

IN THE SENATE

SENATE BILL NO. 1059

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO AN EMBRYO, FETUS, OR PREBORN CHILD; PROVIDING LEGISLATIVE IN-
2 TENT; AMENDING CHAPTER 3, TITLE 5, IDAHO CODE, BY THE ADDITION OF A
3 NEW SECTION 5-311A, IDAHO CODE, TO PROVIDE APPLICABILITY FOR A PREBORN
4 CHILD; AMENDING SECTION 18-907, IDAHO CODE, TO REMOVE A DEFINITION,
5 TO REMOVE PROVISIONS REGARDING EXEMPTIONS FROM PROSECUTION, AND TO
6 MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 9, TITLE 18, IDAHO CODE,
7 BY THE ADDITION OF A NEW SECTION 18-926, IDAHO CODE, TO DEFINE TERMS
8 AND TO ESTABLISH PROVISIONS REGARDING APPLICABILITY; REPEALING SEC-
9 TION 18-4016, IDAHO CODE, RELATING TO THE DEFINITION OF A HUMAN EMBRYO
10 AND FETUS AND PROHIBITING THE PROSECUTION OF CERTAIN PERSONS; AMEND-
11 ING CHAPTER 40, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
12 18-4018, IDAHO CODE, TO DEFINE TERMS AND TO ESTABLISH PROVISIONS RE-
13 GARDING APPLICABILITY; AND DECLARING AN EMERGENCY.
14

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

16 SECTION 1. LEGISLATIVE INTENT. (1) This act shall be known and may be
17 cited as the "Idaho Prenatal Equal Protection Act."

18 (2) Acknowledging the sanctity of innocent human life, created in the
19 image of God, the purpose of this act is to:

20 (a) Follow the Constitution of the United States, which requires that
21 "no state shall... deny to any person within its jurisdiction the equal
22 protection of the laws";

23 (b) Follow the Constitution of the State of Idaho, which provides in Ar-
24 ticle I, Section 2 that the government is instituted for the "equal pro-
25 tection" of the people;

26 (c) Protect the lives of preborn persons with the same criminal and
27 civil laws protecting the lives of born persons by removing provisions
28 that enable the commission of willful prenatal homicide and assault;
29 and

30 (d) Remove provisions that could be interpreted to allow a person to
31 pressure a pregnant mother to abort her child and, therefore, secure the
32 right to life and equal protection of the laws to all preborn children
33 from the moment of fertilization and to protect pregnant mothers.

34 SECTION 2. That Chapter 3, Title 5, Idaho Code, be, and the same is
35 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
36 ignated as Section 5-311A, Idaho Code, and to read as follows:

37 5-311A. APPLICATION TO PREBORN CHILD. (1) For the purposes of section
38 5-311, Idaho Code, "person" includes a preborn child.

39 (2) "Preborn child" means a living human being before birth from the be-
40 ginning of biological development at the moment of fertilization upon the
41 fusion of a human spermatozoon with a human ovum.

1 (3) The provisions of this section are prospective only and shall not
 2 apply to any act or neglect committed prior to the effective date of this sec-
 3 tion. For the purposes of this section, an act, neglect, or default occurred
 4 before the effective date of this section if any element of the act occurred
 5 before such date.

6 SECTION 3. That Section 18-907, Idaho Code, be, and the same is hereby
 7 amended to read as follows:

8 18-907. AGGRAVATED BATTERY DEFINED. (1) A person commits aggravated
 9 battery who, in committing battery:

10 (a) Causes great bodily harm, permanent disability or permanent dis-
 11 figurement; ~~or~~

12 (b) Uses a deadly weapon or instrument; ~~or~~

13 (c) Uses any vitriol, corrosive acid, or a caustic chemical of any na-
 14 ture; ~~or~~

15 (d) Uses any poison or other noxious or destructive substance or liq-
 16 uid; or

17 (e) ~~Upon~~ On the person of a pregnant female, causes great bodily harm,
 18 permanent disability or permanent disfigurement to an embryo or fetus.

