

IN THE SENATE

SENATE BILL NO. 1085

BY STATE AFFAIRS 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 A PENALTY, 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 preborn
39 children have interests in life, health, and well-being that should be pro-
40 tected.

1 (2) The uniform determination of death act (UDDA) is a model law that
2 has reigned for nearly four (4) decades as the nationwide standard "to pro-
3 vide a comprehensive and medically sound basis for determining death [or
4 life] in all situations." It has been adopted by numerous medical and ethics
5 organizations, including the national conference of commissioners on uni-
6 form state laws, the American medical association, and almost all states in
7 the United States.

8 (3) The UDDA and the medical community at large affirm that a consistent
9 human heartbeat, independent of life support, is a core determining factor
10 in establishing the legal presence of human life in a full range of circum-
11 stances, for old and young alike, including preborn babies.

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

15 (5) A detectable fetal heartbeat and its characteristics, in varying
16 stages of pregnancy, have become key predictors in whether a preborn human
17 child will reach live birth.

18 (6) The fetal heartbeat, when detected, can be a consistent and clearly
19 definable point at which the preborn child in the womb has a greater than
20 ninety percent (90%) chance of survival when carried to term.

21 (7) It is this state's intent to no longer base the standard of life for
22 preborn children in the womb upon the medically uncertain concept of "via-
23 bility" and whether that preborn child is "potentially able to live outside
24 the mother's womb," but rather to provide medical and legal clarity that life
25 exists when the presence of a human heartbeat is detectable. This is the pre-
26 ferred modality to determining the presence of life.

27 (8) Therefore, the state of Idaho has a compelling interest in protect-
28 ing the life of a preborn child at all stages of growth and especially upon
29 the detection of a fetal heartbeat, which signals rhythmically and without
30 pause a presence as a precious and unique life, one that is independent and
31 distinct from the mother's, and one that is also worthy of our utmost protec-
32 tion.

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

44 18-8704. ABORTION FOLLOWING DETECTION OF A FETAL HEARTBEAT PROHIB-
45 ITED. A person may not perform an abortion on a pregnant woman when a fetal
46 heartbeat has been detected, except in the case of a medical emergency, or
47 in the case of rape as defined in section 18-6101, Idaho Code, or incest as

1 described in section 18-6602, Idaho Code. In the case of rape or incest, the
2 following is required:

3 (1) A copy of the court determination of rape or incest must be provided
4 to the physician performing the abortion;

5 (2) Where no court determination has been made, documentation that the
6 rape or incest was reported to a law enforcement agency must be provided to
7 the physician performing the abortion; or

8 (3) Where the rape or incest was not reported to a law enforcement
9 agency, a licensed physician must certify in writing that, in the physi-
10 cian's professional opinion, the woman was unable, for reasons related to
11 her health, to report the rape or incest to a law enforcement agency. The
12 certificate must contain the name and address of the woman.

13 18-8705. PENALTY FOR VIOLATIONS. Any person licensed to practice
14 medicine or registered as an intern or resident under Idaho Code who violates
15 the provisions of this chapter by performing an abortion on a pregnant woman
16 after the detection of any fetal heartbeat is subject to discipline pursuant
17 to section 54-1814, Idaho Code.

18 18-8706. EFFECTIVE UPON A CERTAIN OCCURRENCE. This chapter takes ef-
19 fect immediately upon the issuance of the mandate in any United States appel-
20 late court case in which the appellate court upholds a restriction or ban on
21 abortion for a preborn child because a detectable heartbeat is present on the
22 grounds that such restriction or ban does not violate the United States con-
23 stitution.

24 18-8707. ENFORCEMENT PROVISIONS. Any woman on whom an abortion is per-
25 formed in violation of this chapter may recover in a civil action all damages
26 available to her under Idaho law from the person or persons who, in knowing
27 or reckless violation of section 18-8703 or 18-8704, Idaho Code, engaged in
28 such violations.

29 18-8708. SEVERABILITY. The provisions of this chapter are hereby de-
30 clared to be severable, and if any provision of this chapter or the appli-
31 cation of such provision to any person or circumstance is declared invalid
32 for any reason, such declaration does not affect the validity of the remain-
33 ing portions of this chapter. Any invalidity or potential invalidity of the
34 provisions of this chapter does not impair the immediate and continuing en-
35 forceability of the remaining provisions. The provisions of this chapter do
36 not have the effect of repealing or limiting any other laws of this state, ex-
37 cept as specified by this chapter.