Idaho Prop 1 vs. Section 18-622:

Where the Initiative's Language Breaks Down

Side-by-Side

Issue	Current Law — Idaho Code 18-622	Prop 1 — Reproductive Freedom & Privacy Act
Who may provide care	A "physician" only — every exception requires a licensed physician's good-faith medical judgment.	A "health care provider" — defined only as "a licensed person or an entity." No professional category specified.
Gestational limit	None stated as a limit — abortion is a felony at any stage except two narrow exceptions.	Elective abortion allowed up to "viability," a term left to case-by-case physician discretion with no gestational week attached.
Post-limit exception	"Necessary to prevent death." Self-harm threats expressly do NOT count.	"Medical emergency" = life risk OR "serious impairment to a bodily function" OR "serious dysfunction of any bodily organ or part." "Serious" is undefined; no self-harm exclusion.
Minors	Parent/guardian must report to law enforcement or CPS before a minor's rape/incest-track abortion.	No mention of minors anywhere. "Every person" carries the identical, unqualified right.
Reporting / recordkeeping	72-hour report requirement for rape/incest cases; report kept in confidential medical record.	No reporting or recordkeeping requirement of any kind.
Facility / inspection standards	Physician-only rule plus existing medical licensing board oversight.	Not addressed anywhere in the text. No hospital, clinic, or inspection standard is written into the act.
Standard the state must meet to regulate	Ordinary police power — legislature sets the rule.	Any state action must be "narrowly tailored ... through the least restrictive means," and the act is written to "control over any other section of Idaho Code."
Penalties for violation	Felony; 2–5 years prison; license suspension (6 mo. minimum) or revocation.	None written into the act.

Shaded rows mark where Prop 1 is silent, undefined, or broader than current law.

Bottom Line

- Current law (18-622) says **physician** — a licensed medical doctor — every single time it authorizes an abortion. Prop 1 swaps that word out for "health care provider," defined as nothing more than "a licensed person or an entity." That is not a small edit.
- Prop 1 replaces a felony statute with defined exceptions with an undefined "right" subject to an undefined "viability" line and an undefined "medical emergency" standard.
- It contains no facility standard, no reporting requirement, no minor-protection provision, and no penalty for violation — all things current law has.
- Section 4 of the act is written to "control over any other section of Idaho Code" and to bar any state regulation that isn't "narrowly tailored" and the "least restrictive means" — language borrowed from strict-scrutiny constitutional review,

which is the hardest legal test for a government rule to survive. That's the mechanism that puts 18-622's physician-only rule, its rape/incest reporting requirement, and its minor safeguards on the chopping block.

The Vague Terms, in the Initiative's Own Words

1. “Health care provider” — undefined by profession

The act defines the term doing all the work like this:

> *“Health care provider” means a licensed person or an entity that provides health care or medical treatment.*

(Section 39-803(5)(f))

- Licensed in what? The act never says. Not “licensed to practice medicine,” not “physician,” not even “in Idaho.” Any occupational license could arguably qualify.
- This is the term that governs day-to-day: “the right of privacy in making personal decisions about reproductive health care in consultation with a health care provider” (39-803(2)(b)). “Physician” only resurfaces for two narrow, technical judgment calls — setting the viability point and certifying a medical emergency (39-803(5)(d), (g)). Who actually performs the abortion is never pinned to a physician.

2. No facility, licensing, or inspection standard

- Search the operative text (39-801 through 39-803) and there is no requirement that abortion be performed in a hospital, licensed clinic, or ambulatory surgical center — nothing at all about where or under what safety conditions.
- Contrast that with current law, where the physician-only rule ties abortion to Idaho's existing medical licensing board oversight by default.

3. “Viability” — a moving target, not a date

> *“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.*

(Section 39-803(5)(d))

- No week, no trimester, no fixed line — it's decided case by case, provider by provider. Two different physicians could reasonably set the viability point weeks apart.
- Current law doesn't use a viability concept at all; it is a near-total ban with two narrow, clearly defined exceptions regardless of gestational age. This is the single biggest structural shift between the two documents.

