

IN THE SENATE

SENATE BILL NO. 1171

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE FETAL HEARTBEAT PREBORN CHILD PROTECTION ACT; AMENDING SECTION 18-8807, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING A CIVIL CAUSE OF ACTION WHEN AN ABORTION HAS BEEN ATTEMPTED OR PERFORMED AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-8807, Idaho Code, be, and the same is hereby amended to read as follows:

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

(a) All damages from the medical professionals who knowingly or recklessly attempted, performed, or induced the abortion in violation of this chapter;

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

(c) Costs and attorney's fees.

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

(3) To prevail under this section, the plaintiff must establish that the defendant more likely than not violated the provisions of the defense of life act, as contained in section 18-622, Idaho Code.

(4) No later than sixty (60) days after a defendant is served with a complaint or other pleading that asserts a cause of action under this section, or at a later time on a showing of good cause, the defendant may file a special motion for expedited relief regarding the cause of action.

(5) (a) Except as otherwise provided in paragraphs (d) through (g) of this subsection, upon the filing of a motion pursuant to subsection (4) of this section, all other proceedings between the plaintiff and the defendant, including discovery and a pending hearing or motion, shall be stayed.

(b) A stay issued pursuant to paragraph (a) of this subsection shall remain in effect until entry of an order ruling on the motion pursuant to subsection (4) of this section or expiration of the time for the moving party to appeal the order pursuant to subsection (10) of this section, per applicable court rule.

(c) Except as otherwise provided in paragraphs (e), (f), and (g) of this subsection, if a party appeals an order ruling on a motion pursuant to subsection (4) of this section, all proceedings between all parties in the action shall be stayed. The stay shall remain in effect until the conclusion of the appeal.

(d) During a stay issued pursuant to paragraph (a) of this subsection, the court may allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden pursuant to subsection (8) of this section and the information is not reasonably available unless discovery is allowed.

(e) A motion pursuant to subsection (11) of this section for costs, attorney's fees, and expenses shall not be subject to a stay pursuant to this subsection.

(f) A stay issued pursuant to the provisions of this subsection shall not affect a party's ability to voluntarily dismiss a cause of action or part of a cause of action.

(g) During a stay issued pursuant to the provisions of this subsection, the court for good cause may hear and rule on a motion unrelated to the motion pursuant to subsection (4) of this section.

(6) (a) The court shall hear a motion pursuant to subsection (4) of this section no later than sixty (60) days after filing of the motion, unless the court orders a later hearing:

(i) To allow discovery pursuant to subsection (5) (d) of this section; or

(ii) For other good cause.

(b) If the court orders a later hearing pursuant to paragraph (a) of this subsection, the court shall hear the motion pursuant to subsection (5) of this section no later than sixty (60) days after the court order allowing the discovery, unless the court orders a later hearing pursuant to paragraph (a) (ii) of this subsection.

(7) In ruling on a motion pursuant to subsection (4) of this section, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment pursuant to applicable court rule.

(8) (a) In ruling on a motion pursuant to subsection (4) of this section, the court shall dismiss with prejudice a cause of action or part of a cause of action if:

(i) The responding party fails to establish a prima facie case as to each essential element of the cause of action; or

(ii) The moving party establishes that:

1. The responding party failed to state a cause of action upon which relief can be granted; or

2. There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

(b) A voluntary dismissal with or without prejudice of a responding party's cause of action or part of a cause of action that is the subject of a motion pursuant to subsection (4) of this section shall not affect a moving party's right to obtain a ruling on the motion and to seek costs,

1 attorney's fees, and expenses pursuant to subsection (11) of this sec-  
 2 tion.

3 (9) The court shall rule on a motion pursuant to subsection (4) of this  
 4 section no later than sixty (60) days after a hearing held pursuant to sub-  
 5 section (6) of this section.

6 (10) A moving party may appeal as a matter of right from an order deny-  
 7 ing, in whole or in part, a motion pursuant to subsection (4) of this section.  
 8 The appeal shall be filed within forty-two (42) days after entry of the order  
 9 pursuant to applicable court rule.

10 (11) Upon a motion pursuant to subsection (4) of this section, the court  
 11 shall award court costs, reasonable attorney's fees, and reasonable litiga-  
 12 tion expenses related to the motion to the prevailing party.

