

IN THE SENATE

SENATE BILL NO. 1358

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE FETAL HEARTBEAT PREBORN CHILD PROTECTION ACT; AMENDING SEC-
2 TION 18-8807, IDAHO CODE, AS AMENDED IN SECTION 6 OF SENATE BILL NO.
3 1309, IF ENACTED BY THE SECOND REGULAR SESSION OF THE SIXTY-SIXTH IDAHO
4 LEGISLATURE, TO REVISE A PROVISION REGARDING COSTS AND ATTORNEY'S FEES
5 AND TO REMOVE A PROVISION REGARDING AN AFFIRMATIVE DEFENSE; AMENDING
6 SECTION 18-8703, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER 289, LAWS
7 OF 2021, TO REDESIGNATE THE SECTION; AND DECLARING AN EMERGENCY AND PRO-
8 VIDING AN EFFECTIVE DATE.
9

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

11 SECTION 1. That Section 18-8807, Idaho Code, as amended in Section 6
12 of Senate Bill No. 1309, if enacted by the Second Regular Session of the
13 Sixty-sixth Idaho Legislature, be, and the same is hereby amended to read as
14 follows:

15 18-8807. CIVIL CAUSES OF ACTION. (1) Any female upon whom an abortion
16 has been attempted or performed, the father of the preborn child, a grandpar-
17 ent of the preborn child, a sibling of the preborn child, or an aunt or uncle
18 of the preborn child may maintain an action for:

19 (a) All damages from the medical professionals who knowingly or reck-
20 lessly attempted, performed, or induced the abortion in violation of
21 this chapter;

22 (b) Notwithstanding any other provision of law, statutory damages in an
23 amount not less than twenty thousand dollars (\$20,000) from the medical
24 professionals who knowingly or recklessly attempted, performed, or in-
25 duced an abortion in violation of this chapter; and

26 (c) Costs and attorney's fees.

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

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

33 (4) Notwithstanding any other provision of law, including chapter 1,
34 title 12, Idaho Code, a court may not award costs or attorney's fees to a
35 defendant in an action brought under this section unless the defendant has
36 complied with the applicable requirements of sections 18-8803 and 18-8804,
37 Idaho Code.

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

1 ~~the burden of providing an affirmative defense by a preponderance of the evi-~~
2 ~~dence.~~

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

7 ~~(76)~~ Notwithstanding any other provision of law, including chapters
8 14, 17, and 18, title 54, Idaho Code, the requirements of this section shall
9 be enforced exclusively through the private civil causes of action de-
10 scribed. No enforcement of this section may be taken or threatened against
11 any person by this state, a political subdivision of this state, a prosecut-
12 ing attorney, or an executive or administrative officer or employee of this
13 state or a political subdivision of this state.

14 ~~(87)~~ Notwithstanding any other provision of law, this state, a state
15 official, or a prosecuting attorney may not intervene in an action brought
16 under this section. Nothing in this subsection shall prohibit a person de-
17 scribed in this subsection from filing an amicus curiae brief in the action.

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

20 SECTION 2. That Section 18-8703, Idaho Code, as enacted by Section 1,
21 Chapter 289, Laws of 2021, be, and the same is hereby amended to read as fol-
22 lows:

23 ~~18-8703~~18803. DETERMINATION OF FETAL HEARTBEAT. Any person who in-
24 tends to perform or induce an abortion on a pregnant woman must determine if
25 there is the presence of any fetal heartbeat, except in the case of a medical
26 emergency. In testing for any fetal heartbeat, the person conducting the
27 physical examination on the pregnant woman must determine in his reasonable
28 medical judgment and according to standard medical practice whether or not
29 any fetal heartbeat is present. The person who determines the presence or
30 absence of any fetal heartbeat must record in the pregnant woman's medical
31 record the estimated gestational age of the preborn human individual or in-
32 dividuals, the method used to test for the fetal heartbeat, the date and time
33 of the test, and the results of the test.

34 SECTION 3. An emergency existing therefor, which emergency is hereby
35 declared to exist, this act shall be in full force and effect on and after
36 the effective date of Senate Bill No. 1309, if enacted by the Second Regular
37 Session of the Sixty-sixth Idaho Legislature.