LEGISLATURE OF THE STATE OF IDAHO
Sixty-sixth Legislature Second Regular Session - 2022

IN THE SENATE

SENATE BILL NO. 1309

BY STATE AFFAIRS COMMITTEE

AN ACT
RELATING TO THE FETAL HEARTBEAT PREBORN CHILD PROTECTION ACT; AMENDING SECTION 18-8701, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER 289, LAWS OF 2021, TO REDESIGNATE THE SECTION AND TO REVISE A DEFINITION; AMENDING SECTION 18-8702, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER 289, LAWS OF 2021, TO REDESIGNATE THE SECTION AND TO REVISE LEGISLATIVE FINDINGS AND INTENT; AMENDING SECTION 18-8704, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER 289, LAWS OF 2021, TO REDESIGNATE THE SECTION AND TO PROVIDE THAT THE SECTION DOES NOT RECOGNIZE A RIGHT TO ABORTION BEFORE A FETAL HEARTBEAT IS DETECTED; AMENDING SECTION 18-8705, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER 289, LAWS OF 2021, TO REDESIGNATE THE SECTION, TO PROVIDE AN EFFECTIVE DATE UPON A CERTAIN OCCURRENCE, AND TO PROVIDE APPLICABILITY; REPEALING SECTION 18-8706, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER 289, LAWS OF 2021, RELATING TO EFFECTIVENESS UPON A CERTAIN OCCURRENCE; AMENDING SECTION 18-8707, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER 289, LAWS OF 2021, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR CIVIL CAUSES OF ACTION IN CERTAIN INSTANCES; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-8701, Idaho Code, as enacted by Section 1, Chapter 289, Laws of 2021, be, and the same is hereby amended to read as follows:

18-8701. DEFINITIONS. As used in this chapter:

1. "Abortion" means the use of any means to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the preborn child. "Abortion" does not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulations, fertilization, or the implantation of a fertilized ovum within the uterus.

2. "Fetal heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

3. "Fetus" and "preborn child" each mean an individual organism of the species Homo sapiens from fertilization until live birth.

4. "Gestational age" means the age of a preborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

5. "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay
will create serious risk of substantial and irreversible impairment of a major bodily function.

SECTION 2. That Section 18-8702, Idaho Code, as enacted by Section 1, Chapter 289, Laws of 2021, be, and the same is hereby amended to read as follows:

18-87028802. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and declares that:

(1) The life of each human being begins at fertilization, and unborn preborn children have interests in life, health, and well-being that should be protected.

(2) The cardiopulmonary definition of death, which is the reigning common law standard for determining death, is defined as the "irreversible cessation of circulatory and respiratory functions." This cardiopulmonary definition of death was included in the uniform determination of death act, a model law that was adopted by numerous medical and ethics organizations, including the national conference of commissioners on uniform state laws, the American medical association, and almost all states in the United States.

(3) Legal standards and the medical community at large both affirm that a consistent human heartbeat, independent of life support, is a core determining factor in establishing the legal presence of human life in a full range of circumstances, for old and young alike.

(4) The heartbeat of a preborn child begins at a biologically identifiable moment in time that can be detected and imaged by medical equipment.

(5) A detectable fetal heartbeat and its characteristics is a key medical predictor in whether a preborn child will reach live birth.

(6) The fetal heartbeat, when detected, presents a clearly identifiable point at which the preborn child in the womb has a greater than ninety-five percent (95%) chance of survival when carried to term.

(7) The presence of a human heartbeat is a more reliable indicator of life than the medically uncertain concept of "viability" and whether that preborn child is "potentially able to live outside the mother's womb."

(8) Therefore, the state of Idaho has a compelling interest in protecting the life of a preborn child at all stages of its development, including after the preborn child has a detectable heartbeat, which signals rhythmically and without pause the presence of a precious and unique life, one that is independent and distinct from the mother's and one that is also worthy of our utmost protection.

SECTION 3. That Section 18-8704, Idaho Code, as enacted by Section 1, Chapter 289, Laws of 2021, be, and the same is hereby amended to read as follows:

18-87048804. ABORTION FOLLOWING DETECTION OF A FETAL HEARTBEAT PROHIBITED. (1) A person may not perform an abortion on a pregnant woman when a fetal heartbeat has been detected, except in the case of a medical emergency, in the case of rape as defined in section 18-6101, Idaho Code, or in the case of incest as described in section 18-6602, Idaho Code. In the case of rape or incest:
(4a) If the woman is not a minor or subject to guardianship, then, prior to the performance of the abortion, the woman has reported the act of rape or incest to a law enforcement agency and provided a copy of such report to the physician who is to perform the abortion; or
(2b) If the woman is a minor or subject to guardianship, then, prior to the performance of the abortion, the woman or her parent or guardian has reported the act of rape or incest to a law enforcement agency or child protective services and a copy of such report have been provided to the physician who is to perform the abortion.
(2) Nothing in this section recognizes a right to abortion before a fetal heartbeat is detected.

