)(i). The Acts specify that a "medical emergency" does not include "[a]ny physical condition that would be expected to occur in normal pregnancies of women of similar age, physical condition and gestation" or "[a]ny condition that is predominantly psychological or psychiatric in nature." Idaho Code § 18-609A(5)(c)(ii). This definition fails to encompass emergency abortions necessary as a result of a woman's physical condition that is not "sudden or unexpected" or emergency abortions necessary to prevent non-immediate or reversible bodily damage; damage to non-bodily, *i.e.*, mental health; and damage to minor physical bodily functions.

21. The Acts require that immediately after an abortion performed in the case of medical emergency, the physician “attempt to provide a parent of an unemancipated minor actual notice of the medical emergency.” Idaho Code § 18-609A(1)(a)(v). If a parent cannot be “immediately contacted” for actual notification, the physician must “with due diligence, attempt to provide actual notification to a parent for an eight hour period” following the abortion. *Id.* Notwithstanding those requirements, a physician who performs an abortion on a minor in the case of medical emergency must provide actual notification to a parent within twenty-four hours of the procedure by one of several means set forth in the Acts. *See Id.*

22. The Acts make no provision for waiver of the actual notification requirement unless a physician believes that the minor is homeless or abandoned or that her physical safety would be jeopardized by parental notification, in which case, the physician is required to make a report to a law enforcement agency. Idaho Code § 18-609A(1)(a)(v).

C. Defenses to Prosecution

23. The Acts provide a defense to criminal or administrative prosecution for a physician if:

prior to causing or performing the abortion the physician obtains either positive identification or other documentary evidence from which a reasonable person would have concluded that the woman seeking the abortion was either an emancipated minor or was not then a minor and if the physician retained, at the time of receiving the evidence, a legible photocopy of such evidence in the physician’s office file for the woman.

Idaho Code § 18-614(1). This is “an affirmative defense that shall be raised by the defendant and is not an element of any crime or administrative violation that must be proved by the state” and is not a defense to a civil claim. *Id.*

24. The Acts provide another defense to criminal or administrative prosecution for a physician who performs an abortion on a minor in the case of a medical emergency if:

as soon as possible but in no event longer than twenty-four (24) hours after performing the abortion, the physician obtained positive identification or other documentary evidence from which a reasonable person would have concluded that the woman seeking the abortion was either an emancipated minor or was not then a minor and if the physician retained, at the time of receiving the evidence a legible photocopy of such evidence in the physician’s office file for the woman.

Idaho Code § 18-614(2). This is also “an affirmative defense that shall be raised by the defendant and is not an element of any crime or administrative violation that must be proved by the state” and is not a defense to a civil claim. *Id.*

25. The Acts provide a defense to criminal, civil or administrative prosecution in the case of medical emergency, if “the physician after reasonable inquiry, is unable to determine whether or not the woman is a minor,” and he “tak[es] any action that would have been required” by Section 18-609A(1)(a)(v). *See* Idaho Code § 18-614(3).

26. For the purpose of these defenses to prosecution, “positive identification” means “a lawfully issued state, district, territorial, possession, provincial, national or other equivalent government driver’s license, identification card or military card, bearing

the person's photograph and date of birth, the person's valid passport or a certified copy of the person's birth certificate." Idaho Code § 18-614(4).

D. Penalties

27. A physician who violates the Acts is subject to professional discipline and civil penalties as well criminal penalties of \$5000 and up to five years in prison. *See* Idaho Code § 18-605. To be found liable under the Acts, a physician must knowingly cause or perform an abortion, but the Acts have no requirement with respect to the physician's knowledge that his patient is a minor. *See* Idaho Code § 18-609A(1)(a).

28. The Acts also impose criminal penalties of \$5000 and up to five years in prison upon a physician's accomplices and accessories and any woman who "knowingly submits" to the abortion. *See* Idaho Code §§ 18-606.

29. The Acts further provide that any person who is injured by the performing of an abortion on a minor in violation of the Acts "shall have a private right of action to recover all damages sustained as a result of such violation, including reasonable attorney's fees if judgment is rendered in favor of plaintiff." Idaho Code § 18-609A(3).

30. The 2001 Act is to take effect July 1, 2001. *See* Idaho Code § 67-510.

V. STATEMENT OF FACTS

31. According to the Idaho Department of Health and Welfare's Center for Vital Statistics and Health Policy, there were 888 induced abortions performed in the state of Idaho in 1998. Upon information and belief, a similar number of procedures were performed in 1999 and 2000 and will be performed in 2001 absent enforcement of the Acts.

32. Abortions are only rarely performed in Idaho after 16 weeks LMP. Of the abortions performed in 1998, only fifteen were performed after 16 weeks LMP, and of those fifteen, only 5 were performed from 20 weeks LMP on. Generally, if a woman in Idaho is seeking to terminate her pregnancy after 16 weeks LMP, she must travel to another state to obtain an abortion.