13 ~~(3)~~ (12) Notwithstanding Except as provided in subsection (11) of this  
 14 section and notwithstanding any other provision of law, including chapter  
 15 1, title 12, Idaho Code, a court may not award costs or attorney's fees to a  
 16 defendant in an action brought under this section unless the defendant has  
 17 complied with the applicable requirements of sections 18-8803 and 18-8804,  
 18 Idaho Code court finds that the defendant has complied with the defense of  
 19 life act, as contained in section 18-622, Idaho Code.

20 ~~(4)~~ (13) The civil causes of action provided for in this section exist  
 21 independently of any criminal action commenced pursuant to this chapter. A  
 22 civil cause of action may be pursued under the provisions of this chapter  
 23 even if a criminal prosecution is not pursued.

24 ~~(5)~~ (14) Notwithstanding any other provision of law, including chap-  
 25 ters 14, 17, and 18, title 54, Idaho Code, the requirements of this section  
 26 shall be enforced exclusively through the private civil causes of action  
 27 described. No enforcement of this section may be taken or threatened against  
 28 any person by this state, a political subdivision of this state, a prosecut-  
 29 ing attorney, or an executive or administrative officer or employee of this  
 30 state or a political subdivision of this state.

31 ~~(6)~~ (15) Notwithstanding any other provision of law, this state, a state  
 32 official, or a prosecuting attorney may not intervene in an action brought  
 33 under this section. Nothing in this subsection shall prohibit a person de-  
 34 scribed in this subsection from filing an amicus curiae brief in the action.

35 ~~(7)~~ (16) Nothing in this section shall be deemed to affect any familial  
 36 rights or responsibilities or any proceedings conducted under Idaho law.

37 ~~(8)~~ (17) In an action brought under this section, a court may not award  
 38 compensatory or punitive damages if a person demonstrates that the person  
 39 paid, or has been ordered to pay, compensatory or punitive damages, respec-  
 40 tively, in a previous civil action for that particular violation of this  
 41 chapter.

42 ~~(9)~~ (18) Notwithstanding any other law to the contrary, a civil action  
 43 may not be brought under this section by a person who, through an act of rape,  
 44 sexual assault, incest, or other criminal conduct, impregnated the pregnant  
 45 woman seeking an abortion in violation of this chapter.

46 ~~(10)~~ (19) Notwithstanding any other law to the contrary, the following  
 47 shall not be defenses to an action brought under this section:

- 48 (a) That the pregnant woman or, if the pregnant woman is a minor, a par-
- 49 ent or guardian consented to an unlawful abortion;
- 50 (b) Ignorance or mistake of law;

1 (c) A person's belief that any provision of this section is or was un-  
 2 constitutional;

3 (d) A person's reliance on a state or federal court decision that is not  
 4 binding on the court in which the action has been brought;

5 (e) Non-mutual issue preclusion or non-mutual claim preclusion;

6 (f) Contributory or comparative negligence;

7 (g) Assumption of risk; or

8 (h) A claim that an action brought under ~~the~~ this section will violate a  
 9 constitutional right of a third party.

10 ~~(11)~~ (20) Notwithstanding Except as provided in subsection (11) of this  
 11 section and notwithstanding any other law to the contrary, a court may:

12 (a) Not award attorney's fees or costs to a person subject to an ac-  
 13 tion brought under this section, unless the action is frivolous, with-  
 14 out foundation, or brought in bad faith or for the sole reason for delay;

15 (b) Not award attorney's fees or costs to a person who prevails in  
 16 challenging the constitutionality of this section under state law, un-  
 17 less the defense of this section is frivolous, without foundation, or  
 18 brought in bad faith or for the sole reason for delay; and

19 (c) Award attorney's fees or costs to a person who prevails in defending  
 20 the constitutionality of this section under state law, even though the  
 21 challenge to the constitutionality of this section was not frivolous,  
 22 without foundation, or brought in bad faith or for the sole reason for  
 23 delay.

24 ~~(12)~~ (21) The provisions of this section shall not be construed to im-  
 25 pose liability on speech or conduct protected by the first amendment of the  
 26 United States constitution or by section 9, article I of the constitution of  
 27 the state of Idaho.

28 SECTION 2. An emergency existing therefor, which emergency is hereby  
 29 declared to exist, this act shall be in full force and effect on and after  
 30 July 1, 2025.