

IN THE SENATE

SENATE BILL NO. 1309

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE FETAL HEARTBEAT PREBORN CHILD PROTECTION ACT; AMENDING SEC-  
2 TION 18-8701, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER 289, LAWS OF  
3 2021, TO REDESIGNATE THE SECTION AND TO REVISE A DEFINITION; AMENDING  
4 SECTION 18-8702, IDAHO CODE, AS ENACTED BY SECTION 1, CHAPTER 289, LAWS  
5 OF 2021, TO REDESIGNATE THE SECTION AND TO REVISE LEGISLATIVE FINDINGS  
6 AND INTENT; AMENDING SECTION 18-8704, IDAHO CODE, AS ENACTED BY SECTION  
7 1, CHAPTER 289, LAWS OF 2021, TO REDESIGNATE THE SECTION AND TO PROVIDE  
8 THAT THE SECTION DOES NOT RECOGNIZE A RIGHT TO ABORTION BEFORE A FETAL  
9 HEARTBEAT IS DETECTED; AMENDING SECTION 18-8705, IDAHO CODE, AS ENACTED  
10 BY SECTION 1, CHAPTER 289, LAWS OF 2021, TO REDESIGNATE THE SECTION, TO  
11 PROVIDE AN EFFECTIVE DATE UPON A CERTAIN OCCURRENCE, AND TO PROVIDE AP-  
12 PPLICABILITY; REPEALING SECTION 18-8706, IDAHO CODE, AS ENACTED BY SEC-  
13 TION 1, CHAPTER 289, LAWS OF 2021, RELATING TO EFFECTIVENESS UPON A CER-  
14 TAIN OCCURRENCE; AMENDING SECTION 18-8707, IDAHO CODE, AS ENACTED BY  
15 SECTION 1, CHAPTER 289, LAWS OF 2021, TO REDESIGNATE THE SECTION AND TO  
16 PROVIDE FOR CIVIL CAUSES OF ACTION IN CERTAIN INSTANCES; AND DECLARING  
17 AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
18

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

20 SECTION 1. That Section 18-8701, 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 ~~18-8701~~18801. DEFINITIONS. As used in this chapter:

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

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

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

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

38 (5) "Medical emergency" means a condition that, ~~on the basis of the~~  
39 ~~physician's good faith clinical~~ in reasonable medical judgment, so com-  
40 plicates the medical condition of a pregnant woman as to necessitate the  
41 immediate abortion of her pregnancy to avert her death or for which a delay

1 will create serious risk of substantial and irreversible impairment of a  
2 major bodily function.

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

6 ~~18-8702~~18802. LEGISLATIVE FINDINGS AND INTENT. The legislature finds  
7 and declares that:

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

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

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

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

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

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

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

32 (8) Therefore, the state of Idaho has a compelling interest in protect-  
33 ing the life of a preborn child at all stages of its development, including  
34 after the preborn child has a detectable heartbeat, which signals rhythmi-  
35 cally and without pause the presence of a precious and unique life, one that  
36 is independent and distinct from the mother's and one that is also worthy of  
37 our utmost protection.

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

41 ~~18-8704~~18804. ABORTION FOLLOWING DETECTION OF A FETAL HEARTBEAT PRO-  
42 HIBITED. (1) A person may not perform an abortion on a pregnant woman when a  
43 fetal heartbeat has been detected, except in the case of a medical emergency,  
44 in the case of rape as defined in section 18-6101, Idaho Code, or in the case  
45 of incest as described in section 18-6602, Idaho Code. In the case of rape or  
46 incest:

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

5           (2b) If the woman is a minor or subject to guardianship, then, prior to  
6 the performance of the abortion, the woman or her parent or guardian has  
7 reported the act of rape or incest to a law enforcement agency or child  
8 protective services and a copy of such report have been provided to the  
9 physician who is to perform the abortion.

10           (2) Nothing in this section recognizes a right to abortion before a fe-  
11 tal heartbeat is detected.

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

15           ~~18-87058805.~~ PENALTIES FOR VIOLATIONS -- EFFECTIVE UPON A CERTAIN OC-  
16 CURRENCE. (1) This section shall become effective thirty (30) days follow-  
17 ing the issuance of the judgment in any United States appellate court case in  
18 which the appellate court upholds a restriction or ban on abortion for a pre-  
19 born child because a detectable heartbeat is present on the grounds that such  
20 restriction or ban does not violate the United States constitution.

21           (2) Every licensed health care professional who ~~intentionally,~~ know-  
22 ingly, ~~and or~~ recklessly performs or induces an abortion in violation of this  
23 chapter commits the crime of criminal abortion. Criminal abortion shall be a  
24 felony punishable by a sentence of imprisonment of no less than two (2) years  
25 and no more than five (5) years in prison.

26           (3) The professional license of any health care professional who per-  
27 forms or induces an abortion or who assists in performing or inducing an  
28 abortion in violation of this chapter shall be suspended by the appropriate  
29 licensing board for a minimum of six (6) months upon a first offense and shall  
30 be permanently revoked upon a subsequent offense.

31           (4) Nothing in this section shall be construed to conflict with the ef-  
32 fectiveness of section 18-622, Idaho Code, following the occurrence of the  
33 circumstances described in that section. In the event both this section and  
34 section 18-622, Idaho Code, are enforceable, section 18-622, Idaho Code,  
35 shall supersede this section.

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

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

41           ~~18-87078807.~~ CIVIL CAUSES OF ACTION. (1) Any woman on whom an abortion  
42 is performed in violation of this chapter may recover in a civil action all  
43 damages available to her under Idaho law from the person or persons who in-  
44 tentionally, knowingly, and recklessly violated the provisions of section  
45 18-8703 or 18-8704, Idaho Code. Any female upon whom an abortion has been at-  
46 tempted or performed, the father of the preborn child, a grandparent of the

1 preborn child, a sibling of the preborn child, or an aunt or uncle of the pre-  
2 born child may maintain an action for:

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

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

10 (c) Costs and attorney's fees.

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

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

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

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

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

30 (7) Notwithstanding any other provision of law, including chapters 14,  
31 17, and 18, title 54, Idaho Code, the requirements of this section shall be  
32 enforced exclusively through the private civil causes of action described.  
33 No enforcement of this section may be taken or threatened against any person  
34 by this state, a political subdivision of this state, a prosecuting attor-  
35 ney, or an executive or administrative officer or employee of this state or a  
36 political subdivision of this state.

37 (8) Notwithstanding any other provision of law, this state, a state of-  
38 ficial, or a prosecuting attorney may not intervene in an action brought un-  
39 der this section. Nothing in this subsection shall prohibit a person de-  
40 scribed in this subsection from filing an amicus curiae brief in the action.

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

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