33. The risks associated with childbirth are 22 times the risks associated with an abortion at twelve weeks or earlier and twice the risk of abortion after twelve weeks. At no time before 21 weeks do the risks of abortion exceed those incurred with childbirth.

34. Although abortion through the 21st week of pregnancy is significantly safer than pregnancy and childbirth, delay of any length in performing an abortion increases the risk to the woman seeking to obtain the abortion. The increase in risk becomes statistically significant when delay reaches one week. Delays of any length may be sufficient to prolong a woman's pregnancy into the second trimester, thereby significantly increasing the cost, inconvenience and risk associated with the procedure.

A. Parental Consent

35. Of the Idaho residents who obtained abortions in 1998, approximately 9 percent of them were women under the age of 18. Upon information and belief, a similar percentage of the abortions performed in 1999 and 2000 were obtained by minors. These figures do not include minors from other states who obtained abortions in Idaho to whom the Acts also apply.

36. When a minor does not involve a parent in her decision to terminate her pregnancy, she generally has compelling reasons. Such reasons include fear of physical violence against the minor or other family members; of being forced to leave home; of being forced to carry an unwanted pregnancy to term; or other punishment of the minor; or of causing other problems between the minor and one parent or both parents or between the minor's parents. In addition, parents may refuse consent for an abortion, thus vetoing the minor's decision.

37. Nationally, seventeen percent of teenagers who undergo abortions obtain them after twelve weeks LMP. Even without parental consent requirements like those set forth in the Acts, minors already tend to seek abortions later in pregnancy than adults due to delays in discovering their pregnancies, fear of telling their parents or partner that they are pregnant, or difficulty in deciding how to deal with their pregnancy. The delay will often be compounded by scheduling difficulties resulting from the limited hours when clinics are open, the limited hours when physicians are available to perform abortions, transportation requirements, the minor's work and/or school commitments, and the parent's family or work obligations.

38. The Acts' venue restriction, which requires that the minor file her petition in the county in which she resides or where the abortion is caused or performed, unduly constrains a minor's ability to obtain a confidential and expeditious bypass because, among other things: it hinders her ability to seek the bypass in an area where she can avoid seeing someone she knows; it separates her from resources in other counties that

may be available to assist her in the judicial bypass process; and it denies her the flexibility she needs to procure the bypass as quickly as possible.

39. The Acts' timeframes for the district court to hear and rule on a minor's bypass petition, the ability of judges to extend those timeframes for "good cause," and the lack of any time limit within which appeals must be resolved fail to provide minors with an expeditious bypass and will prevent some minors from obtaining abortions.

40. The Acts' requirement that a minor file a notice of appeal within two days of the issuance of the district court's order denying her bypass petition will prevent some minors from obtaining abortions.

41. Minors have confidentiality concerns, and the Acts fail to assure a minor that a bypass hearing and any appeals that follow will be conducted in a way that satisfactorily preserves her confidentiality. The provisions of the Acts relating to court records and dockets do not adequately protect the identity of the minor. Moreover, the Acts contain no provision to guarantee the confidentiality of the appeal of a denial of a bypass petition, including any hearing on such an appeal.

42. The Acts require that, as a condition of exercising their constitutional right to seek a judicial bypass, minors trigger, at a minimum, criminal investigations relating to their conduct. Under these circumstances, a minor is deprived of the ability to obtain an effective and confidential bypass.

43. The Acts' failure to guarantee that all minors seeking a judicial bypass are offered and may obtain the assistance of a lawyer deprives minors of the opportunity to seek an effective bypass.

B. Medical Emergency

44. There are urgent medical situations that necessitate an immediate abortion. In these situations, delay of a couple of weeks or even a few days could place the health – or the life – of the woman in jeopardy.

45. Without knowing precisely how long the district and appellate courts will take to hear and rule on a minor's bypass petition, a doctor will, in some circumstances, be unable to certify with any degree of certainty that there is insufficient time to obtain a court order prior to performing an abortion necessary to preserve a woman's health or life.

46. Some women have chronic medical conditions, such as kidney or heart disease, that will cause the woman to need an abortion on an emergency basis although her physician originally believed that she would be able to carry a pregnancy to term. Depending on how far her condition has deteriorated, requiring a woman in this situation to wait to have an abortion poses serious risks to her health and, potentially, her life.

47. Some minors needing emergency abortions, like other minors, have compelling reasons for not involving a parent in their decisions to have abortions and/or are sufficiently mature to make those decisions without parental involvement.

C. Defenses to Prosecution

48. Among plaintiffs' patients are women who do not have and/or will not be able to access within 24 hours "positive identification" as it is defined in the Acts or "other documentary evidence from which a reasonable person would have concluded that ... [she] was either an emancipated minor or was not then a minor."

