

IDAHOANS UNITED *for*
Women & Families



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IDAHO SECRETARY OF STATE

November 20, 2024

To the Honorable Phil McGrane
Secretary of State
Idaho Secretary of State's Office
700 W Jefferson St, Room E205
Boise, Idaho 83720

Re: Reproductive Freedom and Privacy Act Initiative – Resubmission

Dear Secretary McGrane,

This letter accompanies our resubmission of the enclosed Reproductive Freedom and Privacy Act Initiative, which would establish a right to make private reproductive health care decisions, including abortion up to fetal viability and in medical emergencies.

We are submitting the Initiative with a new petition making slight revisions to the prior version to address typos and clarify key terms, including to further clarify that the Initiative does not create a financial obligation on the state, its agencies, or their programs to pay for, fund, or subsidize the reproductive health care protected by the Initiative. Because of this change accompanied by a new petition, we respectfully ask that your Office request that the official fiscal impact statement for the Initiative from the Division of Financial Management be issued to reflect the enclosed Initiative's further clarified provision. Care has been taken to avoid substantive changes to the operative portions of the Initiative, including those addressed by the issued titles, while enhancing clarity and ensuring the language accurately reflects its purpose and intent.

Very truly yours,

A handwritten signature in cursive script that reads 'Melanie Folwell'.

Melanie Folwell

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

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

39-801. SHORT TITLE. This act shall be known and may be cited as the “Reproductive Freedom and Privacy Act.”

39-802. STATEMENT OF PURPOSE. The Reproductive Freedom and Privacy Act recognizes that reproductive health care choices—such as the use of contraception, fertility treatments, childbirth care, miscarriage care, the decision to continue one’s own pregnancy, and abortion—are deeply private matters that should be decided by a person in consultation with their health care provider. This statute upholds a person’s rights to make their own decisions based on their own values, health care needs, and circumstances—free from the fear of external pressures or punitive consequences to them or their health care provider. The act supports a person’s right to reproductive freedom and privacy, protects the confidential nature of the patient-provider relationship, and secures a person’s right to make their own health care decisions without government interference.

39-803. REPRODUCTIVE FREEDOM AND PRIVACY ACT

1. This act establishes a right to make private reproductive health care decisions, including abortion up to fetal viability and in medical emergencies.
2. Notwithstanding any other provision of law to the contrary:
 - a. Every person has the right to reproductive freedom and privacy, which is the right to make personal decisions about reproductive health care that directly impact the person’s own body, including but not limited to the right to make decisions about:
 - i. Abortion;
 - ii. Childbirth care;
 - iii. Contraception;
 - iv. Fertility treatment;
 - v. Miscarriage care; and
 - vi. Prenatal, pregnancy, and postpartum care.
 - b. The right to reproductive freedom and privacy includes the right of privacy in making personal decisions about reproductive health care in consultation with a health care provider.
 - c. A person’s voluntary exercise of the right to reproductive freedom and privacy shall not be burdened, interfered with, discriminated against, deprived, or prohibited by the state, directly or indirectly, in any manner, unless such state action is narrowly tailored to improve or maintain the health of the person seeking reproductive health care through

the least restrictive means.

- d. Any person or entity may voluntarily advise, assist, facilitate, inform, refer, or otherwise aid another person exercising the right to reproductive freedom and privacy, and the state shall not burden, interfere with, discriminate against, deprive, or prohibit such acts, directly or indirectly, in any manner, unless such state action is narrowly tailored to improve or maintain the health of the person seeking reproductive health care through the least restrictive means.
 - e. In no case may reproductive health care provided consistent with this act by a health care provider be a basis for professional discipline, civil liability, or criminal liability as to a health care provider solely on the basis that the health care provider knowingly advised, assisted, facilitated, informed, referred, or otherwise aided a person in exercising their right to reproductive freedom and privacy.
3. Provided further that as this act specifically applies to abortion:
- a. After the point of fetal viability, it shall not be a violation of the right to reproductive freedom and privacy for the state to regulate abortion, except in cases of medical emergency.
4. The provisions of this act are to be liberally construed in favor of reproductive freedom and privacy and are intended to control over any other section of Idaho Code, consistent with the following:
- a. Nothing in this act shall be construed to limit any right or access to reproductive health care, including but not limited to abortion, that currently exists or is otherwise provided for or guaranteed by law.
 - b. This act does not create a financial obligation on the state, its agencies, or their programs to pay for, fund, or subsidize the reproductive health care protected by this act.
 - c. Nothing in this act will be deemed to bar or otherwise apply to a claim of medical malpractice against a health care provider for failing to comply with the applicable community standard of health care practice, as set forth in Section 6-1012, Idaho Code.
 - d. Nothing in this act will infringe on the protections and accommodations regarding a health care provider's freedom of conscience, as set forth in Section 18-611, Idaho Code.
 - e. If the application of any provision of this act is declared invalid for any reason including by the application thereof, such invalidity shall not affect the validity of the remaining portions of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

5. Definitions. As used in this act:

- a. "Abortion" means a medical treatment that is intended to terminate a pregnancy.
- b. "Childbirth care" means the medical treatment provided by health care providers in the processes of labor and delivery, including all stages of labor, the act of giving birth, and any medical procedures related to the delivery of a child, whether by vaginal birth or cesarean section.
- c. "Contraception" means any act of preventing pregnancy including the use of any device, drug, procedure, or biological product intended for use in the prevention of pregnancy.
- d. "Fetal viability" means the point in a pregnancy when, on the basis of a physician's good faith medical judgment, based on the facts known at the time, and determined on a case-by-case basis, the fetus has a significant likelihood of sustained survival outside of the uterus without extraordinary medical measures.
- e. "Fertility Treatment" means the treatment of infertility and related conditions, including but not limited to assisted reproductive technology and in vitro fertilization.
- f. "Health care provider" means a licensed person or an entity that provides health care or medical treatment.
- g. "Medical emergency" means a physical medical condition that, on the basis of a physician's good faith medical judgment, based on the facts known at the time, and determined on a case-by-case basis, complicates the physical medical condition of a pregnant patient as to warrant an abortion:
 - i. To protect a pregnant patient's life; or
 - ii. For which a delay may:
 - a. Place the health of a pregnant patient in serious jeopardy;
 - b. Cause serious impairment to a bodily function of a pregnant patient; or
 - c. Cause serious dysfunction of any bodily organ or part of a pregnant patient's body.
- h. "Miscarriage care" means the treatment and management of pregnancy loss.
- i. "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. A physician is a health care provider as defined in this act.
- j. "Prenatal, pregnancy, and postpartum care" means health care and other medical services provided before, during, and after childbirth, including but not limited to exams, treatments, diagnostic testing, postpartum recovery and support, and any other care necessary for the health of the patient.

- k. “Reproductive health care” means health care and other medical services related to the reproductive processes, functions, and systems. It includes but is not limited to abortion, contraception, childbirth, fertility treatment, miscarriage care, and prenatal, pregnancy, and postpartum care.

SECTION 2. This act shall be in full force and effect on and after January 1, 2027.