Note: If Prop 1 passes, this is the full language that will be in Idaho Statute and considered law.

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.

4 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:

5 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:

6 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.

7 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.

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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.

Please refer to the included document for breakdown of these red flags:

The 10 Red Flags of Prop 1 Legislation

The 10 Red Flags of Prop 1 Legislation

1. **(Section 2, a.) This phrase is a classic expansion device. It converts a specific list into an open invitation for litigation to enlarge the protected category.**
   a. Allows expansion into procedures that affect reproductive organs or systems but are not primarily about reproduction
   b. The language can be used to challenge waiting periods, informed-consent requirements, ultrasound mandates, or limits on specific methods if a provider frames them as interfering with the patient's "personal decisions about reproductive health care.
   c. A minor (or the minor's provider) could argue that requiring parental notice or consent for abortion, contraception, or other listed care burdens the minor's independent right to make those decisions.
   d. Advocates can (and historically have) used broad rights language to press for mandates that private insurers or public programs cover the full range of "reproductive health care," including items far outside the original political sales pitch of contraception and early abortion.
2. **(Section 2, b.) This ties privacy to the act of consulting a health-care provider.**
   a. If a consultation reveals information that would normally trigger mandatory reporting (abuse, trafficking, suicidal tendencies, etc.), the privacy framing can be used to argue that reporting itself burdens the protected private decision-making process. This creates friction with existing child-protection and public-safety statutes.
   b. For minors, a requirement of parental notice or consent can be attacked as an unconstitutional or statutory intrusion into the minor's private consultation with a provider. The language frames the protected interest as the privacy of the decision in consultation with the provider, which can be used to treat the parent as an outsider rather than a necessary party.
   c. Because the right is framed around consultation with a provider, questions arise about tele-health, non-physician counselors, out-of-state providers, or even AI-assisted consultations that lead to the the decision to end a healthy pregnancy.
   d. Investigations into whether a provider gave adequate counseling, followed medical standards, or engaged in coercive practices become more difficult. The provider can invoke the patient's statutory right of privacy in the consultation as a barrier to discovery, subpoenas, or professional discipline—especially when the statute already protects providers from liability solely for assisting in the exercise of the right.
3. **(Section 2, c.) Traditional compelling interests of the State become unimportant. This section is written in a way that makes almost any meaningful regulation presumptively invalid, and the undefined breadth of "health" is a significant part of why.**
   a. The only permissible government interest is improving or maintaining the patient's own health. The health of the fetus, the interests of parents, public morals, fetal dignity, or any other traditional state interest are irrelevant under this language.
   b. A wide range of claims can be framed as "health." Such as mental health (anxiety, depression, stress), exacerbating existing physical ailments, body-image concerns, and even career or educational pressures.
4. **(Section 2, d.) This should be of concern to even those who are pro-abortion.**
   a. This places no limit on who can facilitate or even refer an abortion, and it shields them from civil and criminal liability.
   b. This may even prevent the state from promoting abortion alternatives as it may "interfere with" reproductive freedom and privacy.

5. **(Section 3, a.) The proponents of this initiative concede that reproductive freedom and privacy have its limits after the unborn is considered "viable" outside of the womb.**
    a. This determination is to be made by patient and health care representative on a case-by-case basis under the definition laid out in **Red Flag 9.**
6. **(Section 4, a.) There is that phrase again.**
    a. This section appears to be a repeat of earlier language, but it is allowed an even broader context.
7. **(Section 4, b.) While no direct funding of abortion is mandated, there are costs accrued by the state due to complications or after-care, as pointed out by Idaho Secretary of State, Attorney General, and Division of Financial Management.**
    a. Medicaid covers medically necessary services to treat complications from all abortions. It is anticipated that as legal abortions increase, the complications will also increase.
    b. Complications from chemical abortions alone would cost the state taxpayer $531 per claim, and depending on the patient's medicaid status, would cost the federal taxpayer anywhere from $1000 to $4700 per claim.
    c. While abortions themselves aren't intended to be funded by taxpayers, the complications, and after care can be.
8. **(Section 5, d.) The phrase "extraordinary medical measures" is inherently subjective and context-dependent.**
    a. Babies who need NICU care may undergo various types of measures that some may see as routine for the diagnosis or extraordinary such as prolonged mechanical ventilation, intubation or surgery immediately after birth.
    b. Because of this open-ended language, the same gestational age and similar medical facts can produce different viability determinations depending on the physician's judgment.
9. **(Section 5, g.) This definition now means that abortions are allowed beyond just saving the life of the mother.**
    a. Path (i) covers the life of the mother. Path (ii) goes well beyond that. It specifically allows post-viability abortions in situations that go far beyond preventing the mother's death.
    b. The physician does not have to conclude that serious harm will occur or is likely to occur. It is enough that a delay may produce one of the listed results.
    c. Although the overall definition begins with "physical medical condition," subsection (ii) (a) uses the broader term "health." In the legal system, "health" has historically been interpreted to include emotional and psychological factors.
    d. These phrases can be applied to a wide range of conditions. A physician could argue that continuing the pregnancy would seriously impair a bodily function or risk dysfunction of an organ (which includes the brain), even if the risk is not immediately life-threatening.
    e. There is no external objective standard or second-opinion requirement written into the definition. Once a physician documents that the criteria are met, the abortion is protected under the act.
10. **(Section 5, k.) There's that phrase again.**
    a. An open invitation for anything the abortion crowd deems as reproductive health care. q