49. Even if a woman could access the documentary evidence required by the Acts within 24 hours of an emergency abortion, Section 18-614(2) provides no defense because by waiting to obtain such evidence, the physician will have already violated the Acts requirements that he "immediately" contact the parent and that he "attempt to provide actual notification to a parent for an eight hour period" following the abortion. This will result in the violation of the rights of plaintiffs' patients.

50. For some women seeking an emergency abortion, their physician will be unable to determine "after reasonable inquiry" whether or not they are minors. Because Section 18-614(3) does not specify what constitutes "reasonable inquiry" and because this Section provides immunity to a physician who notifies an adult woman's parents, some adult women suffering medical emergencies will have their parents notified of their abortion in violation of their rights.

D. Penalties

51. Section 18-609A(1)(a) improperly imposes strict liability on a physician with respect to a minor's age. Under the Acts, a physician may be subject to administrative, civil and/or criminal liability even if he in good faith believed that his patient was an

adult. This lack of scienter with respect to minority will chill physicians' willingness to provide abortions and infringe on the rights of plaintiffs and their patients.

CLAIMS FOR RELIEF

COUNT I – RIGHT TO DUE PROCESS OF LAW

52. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶1-51 above as if set forth fully herein.

53. The Acts violate the rights of plaintiffs' patients to privacy as guaranteed by the fourteenth amendment to the United States Constitution in, including but not limited to, the following ways:

- a) by failing to provide an adequate judicial bypass to parental consent;
- b) by failing to make adequate provision for abortion in any case where the woman's health is at risk; and
- c) by requiring parental notification in the case of a medical emergency.

COUNT II – RIGHT TO DUE PROCESS OF LAW

54. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶1-53 above as if set forth fully herein.

55. The Acts violate the rights of plaintiff providers to due process as guaranteed by the fourteenth amendment to the United States Constitution in, including but not limited to, the following ways:

- a) by containing vague and/or conflicting terms that fail to give clear notice of what conduct is prohibited and/or required;

b) by imposing strict liability on physicians with respect to their patients' minority;

c) by failing to give adequate notice of what constitutes a "medical emergency";

d) by failing to give adequate notice of what is "insufficient time for the physician to obtain ... a court order;" and

e) by utilizing an objective standard in imposing liability under the "medical emergency" provisions.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

1. Issue a declaratory judgment that 2001 Idaho House Bill No. 340, amending Chapter 6, Title 18 of the Idaho Code, Sections 18-605, 18-609A and 18-614 and adopted by the Idaho Legislature in March 2001, and 2000 Idaho Senate Bill No. 1299, amending Chapter 6, Title 18 of the Idaho Code to add new Sections 18-609A and 18-614 and adopted by the Idaho Legislature in February 2000, violate the rights of plaintiffs and their patients as protected by the fourteenth amendment to the United States Constitution and is therefore void and of no effect;

2. Issue preliminary and permanent injunctive relief, without bond, restraining the enforcement, operation and execution of 2001 Idaho House Bill No. 340, amending Chapter 6, Title 18 of the Idaho Code, Sections 18-605, 18-609A and 18-614 and adopted by the Idaho Legislature in March 2001, and 2000 Idaho Senate Bill No. 1299,

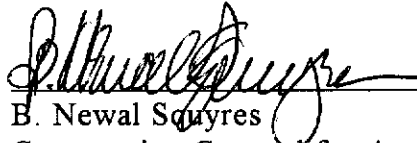
amending Chapter 6, Title 18 of the Idaho Code to add new Sections 18-609A and 18-614 and adopted by the Idaho Legislature in February 2000, by enjoining defendants, their agents, employees, appointees or successors from enforcing, threatening to enforce or otherwise applying the provisions of those Acts;

3. Grant plaintiffs attorneys' fees, costs and expenses pursuant to 42 U.S.C. § 1988; and

4. Grant such further relief as this Court deems just and proper.

Dated: April 27, 2001

Respectfully submitted,



B. Newal Squires
Cooperating Counsel for American Civil
Liberties Union of Idaho Foundation
P. O. Box 2527
Boise, Idaho 83701-2527
(208) 342-5000

Helene T. Krasnoff
Planned Parenthood Federation of America
1780 Massachusetts Avenue, N.W.
Washington, DC 20036
(202) 973-4800

Roger K. Evans
Dara Klassel
Eve C. Gartner
Planned Parenthood Federation of America
810 Seventh Avenue
New York, NY 10019
(212) 261-4708

Attorneys for Plaintiffs

Of Counsel:

Louise Melling
Jennifer Dalven
Reproductive Freedom Project
American Civil Liberties Union
125 Broad Street
New York, NY 10004
(212) 549-2637

