

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 4327

By: Stearman and **Roberts (Sean)**

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9 COMMITTEE SUBSTITUTE

10 An Act relating to abortion; defining terms;
11 prohibition certain abortions; creating an exception;
12 enabling a private cause of action against abortion
13 providers; creating requirements; creating defenses
14 to action; specifying damages; prohibiting official
15 state claims; providing for codification; and
16 providing an effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-758 of Title 63, unless there
19 is created a duplication in numbering, reads as follows:

20 A. As used in this section:

21 1. "Gestational age" means the amount of time that has elapsed
22 from the first day of a woman's last menstrual period;

1 2. "Gestational sac" means the structure comprising the
2 extraembryonic membranes that envelop the unborn child and that is
3 typically visible by ultrasound after the fourth week of pregnancy;

4 3. "Physician" means an individual licensed to practice
5 medicine in this state, including a medical doctor and a doctor of
6 osteopathic medicine;

7 4. "Pregnancy" means the human female reproductive condition
8 that:

- 9 a. begins with fertilization,
- 10 b. occurs when the woman is carrying the developing human
11 offspring, and
- 12 c. is calculated from the first day of the woman's last
13 menstrual period;

14 5. "Standard medical practice" means the degree of skill, care,
15 and diligence that an obstetrician of ordinary judgment, learning,
16 and skill would employ in like circumstances; and

17 6. "Unborn child" means a human fetus or embryo in any stage of
18 gestation from fertilization until birth.

19 B. A physician may not knowingly perform or induce an abortion
20 on a pregnant woman, unless such abortion is performed to save the
21 life of the mother.

22 C. This act shall be enforced exclusively through private civil
23 actions.

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1 D. Any person, other than an officer or employee of a state or
2 local governmental entity in this state, may bring a civil action
3 against any person who:

4 1. Performs or induces an abortion in violation of this act;

5 2. Knowingly engages in conduct that aids or abets the
6 performance or inducement of an abortion, including paying for or
7 reimbursing the costs of an abortion through insurance or otherwise,
8 if the abortion is performed or induced in violation of this act,
9 regardless of whether the person knew or should have known that the
10 abortion would be performed or induced in violation of this act; or

11 3. Intends to engage in the conduct described by this act.

12 E. If a claimant prevails in an action brought under this
13 section, the court shall award:

14 1. Injunctive relief sufficient to prevent the defendant from
15 violating this act or engaging in acts that aid or abet violations
16 of this act;

17 2. Statutory damages in an amount of not less than Ten Thousand
18 Dollars (\$10,000.00) for each abortion that the defendant performed
19 or induced in violation of this act, and for each abortion performed
20 or induced in violation of this act that the defendant aided or
21 abetted; and

22 3. Costs and attorney's fees.

23 A court may not award relief under this section in response to a
24 violation of this act if the defendant demonstrates that the

1 defendant previously paid the full amount of statutory damages in a
2 previous action for that particular abortion performed or induced in
3 violation of this act, or for the particular conduct that aided or
4 abetted an abortion performed or induced in violation of this act.
5 Additionally, a court may not award relief under this section where
6 the abortion in question was performed to save the life of the
7 mother.

8 F. A person may bring an action under this section not later
9 than the fourth anniversary of the date the cause of action accrues.

10 G. The following are not a defense to an action brought under
11 this act:

12 1. Ignorance or mistake of law;

13 2. A defendant's belief that the requirements of this act are
14 unconstitutional or were unconstitutional;

15 3. A defendant's reliance on any court decision that has been
16 overruled on appeal or by a subsequent court, even if that court
17 decision had not been overruled when the defendant engaged in
18 conduct that violates this act;

19 4. A defendant's reliance on any state or federal court
20 decision that is not binding on the court in which the action has
21 been brought;

22 5. Nonmutual issue preclusion or nonmutual claim preclusion;

23 6. The consent of the unborn child's mother to the abortion; or
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1 7. Any claim that the enforcement of this act or the imposition
2 of civil liability against the defendant will violate the
3 constitutional rights of third parties.

4 H. It shall be an affirmative defense if:

5 1. A person sued under this act reasonably believed, after
6 conducting a reasonable investigation, that the physician performing
7 or inducing the abortion had complied or would comply with this act;
8 or

9 2. A person sued under this act reasonably believed, after
10 conducting a reasonable investigation, that the physician performing
11 or inducing the abortion will comply with this act;

12 The defendant shall have the burden of proving an affirmative
13 defense by a preponderance of the evidence.

14 I. Notwithstanding any other law, this state, a state official,
15 or a district may not intervene in an action brought under this
16 section. This subsection does not prohibit a person described by
17 this subsection from filing an amicus curiae brief in the action.

18 J. A court shall not award costs or attorney's fees to a
19 defendant in an action brought under this act.

20 K. A civil action under this section may not be brought by a
21 person who impregnated the abortion patient through an act of rape,
22 sexual assault, or incest.

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1 L. A defendant against whom an action is brought under this act
2 does not have standing to assert the rights of women seeking an
3 abortion as a defense to liability under that section unless:

4 1. The United States Supreme Court holds that the courts of
5 this state must confer standing on that defendant to assert the
6 third-party rights of women seeking an abortion in state court as a
7 matter of federal constitutional law; or

8 2. The defendant has standing to assert the rights of women
9 seeking an abortion under the tests for third-party standing
10 established by the United States Supreme Court.

11 The defense under this subsection of this section is not
12 available if the United States Supreme Court overrules *Roe v. Wade*
13 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833
14 (1992), regardless of whether the conduct on which the cause of
15 action is based occurred before the Supreme Court overruled either
16 of those decisions.

17 SECTION 2. This act shall become effective November 1, 2022.

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19 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 03/02/2022 -
20 DO PASS, As Amended and Coauthored.

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