

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 366

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE FETAL HEARTBEAT PREBORN CHILD PROTECTION ACT; AMENDING TI-
2 TLE 18, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 87, TITLE 18, IDAHO
3 CODE, TO DEFINE TERMS, TO PROVIDE LEGISLATIVE FINDINGS AND INTENT, TO
4 PROVIDE FOR THE DETERMINATION OF A FETAL HEARTBEAT, TO PROHIBIT AN ABOR-
5 TION FOLLOWING DETECTION OF A FETAL HEARTBEAT, TO PROVIDE EXCEPTIONS IN
6 CERTAIN INSTANCES, TO PROVIDE PENALTIES, TO PROVIDE AN EFFECTIVE DATE
7 UPON A CERTAIN OCCURRENCE, TO PROVIDE THAT A PREGNANT WOMAN MAY BRING A
8 CIVIL ACTION IN CERTAIN INSTANCES, AND TO PROVIDE SEVERABILITY.
9

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

11 SECTION 1. That Title 18, Idaho Code, be, and the same is hereby amended
12 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
13 ter 87, Title 18, Idaho Code, and to read as follows:

14 CHAPTER 87

15 FETAL HEARTBEAT PREBORN CHILD PROTECTION ACT

16 18-8701. DEFINITIONS. As used in this chapter:

17 (1) "Abortion" means the use of any means to intentionally terminate
18 the clinically diagnosable pregnancy of a woman with knowledge that the ter-
19 mination by those means will, with reasonable likelihood, cause the death of
20 the preborn child. "Abortion" does not mean the use of an intrauterine de-
21 vice or birth control pill to inhibit or prevent ovulations, fertilization,
22 or the implantation of a fertilized ovum within the uterus.

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

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

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

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

36 18-8702. LEGISLATIVE FINDINGS AND INTENT. The legislature finds and
37 declares that:

38 (1) The life of each human being begins at fertilization, and unborn
39 children have interests in life, health, and well-being that should be pro-
40 tected.

1 (2) The cardiopulmonary definition of death, which is the reigning com-
2 mon law standard for determining death, is defined as the "irreversible ces-
3 sation of circulatory and respiratory functions." This cardiopulmonary def-
4 inition of death was included in the uniform determination of death act, a
5 model law that was adopted by numerous medical and ethics organizations, in-
6 cluding the national conference of commissioners on uniform state laws, the
7 American medical association, and almost all states in the United States.

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

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

14 (5) A detectable fetal heartbeat and its characteristics is a key medi-
15 cal predictor in whether a preborn child will reach live birth.

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

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

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

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

39 18-8704. ABORTION FOLLOWING DETECTION OF A FETAL HEARTBEAT PROHIB-
40 ITED. A person may not perform an abortion on a pregnant woman when a fetal
41 heartbeat has been detected, except in the case of a medical emergency, in
42 the case of rape as defined in section 18-6101, Idaho Code, or in the case of
43 incest as described in section 18-6602, Idaho Code. In the case of rape or
44 incest:

45 (1) If the woman is not a minor or subject to guardianship, then, prior
46 to the performance of the abortion, the woman has reported the act of rape or
47 incest to a law enforcement agency and provided a copy of such report to the
48 physician who is to perform the abortion; or

1 (2) If the woman is a minor or subject to guardianship, then, prior to
2 the performance of the abortion, the woman or her parent or guardian has re-
3 ported the act of rape or incest to a law enforcement agency or child protec-
4 tive services and a copy of such report have been provided to the physician
5 who is to perform the abortion.

6 18-8705. PENALTIES FOR VIOLATIONS. Every licensed health care pro-
7 fessional who intentionally, knowingly, and recklessly performs or induces
8 an abortion in violation of this chapter commits the crime of criminal
9 abortion. Criminal abortion shall be a felony punishable by a sentence of
10 imprisonment of no less than two (2) years and no more than five (5) years
11 in prison. The professional license of any health care professional who
12 performs or induces an abortion or who assists in performing or inducing an
13 abortion in violation of this chapter shall be suspended by the appropriate
14 licensing board for a minimum of six (6) months upon a first offense and shall
15 be permanently revoked upon a subsequent offense.

16 18-8706. EFFECTIVE UPON A CERTAIN OCCURRENCE. (1) This chapter shall
17 become effective thirty (30) days following the issuance of the judgment in
18 any United States appellate court case in which the appellate court upholds
19 a restriction or ban on abortion for a preborn child because a detectable
20 heartbeat is present on the grounds that such restriction or ban does not vi-
21 olate the United States constitution.

22 (2) Nothing in this section shall be construed to conflict with the ef-
23 fectiveness of section 18-622, Idaho Code, following the occurrence of the
24 circumstances described therein. In the event both this section and section
25 18-622, Idaho Code, are enforceable, section 18-622, Idaho Code, shall su-
26 percede this section.

27 18-8707. CIVIL ACTION. Any woman on whom an abortion is performed in
28 violation of this chapter may recover in a civil action all damages available
29 to her under Idaho law from the person or persons who intentionally, know-
30 ingly, and recklessly violated the provisions of section 18-8703 or 18-8704,
31 Idaho Code.

32 18-8708. SEVERABILITY. The provisions of this chapter are hereby de-
33 clared to be severable, and if any provision of this chapter or the appli-
34 cation of such provision to any person or circumstance is declared invalid
35 for any reason, such declaration does not affect the validity of the remain-
36 ing portions of this chapter. Any invalidity or potential invalidity of the
37 provisions of this chapter does not impair the immediate and continuing en-
38 forceability of the remaining provisions. The provisions of this chapter do
39 not have the effect of repealing or limiting any other laws of this state, ex-
40 cept as specified by this chapter.