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April 2001, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Alan G. Lance, Esq.
Office of the Attorney General
Clinton E. Minor
David W. Lloyd
Civil Litigation Division
Len B. Jordan Building
650 W. State Street
Boise, Idaho 83720
Fax: (208) 334-2830

☐ U.S. Mail
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

Richard A. Hearn, ISB No. 5574
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
201 East Center
P. O. Box 1391
Pocatello, Idaho 83201
Fax: (208)-232-6109

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

William T. Sali
Attorney for *amicus curiae*
Idaho Family Defense Fund, Inc.,
on behalf of Idaho Chooses Life
Alliance, Inc.
P. O. Box 71
Kuna, Idaho 83634
Fax: (208) 376-4404

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)


B. Newa Squyres

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HOUSE BILL NO. 340

View Daily Data Tracking History

View Bill Text

View Statement of Purpose / Fiscal Impact

Text to be added within a bill has been marked with Bold and Underline. Text to be removed has been marked with Strikethrough and Italic. How these codes are actually displayed will vary based on the browser software you are using.

This sentence is marked with bold and underline to show added text.

~~*This sentence is marked with strikethrough and italic, indicating text to be removed.*~~

Daily Data Tracking History

H0340.....by STATE AFFAIRS
ABORTION - Amends, repeals and adds to existing law to revise penalties relating to unlawful abortions; to provide that a petition may be filed in the county where a minor resides or in the county where the abortion is caused or performed; to provide for initiation of an investigation or filing of an information, complaint or petition against a person other than the petitioner, based upon certain allegations of which the court is made aware during a petition hearing; to provide that if a minor would have been privileged to withhold information or evidence that was required as proof under Section 18-609A, Idaho Code, then her answers given, evidence produced and information directly or indirectly derived from her answers may not be used against her in a criminal case except that she may be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, failing to answer or producing or failing to produce evidence as required by the court; and to provide defenses to prosecution.

02/28 House intro - 1st rdg - to printing

03/01 Rpt prt - to St Aff

03/05 Rpt out - rec d/p - to 2nd rdg

03/06 2nd rdg - to 3rd rdg

03/08 3rd rdg - PASSED - 66-2-2

AYES -- Barraclough, Barrett, Bedke, Bell, Bieter, Black, Boe, Bolz, Bradford, Bruneel, Callister, Campbell, Chase, Clark, Collins, Crow, Cuddy, Deal, Denney, Ellis, Ellsworth, Eskridge, Field(13), Field(20), Gagner, Gould, Hadley, Hammond, Harwood, Henbest, Higgins, Hornbeck, Jones, Kellogg, Kendell, Kunz, Lake, Langford, Loertscher, Mader, Marley, McKague, Meyer, Montgomery, Mortensen, Moss, Moyle, Pearce, Pischner, Pomeroy, Raybould, Ridinger, Roberts, Robison, Sali, Schaefer, Shepherd, Smylie, Stevenson, Swan, Tilman, Trail, Wheeler, Wood, Young, Mr. Speaker

NAYS -- Jaquet, Stone

Absent and excused -- Sellman, Smith

Floor Sponsor -- Kunz

Title apvd - to Senate

03/09 Senate intro - 1st rdg - to St Aff

03/19 Rpt out - rec d/p - to 2nd rdg

03/20 2nd rdg - to 3rd rdg

03/21 3rd rdg - PASSED - 23-10-2

AYES -- Andreason, Boatright, Branch, Brandt, Bunderson, Burtenshaw,

EXHIBIT

A

Cameron, Darrington, Davis, Frasure, Geddes, Goedde, Hawkins, Ipsen,
King-Barrutia, Lee, Lodge, Richardson, Risch, Sandy, Thorne, Wheeler,
Williams,
NAYS -- Deide, Dunklin, Ingram, Keough, Noh, Schroeder, Sims,
Stegner, Stennett, Whitworth
Absent and excused -- Danielson, Sorensen

Floor Sponsor -- King-Barrutia

Title apvd - to House

03/22 To enrol - rpt enrol - Sp signed
03/23 Pres signed
03/26 To Governor
03/31 Governor signed
Session Law Chapter 277
Effective: 07/01/01

Bill Text

|||| LEGISLATURE OF THE STATE OF IDAHO ||||
Fifty-sixth Legislature First Regular Session - 2001

