

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 391, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO HEALTH AND SAFETY; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 90, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE A STATEMENT OF PUBLIC POLICY AND TO PROVIDE FOR ENFORCEMENT; AND AMENDING SECTION 67-1401, IDAHO CODE, TO REVISE DUTIES OF THE ATTORNEY GENERAL.

Be It Enacted by the Legislature 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 90, Title 39, Idaho Code, and to read as follows:

CHAPTER 90

IDAHO HEALTH FREEDOM ACT

39-9001. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Health Freedom Act."

39-9002. DEFINITIONS. (1) "Health care services" shall mean any service, treatment, or provision of product for the care of physical or mental disease, illness, injury, defect or condition, or to otherwise maintain or improve physical or mental health, subject to all laws and rules regulating health service providers and products within the state of Idaho.

(2) "Mode of securing" shall mean to purchase directly or on credit or by trade, or to contract for third-party payment by insurance or other legal means authorized by the state of Idaho, or to apply for or accept employer or government sponsored health care benefits under such conditions as may legally be required as a condition of such benefits, or any combination of the same.

(3) "Penalty" shall mean any civil or criminal fine, tax, salary or wage withholding, surcharge, fee or any other imposed consequence, established by law or rule of the federal government of the United States of America or its subdivision or agency, that is used to punish or discourage the exercise of rights protected under this chapter.

39-9003. STATEMENT OF PUBLIC POLICY. (1) The power to require or regulate a person's choice in the mode of securing health care services, or to impose a penalty related thereto, is not found in the Constitution of the United States of America, and is therefore a power reserved to the people pursuant to the Ninth Amendment, and to the several states pursuant to the Tenth Amendment. The state of Idaho hereby exercises its sovereign power to declare the public policy of the state of Idaho regarding the right of all persons residing in the state of Idaho in choosing the mode of securing health care services free from the imposition of penalties, or the threat

1 thereof, by the federal government of the United States of America relating
2 thereto.

3 (2) It is hereby declared that the public policy of the state of Idaho,
4 consistent with our constitutionally recognized and inalienable rights of
5 liberty, is that every person within the state of Idaho is and shall be free
6 to choose or decline to choose any mode of securing health care services
7 without penalty or threat of penalty by the federal government of the United
8 States of America.

9 (3) The policy stated herein shall not be applied to impair any right
10 of contract related to the provision of health care services to any person or
11 group.

12 39-9004. ENFORCEMENT. (1) No public official, employee, or agent
13 of the state of Idaho or any of its political subdivisions, shall act to
14 impose, collect, enforce, or effectuate any penalty in the state of Idaho
15 that violates the public policy set forth in section 39-9003(2), Idaho Code.

16 (2) The attorney general shall take such action as is provided in
17 section 67-1401(15), Idaho Code, in the defense or prosecution of rights
18 protected under this act.

19 SECTION 2. That Section 67-1401, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in
22 this chapter, it is the duty of the attorney general:

23 (1) To perform all legal services for the state and to represent
24 the state and all departments, agencies, offices, officers, boards,
25 commissions, institutions and other state entities, in all courts and
26 before all administrative tribunals or bodies of any nature. Representation
27 shall be provided to those entities exempted pursuant to the provisions of
28 section 67-1406, Idaho Code. Whenever required to attend upon any court or
29 administrative tribunal the attorney general shall be allowed necessary and
30 actual expenses, all claims for which shall be audited by the state board of
31 examiners.

32 (2) To advise all departments, agencies, offices, officers, boards,
33 commissions, institutions and other state entities in all matters involving
34 questions of law.

35 (3) After judgment in any of the causes referred to in the first
36 subdivision, to direct the issuing of such process as may be necessary to
37 carry the same into execution.

38 (4) To account for and pay over to the proper officer all moneys
39 received which belong to the state.