4. “Medical emergency” — broader than “necessary to prevent death”

> *...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: place the health of a pregnant patient in serious jeopardy; cause serious impairment to a bodily function of a pregnant patient; or cause serious dysfunction of any bodily organ or part of a pregnant patient's body.*

(Section 39-803(5)(g))

- “Serious” is never defined. “Serious impairment to a bodily function” and “serious dysfunction of any bodily organ or part” are the post-viability exception — and they are considerably wider than current law's “necessary to prevent the death of the pregnant woman,” which also expressly excludes self-harm threats as a justification. Prop 1 includes no equivalent exclusion.

5. “Narrowly tailored” / “least restrictive means” — no minor carve-out, no definition

> *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.*

(Section 39-803(2)(c), repeated in (2)(d))

- This is strict-scrutiny language. Any regulation the state wants to keep — physician-only rules, parental/guardian involvement for minors, rape/incest reporting, waiting periods, informed consent forms — has to be defended in court as "narrowly tailored" to health, using the "least restrictive means." Protecting fetal life or verifying an abuse report isn't a health justification, so those current-law provisions would have to survive on different grounds or fall.
- The act never defines a minor, never mentions parental involvement, and applies "every person" uniformly. Any parental-notice or guardian-report requirement modeled on current law's 18-622(2)(b)(ii) would itself need to clear this same test.

What Else Is Missing Entirely

- No penalty provision. The act creates a right and immunizes providers (39-803(2)(e)) but writes in no consequence for anyone who violates it — nothing like current law's felony, prison range, or license suspension/revocation schedule.
- No reporting or recordkeeping requirement of any kind — current law's 72-hour rape/incest report rule has no counterpart.
- Open-ended list of protected decisions: 39-803(2)(a) lists six categories "including but not limited to," leaving room for courts to read in additional "reproductive health care" categories the drafters didn't name.
- One-way ratchet: 39-803(4)(a) says nothing in the act can be read to limit any reproductive-health access "that currently exists or is otherwise provided for or guaranteed by law," while 39-803(4)'s preamble says the act "control[s] over any other section of Idaho Code." Combined with the least-restrictive-means test, this is built to expand access and make future restriction very hard to write — not to coexist neutrally with 18-622.
- The state's own fiscal note assumes chemical-abortion volume will "increase to the levels prior to 2022" (i.e., back to pre-Dobbs numbers) if this passes — that's the state's financial office, not the campaign, predicting a return to higher abortion volume. The $3,100–$7,800/year cost estimate only covers Medicaid chemical-abortion complications; DFM says outright it lacks reliable data to estimate surgical-abortion costs at all.

Talking Points

- "This measure trades a licensed physician for anyone who's 'licensed' — the initiative never says licensed as what."
- "There's no gestational week in this text. 'Viability' is whatever a given provider decides, case by case."
- "Current law requires a rape or incest report before a first-trimester exception applies. Prop 1 has no reporting requirement anywhere in it."
- "There's no facility standard — nothing requiring a hospital or licensed clinic. It's not in the text."
- "The measure is written to override other Idaho Code sections unless the state can prove its rule is the 'least restrictive means' — that's the same tough legal test used to strike down laws in federal court. It puts every safeguard in 18-622 back in litigation."

Sources

- Idaho Code § 18-622, Defense of Life Act (accessed legislature.idaho.gov, current as of the 2023 amendment).
- Proposed initiative: Reproductive Freedom and Privacy Act, adding Idaho Code Title 39, Chapter 8 (§§ 39-801 to 39-803), resubmitted Nov. 20, 2024 by Idahoans United for Women & Families.
- Idaho Attorney General ballot title certification, Jan. 10, 2025, and Secretary of State's revised short title/fiscal impact statement following Idahoans United for Women and Families v. Labrador, 172 Idaho 820, 563 P.3d 523 (2025).
- Division of Financial Management fiscal impact statement, Dec. 17, 2024 (as revised).