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 340

BY STATE AFFAIRS COMMITTEE

1 AN ACT
2 RELATING TO ABORTIONS; AMENDING SECTION 18-605, IDAHO CODE, TO REVISE PENA
3 TIES RELATING TO UNLAWFUL ABORTIONS AND TO MAKE TECHNICAL CORRECTION
4 AMENDING SECTION 18-609A, IDAHO CODE, TO PROVIDE THAT A PETITION MAY
5 FILED IN THE COUNTY WHERE THE MINOR RESIDES OR THE COUNTY WHERE THE ABO
6 TION IS CAUSED OR PERFORMED, TO PROVIDE FOR INITIATION OF AN INVESTIGATI
7 OR FILING OF AN INFORMATION, COMPLAINT OR PETITION AGAINST A PERSON OTH
8 THAN THE PETITIONER BASED UPON CERTAIN ALLEGATIONS OF WHICH THE COURT
9 MADE AWARE DURING A PETITION HEARING AND TO PROVIDE THAT IF A MINOR WOU
10 HAVE BEEN PRIVILEGED TO WITHHOLD INFORMATION OR EVIDENCE THAT WAS REQUIR
11 AS PROOF UNDER SECTION 18-609A, IDAHO CODE, THEN HER ANSWERS GIVEN, EV
12 DENCE PRODUCED AND INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM H
13 ANSWERS MAY NOT BE USED AGAINST HER IN A CRIMINAL CASE EXCEPT THAT SHE M
14 BE PROSECUTED OR SUBJECTED TO PENALTY OR FORFEITURE FOR ANY PERJURY, FAL
15 SWEARING OR CONTEMPT COMMITTED IN ANSWERING, FAILING TO ANSWER OR PRODU
16 ING OR FAILING TO PRODUCE EVIDENCE AS REQUIRED BY THE COURT; REPEALI
17 SECTION 18-614, IDAHO CODE; AND AMENDING CHAPTER 6, TITLE 18, IDAHO CODE
18 BY THE ADDITION OF A NEW SECTION 18-614, IDAHO CODE, TO PROVIDE F
19 DEFENSES TO PROSECUTION.

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

21 SECTION 1. That Section 18-605, Idaho Code, be, and the same is here
22 amended to read as follows:

23 18-605. UNLAWFUL ABORTIONS -- PROCUREMENT OF -- PENALTY. (1) Every perso
24 not licensed or certified to provide health care in Idaho who, except as per
25 mitted by this ~~act~~ chapter, provides, supplies or administers any medicine
26 drug or substance to any woman or uses or employs any instrument or oth
27 means whatever upon any then-pregnant woman with intent thereby to ~~produce~~

cause or perform an abortion shall be guilty of a felony and shall be fine not to exceed five thousand dollars (\$5,000) and/or imprisoned in the state prison for not less than two (2) and not more than five (5) years.

(2) Any person licensed or certified to provide health care pursuant to title 54, Idaho Code, and who, except as permitted by the provisions of this chapter, provides, supplies or administers any medicine, drug or substance to any woman or uses or employs any instrument or other means whatever upon an then-pregnant woman with intent to cause or perform an abortion shall:

(a) For the first violation, be subject to professional discipline and be assessed a civil penalty of not less than one thousand dollars (\$1,000) payable to the board granting such person's license or certification;

(b) For the second violation, have their license or certification to practice suspended for a period of not less than six (6) months and be assessed a civil penalty of not less than two thousand five hundred dollars (\$2,500), payable to the board granting such person's license or certification; and

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(c) For each subsequent violation, have their license or certification to practice revoked and be assessed a civil penalty of not less than five thousand dollars (\$5,000), payable to the board granting such person's license or certification.

(3) Any person who is licensed or certified to provide health care pursuant to title 54, Idaho Code, and who knowingly violates the provisions of this chapter is guilty of a felony punishable as set forth in subsection (1) of this section, separate from and in addition to the administrative penalties set forth in subsection (2) of this section.

SECTION 2. That Section 18-609A, Idaho Code, be, and the same is here amended to read as follows:

18-609A. CONSENT REQUIRED FOR ABORTIONS FOR MINORS.

(1) (a) No person shall knowingly cause or perform an abortion upon minor unless:

(i) The attending physician has secured the written informed consent of the minor and the written informed consent of the minor parent; or

(ii) The minor is emancipated and the attending physician has received written proof of emancipation and the minor's written informed consent; or

(iii) The minor has been granted the right of self-consent to the abortion by court order pursuant to paragraph (b) of this subsection and the attending physician has received the minor's written informed consent; or

(iv) A court has found that the causing or performing of the abortion, despite the absence of informed consent of a parent, is in the best interests of the minor and the court has issued an order, pursuant to paragraph (b)(iv)2. of this subsection, granting permission for the causing or performing of the abortion, and the minor is having the abortion willingly, pursuant to paragraph (f) of this subsection; or

(v) A medical emergency exists for the minor so urgent that the is insufficient time for the physician to obtain the informed consent of a parent or a court order and the attending physician certifies such in the pregnant minor's medical records. In so certifying, the attending physician must include the factual circumstances supporting his professional judgment that a medical emergency existed and the grounds for the determination that there was insufficient time to obtain the informed consent of a parent or a court order. Immediate

after an abortion pursuant to this paragraph, the physician shall with due diligence, attempt to provide a parent of an unemancipated minor actual notification of the medical emergency. If the parent cannot be immediately contacted for such actual notification, the physician shall, with due diligence, attempt to provide actual notification to a parent for an eight (8) hour period following the causing or performing of the abortion and shall, until a parent receives such notification, ensure that the minor's postabortion medical needs are met. Notwithstanding the above, a physician shall, within twenty-four (24) hours of causing or performing an abortion pursuant to this paragraph, provide actual notification of the medical emergency by:

1. Conferring with a parent or agent designated by the parent and providing any additional information needed for the minor's proper care, and, as soon as practicable thereafter, securing

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the parent's written acknowledgement of receipt of such notification and information; or

2. Providing such actual notification in written form addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent with written acknowledgement of such receipt by the parent returned to the physician; or
3. Providing such actual notification in written form and mailing it by certified mail, addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee so that a postal employee can only deliver the notice to the authorized addressee.

For the purposes of this section, "actual notification" includes, but is not limited to, a statement that an abortion was caused or performed, a description of the factual circumstances supporting the physician's judgment that the medical emergency exists and a statement of the grounds for the determination that there was insufficient time to obtain the informed consent of a parent or court order.

If the physician causing or performing such abortion reasonably believes that the minor is homeless or abandoned so that the parent cannot be readily found or that the minor has suffered abuse or neglect such that the minor's physical safety would be jeopardized if a parent were notified that the abortion was caused or performed, the physician shall, in lieu of notifying a parent as required above, make a report to a law enforcement agency pursuant to section 16-1619, Idaho Code, and a petition shall be filed pursuant to section 16-1605, Idaho Code, which petition shall include a reference to this code section. Upon adjudication that the minor comes within the purview of chapter 16, title 16, Idaho Code, either on the basis of homelessness or abandonment such that no parent can be found, or on the basis of abuse or neglect such that the minor's physical safety would be in jeopardy if a parent were notified that the abortion was performed, the court shall, as a part of the decree, also order that the physician's duty to so notify a parent is relieved. In any other event, unless the court enters a finding that the best interests of the child require withholding notice to a parent, the court shall order that a parent receive actual notification of the medical emergency and the causing or performing of the abortion.

(b) A proceeding for the right of a minor to self-consent to an abortion pursuant to paragraph (a)(iii) of this subsection or for a court order pursuant to paragraph (a)(iv) of this subsection, may be adjudicated by court as follows:

(i) The petition shall be filed in the ~~judicial district court~~ where the minor resides or the county where the abortion is caused or performed. A minor shall have the legal capacity to make and prosecute a petition and appeal as set out herein. A guardian ad litem must assist the minor in preparing her petition and other documents filed pursuant to this section and may seek appointment as set forth below. A guardian ad litem, whether prospective or appointed, must be an attorney properly licensed in this state. The court shall ensure that the minor is given assistance in filing the petition if the minor desires a guardian ad litem but no qualified guardian ad litem is available.

(ii) The petition shall set forth:

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1. The initials of the minor;
 2. The age of the minor;
 3. The name and address of each parent, guardian, or, if the minor's parents are deceased or the minor is abandoned and a guardian has been appointed, the name and address of any other person standing in loco parentis of the minor;
 4. That the minor has been fully informed of the risks and consequences of the abortion procedure to be performed;
 5. A claim that the minor is mature, of sound mind and has sufficient intellectual capacity to consent to the abortion for herself;
 6. A claim that, if the court does not grant the minor the right to self-consent to the abortion, the court should find that causing or performing the abortion, despite the absence of the consent of a parent, is in the best interest of the minor and give judicial consent to the abortion; and
 7. If so desired by the minor, a request that the court appoint a guardian ad litem, or, alternatively, if no guardian ad litem is requested, that the court should consider whether appointment of a guardian ad litem for the minor is appropriate.
- The petition shall be signed by the minor and, if she has received assistance from a prospective guardian ad litem in preparing the petition, by the guardian ad litem.
- (iii) A hearing on the merits of the petition shall be held as soon as practicable but in no event later than five (5) days from the filing of the petition. The petition shall be heard by a district judge on the record in a closed session of the court. The court shall appoint a qualified guardian ad litem for the minor if one is requested in the petition. If no qualified guardian ad litem is available, the court may appoint some other person to act in the capacity of a guardian ad litem, who shall act to fulfill the purposes of this section and protect the confidentiality and other rights of the minor.
- At the hearing, the court shall, after establishing the identity of the minor, hear evidence relating to the emotional development, maturity, intellect and understanding of the minor; the nature of the abortion procedure to be performed and the reasonably foreseeable complications and risks to the minor from such procedure, including those related to future childbearing; the available alternatives to the abortion; the relationship between the minor and her parents; and any other evidence that the court may find relevant in determining whether the minor should be granted the right to self-consent to the abortion or whether the court's consent to causing or performing the abortion, despite the absence of consent of a parent, is in the best interests of the minor.