40 (5) To supervise nonprofit corporations, corporations, charitable
41 or benevolent societies, person or persons holding property subject
42 to any public or charitable trust and to enforce whenever necessary
43 any noncompliance or departure from the general purpose of such trust
44 and, in order to accomplish such purpose, said nonprofit corporations,
45 corporations, charitable or benevolent societies, person or persons holding
46 property subject to any public or charitable trust are subject at all times
47 to examination by the attorney general, on behalf of the state, to ascertain
48 the condition of its affairs and to what extent, if at all, said trustee

1 or trustees may have failed to comply with trusts said trustee or trustees
2 have assumed or may have departed from the general purpose for which it was
3 formed. In case of any such failure or departure, the attorney general shall
4 institute, in the name of the state, any proceeding necessary to enforce
5 compliance with the terms of the trust or any departure therefrom.

6 (6) To give an opinion in writing, without fee, to the legislature or
7 either house thereof, or any senator or representative, and to the governor,
8 secretary of state, treasurer, state controller, and the superintendent of
9 public instruction, when requested, upon any question of law relating to
10 their respective offices. The attorney general shall keep a record of all
11 written opinions rendered by the office and such opinions shall be compiled
12 annually and made available for public inspection. All costs incurred in
13 the preparation of said opinions shall be borne by the office of the attorney
14 general. A copy of the opinions shall be furnished to the supreme court and
15 to the state librarian.

16 (7) When required by the public service, to repair to any county in
17 the state and assist the prosecuting attorney thereof in the discharge of
18 duties.

19 (8) To bid upon and purchase, when necessary, in the name of the state,
20 and under the direction of the state controller, any property offered for
21 sale under execution issued upon judgments in favor of or for the use of the
22 state, and to enter satisfaction in whole or in part of such judgments as the
23 consideration for such purchases.

24 (9) Whenever the property of a judgment debtor in any judgment
25 mentioned in the preceding subdivision has been sold under a prior judgment,
26 or is subject to any judgment, lien, or encumbrance, taking precedence of the
27 judgment in favor of the state, under the direction of the state controller,
28 to redeem such property from such prior judgment, lien, or encumbrance; and
29 all sums of money necessary for such redemption must, upon the order of the
30 board of examiners, be paid out of any money appropriated for such purposes.

31 (10) When necessary for the collection or enforcement of any judgment
32 hereinbefore mentioned, to institute and prosecute, in behalf of the state,
33 such suits or other proceedings as may be necessary to set aside and annul all
34 conveyances fraudulently made by such judgment debtors; the cost necessary
35 to the prosecution must, when allowed by the board of examiners, be paid out
36 of any appropriations for the prosecution of delinquents.

37 (11) To exercise all the common law power and authority usually
38 appertaining to the office and to discharge the other duties prescribed by
39 law.

40 (12) To report to the governor, at the time required by this code, the
41 condition of the affairs of the attorney general's office and of the reports
42 received from prosecuting attorneys.

43 (13) To appoint deputy attorneys general and special deputy attorneys
44 general and other necessary staff to assist in the performance of the duties
45 of the office. Such deputies and staff shall be nonclassified employees
46 within the meaning of section 67-5302, Idaho Code.

47 (14) To establish a medicaid fraud control unit pursuant to the
48 provisions of section 56-226, Idaho Code, and to exercise concurrent
49 investigative and prosecutorial authority and responsibility with county
50 prosecutors to prosecute persons for the violation of the criminal

1 provisions of chapter 2, title 56, Idaho Code, and for criminal offenses that
2 are not defined in said chapter 2, title 56, Idaho Code, but that involve
3 or are directly related to the use of medicaid program funds or services
4 provided through the medicaid program.

5 (15) To seek injunctive and any other appropriate relief as
6 expeditiously as possible to preserve the rights and property of the
7 residents of the state of Idaho, and to defend as necessary the state
8 of Idaho, its officials, employees and agents in the event that any law
9 or regulation violating the public policy set forth in the Idaho health
10 freedom act, chapter 90, title 39, Idaho Code, is enacted by any government,
11 subdivision or agency thereof.