SECTION 4. That Section 18-8705, Idaho Code, as enacted by Section 1, Chapter 289, Laws of 2021, be, and the same is hereby amended to read as follows:

18-8705. PENALTIES FOR VIOLATIONS -- EFFECTIVE UPON A CERTAIN OCCURRENCE. (1) This section shall become effective thirty (30) days following the issuance of the judgment in any United States appellate court case in which the appellate court upholds a restriction or ban on abortion for a preborn child because a detectable heartbeat is present on the grounds that such restriction or ban does not violate the United States constitution.
(2) Every licensed health care professional who intentionally, knowingly, and or recklessly performs or induces an abortion in violation of this chapter commits the crime of criminal abortion. Criminal abortion shall be a felony punishable by a sentence of imprisonment of no less than two (2) years and no more than five (5) years in prison.
(3) The professional license of any health care professional who performs or induces an abortion or who assists in performing or inducing an abortion in violation of this chapter shall be suspended by the appropriate licensing board for a minimum of six (6) months upon a first offense and shall be permanently revoked upon a subsequent offense.
(4) Nothing in this section shall be construed to conflict with the effectiveness of section 18-622, Idaho Code, following the occurrence of the circumstances described in that section. In the event both this section and section 18-622, Idaho Code, are enforceable, section 18-622, Idaho Code, shall supersede this section.

SECTION 5. That Section 18-8706, Idaho Code, as enacted by Section 1, Chapter 289, Laws of 2021, be, and the same is hereby repealed.

SECTION 6. That Section 18-8707, Idaho Code, as enacted by Section 1, Chapter 289, Laws of 2021, be, and the same is hereby amended to read as follows:

18-8707. CIVIL CAUSES OF ACTION. (1) Any woman on whom an abortion is performed in violation of this chapter may recover in a civil action all damages available to her under Idaho law from the person or persons who intentionally, knowingly, and recklessly violated the provisions of section 18-8703 or 18-8704, Idaho Code. Any female upon whom an abortion has been attempted or performed, the father of the preborn child, a grandparent of the
preborn child, a sibling of the preborn child, or an aunt or uncle of the pre-
born child may maintain an action for:

(a) All damages from the medical professionals who knowingly or reck-
lessly attempted, performed, or induced the abortion in violation of
this chapter;
(b) Notwithstanding any other provision of law, statutory damages in an
amount not less than twenty thousand dollars ($20,000) from the medical
professionals who knowingly or recklessly attempted, performed, or in-
duced an abortion in violation of this chapter; and
(c) Costs and attorney's fees.

(2) Notwithstanding any other provision of law, a person may bring an
action under this section not later than four (4) years following the date
the cause of action accrues.

(3) Notwithstanding any other provision of law, a civil cause of action
under this section may not be brought by a person who impregnated the mother
through an act of rape or incest.

(4) Notwithstanding any other provision of law, including chapter 1,
title 12, Idaho Code, a court may not award costs or attorney's fees to a de-
fendant in an action brought under this section.

(5) It shall be an affirmative defense if a person sued under subsection
(1) of this section reasonably believed, after conducting a reasonable in-
vestigation, that the physician performing or inducing the abortion had com-
plied or would comply with the provisions of this chapter. The defendant has
the burden of providing an affirmative defense by a preponderance of the evi-
dence.

(6) The civil causes of action provided for in this section exist inde-
dependently of any criminal action commenced pursuant to this chapter. A civil
cause of action may be pursued under the provisions of this chapter even if a
criminal prosecution is not pursued.

(7) Notwithstanding any other provision of law, including chapters 14,
17, and 18, title 54, Idaho Code, the requirements of this section shall be
enforced exclusively through the private civil causes of action described.
No enforcement of this section may be taken or threatened against any person
by this state, a political subdivision of this state, a prosecuting attor-
ney, or an executive or administrative officer or employee of this state or a
political subdivision of this state.

(8) Notwithstanding any other provision of law, this state, a state of-

(9) Nothing in this section shall be deemed to affect any familial
rights or responsibilities or any proceedings conducted under Idaho law.

SECTION 7. An emergency existing therefor, which emergency is hereby
declared to exist, this act shall be in full force and effect thirty days fol-
lowing signature by the Governor.