(iv) The order shall be entered as soon as practicable, but in no event later than five (5) days after the conclusion of the hearing. If, by clear and convincing evidence, the court finds the allegation of the petition to be true and sufficient to establish good cause, the court shall:

1. Find the minor sufficiently mature to decide whether to have the abortion and grant the petition and give the minor the right of self-consent to the abortion, setting forth the grounds for so finding; or
2. Find the performance of the abortion, despite the absence of

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the consent of a parent, is in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding.

If the court does not find the allegations of the petition to be true or if good cause does not appear from the evidence heard, the court shall deny the petition, setting forth the grounds on which the petition is denied.

If, in hearing the petition, the court becomes aware of allegations which, if true, would constitute a violation of any section of title 18, Idaho Code, by a person other than the petitioner, or would bring a child within the purview of chapter 16, title 16, Idaho Code, the court shall order, upon entry of final judgment in the proceeding under this subsection, that an appropriate investigation be initiated or an appropriate information, complaint or petition be filed. Such allegations shall be forwarded by the court with due consideration for the confidentiality of the proceedings under this section. If but for the requirements for proof as set forth in this section, the minor would have been privileged to withhold information given or evidence produced by her, the answers given or evidence produced on any information directly or indirectly derived from her answers may not be used against the minor in any manner in a criminal case except that she may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering or failing to answer, or in producing or failing to produce, evidence as required by the court.

(c) A notice of appeal from an order issued under the provisions of this subsection shall be filed within two (2) days from the date of issuance of the order. The record on appeal shall be completed and the appeal shall be perfected as soon as practicable, but in no event later than five (5) days from the filing of notice of appeal. Because time may be of the essence regarding the performance of the abortion, appeals pursuant to this subsection shall receive expedited appellate review.

(d) Except for the time for filing a notice of appeal, a court may enlarge the times set forth pursuant to this subsection upon request of the minor or upon other good cause appearing, with due consideration of the expedited nature of these proceedings.

(e) No filing, appeal or other fees shall be charged for cases or appeals brought pursuant to this section.

(f) If a minor desires an abortion, then she shall be orally informed of and, if possible, sign the written consent required by this act, in the same manner as an adult person. No abortion shall be caused or performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to court order if the abortion is necessary to preserve the life of the minor.

(g) All records contained in court files of judicial proceedings arising under the provisions of this subsection, and subsection (3) of this section, shall be confidential and exempt from disclosure pursuant to section

48 9-340G, Idaho Code. Dockets and other court records shall be maintained
49 and court proceedings undertaken so that the names of the parties to
50 actions brought pursuant to this section will not be disclosed to the pub
51 lic.
52 (2) The administrative director of the courts shall compile statistics
53 for each county for each calendar year, accessible to the public, including:
54 (a) The total number of petitions filed pursuant to paragraph (b) of sub
55 section (1) of this section; and

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1 (b) The number of such petitions filed where a guardian ad litem was
2 requested and the number where a guardian ad litem or other person acting
3 in such capacity was appointed; and
4 (c) The number of such petitions for which the right to self-consent was
5 granted; and
6 (d) The number of such petitions for which the court granted its informed
7 consent; and
8 (e) The number of such petitions which were denied; and
9 (f) For categories described in paragraphs (c), (d) and (e) of this sub
10 section, the number of appeals taken from the court's order in each cate
11 gory; and
12 (g) For each of the categories set out in paragraph (f) of this subsec
13 tion, the number of cases for which the district court's order was
14 affirmed and the number of cases for which the district court's order was
15 reversed.

16 (3) In addition to any other cause of action arising from statute or
17 otherwise, any person injured by the causing or performing of an abortion on
18 a minor in violation of any of the requirements of paragraph (a) of subsec
19 (1) of this section, shall have a private right of action to recover all dam
20 ages sustained as a result of such violation, including reasonable attorney's
21 fees if judgment is rendered in favor of the plaintiff.

22 (4) Statistical records.
23 (a) The vital statistics unit of the department of health and welfare
24 shall, in addition to other information required pursuant to section
25 39-261, Idaho Code, require the complete and accurate reporting of infor
26 mation relevant to each abortion performed upon a minor which shall
27 include, at a minimum, the following:

28 (i) Whether the abortion was performed following the physician's
29 receipt of:
30 1. The written informed consent of a parent and the minor; or
31 2. The written informed consent of an emancipated minor for
32 herself; or
33 3. The written informed consent of a minor for herself pursuant
34 to a court order granting the minor the right to self-consent
35 or
36 4. The written informed consent of a court pursuant to an order
37 which includes a finding that the performance of the abortion
38 despite the absence of the consent of a parent, is in the best
39 interests of the minor; or
40 5. The professional judgment of the attending physician that
41 the performance of the abortion was immediately necessary due to
42 a medical emergency and there was insufficient time to obtain
43 consent from a parent or a court order.