19 ~~(2) For purposes of this section the terms "embryo" or "fetus" shall~~
 20 ~~mean any human in utero.~~

21 ~~(3) There shall be no prosecution under subsection (1) (e) of this sec-~~
 22 ~~tion:~~

23 ~~(a) Of any person for conduct relating to an abortion for which the con-~~
 24 ~~sent of the pregnant female, or person authorized by law to act on her~~
 25 ~~behalf, has been obtained or for which such consent is implied by law.~~

26 ~~(b) Of any person for any medical treatment of the pregnant female or~~
 27 ~~her embryo or fetus; or~~

28 ~~(c) Of any female with respect to her embryo or fetus.~~

29 ~~(4)~~ (2) Nothing in this chapter is intended to amend or nullify the pro-
 30 visions of chapter 6, title 18, Idaho Code.

31 SECTION 4. That Chapter 9, Title 18, Idaho Code, be, and the same is
 32 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 33 ignated as Section 18-926, Idaho Code, and to read as follows:

34 18-926. DEFINITION OF HUMAN EMBRYO AND FETUS -- APPLICATION. (1) For
 35 purposes of this chapter:

36 (a) "Embryo" or "fetus" means a preborn child.

37 (b) "Preborn child" means a living human being before birth from the be-
 38 ginning of biological development at the moment of fertilization upon
 39 the fusion of a human spermatozoon with a human ovum.

40 (2) Enforcement for a preborn child pursuant to this chapter shall be
 41 subject to the same presumptions, defenses, justifications, immunities, and
 42 clemencies as would apply to the homicide of a human being who had been born
 43 alive.

44 (3) The provisions of this chapter shall not apply to the unintentional
 45 death of a preborn child when resulting from:

1 (a) The undertaking of life-saving procedures to save the life of a
2 mother when accompanied by reasonable steps, if available, to save the
3 life of her preborn child; or

4 (b) A spontaneous miscarriage.

5 (4) In accordance with section 16, article I of the constitution of the
6 state of Idaho, and section 9, article I, clause 3 of the constitution of the
7 United States, the provisions of this section shall be prospective only and
8 shall not apply to any act committed prior to the effective date of this sec-
9 tion. For the purposes of this section, an act occurred before the effective
10 date of this section if any element of the act occurred before such date.

11 (5) The provisions of this section shall prevail over other laws to the
12 extent of any conflict.

13 SECTION 5. That Section [18-4016](#), Idaho Code, be, and the same is hereby
14 repealed.

15 SECTION 6. That Chapter 40, Title 18, Idaho Code, be, and the same is
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
17 ignated as Section 18-4018, Idaho Code, and to read as follows:

18 18-4018. DEFINITION OF HUMAN EMBRYO AND FETUS -- APPLICATION. (1) For
19 purposes of this chapter:

20 (a) "Embryo" or "fetus" means a preborn child.

21 (b) "Preborn child" means a living human being before birth from the be-
22 ginning of biological development at the moment of fertilization upon
23 the fusion of a human spermatozoon with a human ovum.

24 (2) Enforcement for a preborn child pursuant to this chapter shall be
25 subject to the same presumptions, defenses, justifications, immunities, and
26 clemencies as would apply to the homicide of a human being who had been born
27 alive.

28 (3) The provisions of this chapter shall not apply to the unintentional
29 death of a preborn child when resulting from:

30 (a) The undertaking of life-saving procedures to save the life of a
31 mother when accompanied by reasonable steps, if available, to save the
32 life of her preborn child; or

33 (b) A spontaneous miscarriage.

34 (4) In accordance with section 16, article I of the constitution of the
35 state of Idaho, and section 9, article I, clause 3 of the constitution of the
36 United States, the provisions of this section shall be prospective only and
37 shall not apply to any act committed prior to the effective date of this sec-
38 tion. For the purposes of this section, an act occurred before the effective
39 date of this section if any element of the act occurred before such date.

40 (5) The provisions of this section shall prevail over other laws to the
41 extent of any conflict.

42 SECTION 7. An emergency existing therefor, which emergency is hereby
43 declared to exist, this act shall be in full force and effect on and after its
44 passage and approval.