44 (ii) If the abortion was performed due to a medical emergency and
45 without consent from a parent or court order, the diagnosis upon
46 which the attending physician determined that the abortion was imme
47 diately necessary due to a medical emergency.

48 (b) The knowing failure of the attending physician to perform any one (1
49 or more of the acts required under this subsection is grounds for disci

plined pursuant to section 54-1814(6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars (\$100 for each month or portion thereof that each such failure continues, payable to the center for vital statistics and health policy, but such failure shall not constitute a criminal act.

(5) As used in this section:

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- (a) "Cause or perform an abortion" means to interrupt or terminate pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage upon a minor known to be pregnant.
- (b) "Emancipated" means any minor who has been married or is in active military service.
- (c) (i) "Medical emergency" means a sudden and unexpected physical condition which, in the reasonable medical judgment of any ordinarily prudent physician acting under the circumstances and conditions then existing, is abnormal and so complicates the medical condition of the pregnant minor as to necessitate the immediate causing or performing of an abortion:
1. To prevent her death; or
 2. Because a delay in causing or performing an abortion will create serious risk of immediate, substantial and irreversible impairment of a major physical bodily function of the patient.
- (ii) The term "medical emergency" does not include:
1. Any physical condition that would be expected to occur in normal pregnancies of women of similar age, physical condition and gestation; or
 2. Any condition that is predominantly psychological or psychiatric in nature.
- (d) "Minor" means a woman less than eighteen (18) years of age.
- (e) "Parent" means one (1) parent of the unemancipated minor, or a guardian appointed pursuant to chapter 5, title 15, Idaho Code, if the minor has one.

SECTION 3. That Section 18-614, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Chapter 6, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a **NEW SECTION**, to be known and designated as Section 18-614, Idaho Code, and to read as follows:

18-614. DEFENSES TO PROSECUTION. (1) No physician shall be subject to criminal or administrative liability for causing or performing an abortion upon a minor in violation of any provision of subsection (1) of section 18-609A, Idaho Code, if prior to causing or performing the abortion the physician obtains either positive identification or other documentary evidence from which a reasonable person would have concluded that the woman seeking the abortion was either an emancipated minor or was not then a minor and if the physician retained, at the time of receiving the evidence, a legible photocopy of such evidence in the physician's office file for the woman. This defense is an affirmative defense that shall be raised by the defendant and is not an element of any crime or administrative violation that must be proved by the state.

(2) If, due to a medical emergency as defined in subsection (5) of section 18-609A, Idaho Code, there was insufficient time for the physician to confirm that the woman, due to her age, did not then come within the provisions of subsection (1) of section 18-609A, Idaho Code, the physician shall not be subject to criminal or administrative liability for performing the abortion in violation of subsection (1)(a)(v) of section 18-609A, Idaho Code if, as soon as possible but in no event longer than twenty-four (24) hours

49 after performing the abortion, the physician obtained positive identificatio
 50 or other documentary evidence from which a reasonable person would have con
 51 cluded that the woman seeking the abortion was either an emancipated minor o
 52 was not then a minor and if the physician retained, at the time of receivin

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1 the evidence, a legible photocopy of such evidence in the physician's offic
 2 file for the woman. This defense is an affirmative defense that shall b
 3 raised by the defendant and is not an element of any crime or administrativ
 4 violation that must be proved by the state.

5 (3) If after performing an abortion under circumstances of a medica
 6 emergency as defined in subsection (5) of section 18-609A, Idaho Code, th
 7 physician, after reasonable inquiry, is unable to determine whether or not th
 8 woman is a minor, the physician shall not be subject to criminal, civil o
 9 administrative liability for taking any action that would have been require
 10 by subsection (1)(a)(v) of section 18-609A, Idaho Code, if the woman had bee
 11 a minor at the time the abortion was caused or performed.

12 (4) For purposes of this section, "positive identification" means a law
 13 fully issued state, district, territorial, possession, provincial, national o
 14 other equivalent government driver's license, identification card or militar
 15 card, bearing the person's photograph and date of birth, the person's vali
 16 passport or a certified copy of the person's birth certificate.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE

RS 11155C1

This legislation makes technical correction to Idaho's
 Parental Consent statutes which will help to resolve peripheral
 issues raised in litigation. The original intention of the
 parental consent statutes remains in tact and its underlying
 provisions are not weakened. This legislation addresses factual
 issues raised in the litigation which were not originally
 intended to be targeted by SB 1299 from the 2000 legislative
 session.

FISCAL IMPACT

No net fiscal impact.

Contact

Name: Clinton Miner, Office of the Attorney General

Phone: 334-2400

STATEMENT OF PURPOSE/FISCAL NOTE

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