

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1503

By: Daniels

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5
6 AS INTRODUCED

7 An Act relating to abortion; creating the Oklahoma
8 Heartbeat Act; stating legislative findings; defining
9 terms; prohibiting performance of abortion except
10 under certain conditions; requiring certain test to
11 meet specified criteria; requiring physician to
12 record certain information; prohibiting performance
13 of abortion under certain conditions; clarifying
14 allowed conduct; specifying effect of certain
15 provisions; providing exception for medical
16 emergency; requiring physician to record certain
17 information; providing for and prohibiting certain
18 enforcement; allowing certain persons to bring
19 certain civil action; requiring and prohibiting
20 certain civil relief; establishing deadline for
21 filing of civil action; allowing and disallowing
22 certain defenses; prohibiting certain intervention in
23 civil action; prohibiting certain persons from
24 bringing civil action; limiting standing for
25 defendants; allowing for affirmative defense under
26 certain conditions; stipulating criteria for undue
27 burden defense; specifying venue for civil action;
28 prohibiting certain transfer of venue; specifying
29 control of certain provisions; granting specified
30 entities certain immunities; establishing liability
31 for court costs and attorney fees; defining term;
32 establishing statute of limitation for bringing
33 certain actions; prohibiting use of certain defenses;
34 providing certain construction; providing for
35 codification; and providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-745.31 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the Oklahoma
5 Heartbeat Act.

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-745.32 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 A. The Legislature finds that this state never repealed, either
10 expressly or by implication, the state statutes enacted before the
11 ruling in Roe v. Wade, 410 U.S. 113 (1973), that prohibit and
12 criminalize abortion unless the mother's life is in danger.

13 B. The Legislature finds, according to contemporary medical
14 research, that:

15 1. Fetal heartbeat has become a key medical predictor that an
16 unborn child will reach live birth;

17 2. Cardiac activity begins at a biologically identifiable
18 moment in time, normally when the fetal heart is formed in the
19 gestational sac;

20 3. This state has compelling interests from the outset of a
21 woman 's pregnancy in protecting the health of the woman and the
22 life of the unborn child; and

23 4. To make an informed choice about whether to continue her
24 pregnancy, the pregnant woman has a compelling interest in knowing

1 the likelihood of her unborn child surviving to full-term birth
2 based on the presence of cardiac activity.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-745.33 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 As used in this act:

7 1. "Fetal heartbeat" means cardiac activity or the steady and
8 repetitive rhythmic contraction of the fetal heart within the
9 gestational sac;

10 2. "Gestational age" means the amount of time that has elapsed
11 from the first day of a woman's last menstrual period;

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

15 4. "Physician" means an individual licensed to practice
16 medicine in this state including a medical doctor and a doctor of
17 osteopathic medicine;

18 5. "Pregnancy" means the human female reproductive condition
19 that:

- 20 a. begins with fertilization,
- 21 b. occurs when the woman is carrying the developing human
22 offspring, and
- 23 c. is calculated from the first day of the woman's last
24 menstrual period;

1 6. "Standard medical practice" means the degree of skill, care,
2 and diligence that an obstetrician of ordinary judgment, learning,
3 and skill would employ in like circumstances; and

4 7. "Unborn child" means a human fetus or embryo in any stage of
5 gestation from fertilization until birth.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-745.34 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 A. For the purposes of determining the presence of a fetal
10 heartbeat under this section, "standard medical practice" includes
11 employing the appropriate means of detecting the heartbeat based on
12 the estimated gestational age of the unborn child and the condition
13 of the woman and her pregnancy.

14 B. Except as provided by Section 4 of this act, a physician
15 shall not knowingly perform or induce an abortion on a pregnant
16 woman unless the physician has determined, in accordance with this
17 section, whether the woman's unborn child has a detectable fetal
18 heartbeat.

19 C. In making a determination under subsection B of this
20 section, the physician must use a test that is:

21 1. Consistent with the physician's good faith and reasonable
22 understanding of standard medical practice; and

23 2. Appropriate for the estimated gestational age of the unborn
24 child and the condition of the pregnant woman and her pregnancy.

1 D. A physician making a determination under subsection B of
2 this section shall record in the pregnant woman's medical record:

- 3 1. The estimated gestational age of the unborn child;
- 4 2. The method used to estimate the gestational age; and
- 5 3. The test used for detecting a fetal heartbeat including the
6 date, time, and results of the test.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-745.35 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

10 A. Except as provided by Section 6 of this act, a physician
11 shall not knowingly perform or induce an abortion on a pregnant
12 woman if the physician detected a fetal heartbeat for the unborn
13 child as required by Section 4 of this act or failed to perform a
14 test to detect a fetal heartbeat.

15 B. A physician shall not be in violation of this section if the
16 physician performed a test for a fetal heartbeat as required by
17 Section 4 of this act and did not detect a fetal heartbeat.

18 C. This section shall not affect any provision of state law
19 that regulates or prohibits abortion including but not limited to
20 any provision that restricts or regulates an abortion by a
21 particular method or during a particular stage of pregnancy.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-745.36 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 A. Sections 4 and 5 of this act shall not apply if a physician
2 believes a medical emergency exists that prevents compliance with
3 this act.

4 B. A physician who performs or induces an abortion under
5 circumstances described by subsection A of this section shall make
6 written notations in the pregnant woman's medical record of:

7 1. The physician's belief that a medical emergency necessitated
8 the abortion; and

9 2. The medical condition of the pregnant woman that prevented
10 compliance with this act.

11 C. A physician performing or inducing an abortion under this
12 section shall maintain in the physician's practice records a copy of
13 the notations made under subsection B of this section.

14 SECTION 7. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-745.37 of Title 63, unless
16 there is created a duplication in numbering, reads as follows:

17 This act shall not be construed to:

18 1. Create or recognize a right to abortion before a fetal
19 heartbeat is detected;

20 2. Authorize the initiation of a cause of action against or the
21 prosecution of a woman on whom an abortion is performed or induced
22 or attempted to be performed or induced in violation of this act;

23 3. Wholly or partly repeal, either expressly or by implication,
24 any other statute that regulates or prohibits abortion; or

1 4. Restrict a political subdivision from regulating or
2 prohibiting abortion in a manner that is at least as stringent as
3 the laws of this state.

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-745.38 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 A. Notwithstanding any other law, the requirements of this act
8 shall be enforced exclusively through the private civil actions
9 described in Section 9 of this act. No enforcement of this act, and
10 no enforcement of any statute with criminal or administrative
11 penalties, in response to violations of this act, shall be taken or
12 threatened by this state, a political subdivision, a district
13 attorney, or an executive or administrative officer or employee of
14 this state or a political subdivision against any person, except as
15 provided in Section 9 of this act.

16 B. Subsection A of this section shall not be construed to:

- 17 1. Legalize the conduct prohibited by this act;
18 2. Limit in any way or affect the availability of a remedy
19 established by Section 9 of this act; or
20 3. Limit the enforceability of any other laws that regulate or
21 prohibit abortion.

22 SECTION 9. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-745.39 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 A. 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 paragraph 1 or
12 2 of this subsection.

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

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

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

23 3. Court costs and attorney fees.
24
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1 C. Notwithstanding subsection B of this section, a court shall
2 not award relief under this section in response to a violation of
3 paragraph 1 or 2 of subsection A of this section if the defendant
4 demonstrates that the defendant previously paid not less than Ten
5 Thousand Dollars (\$10,000.00) of statutory damages as provided in
6 paragraph 2 of subsection B of this section in a previous action for
7 that particular abortion performed or induced in violation of this
8 act, or for the particular conduct that aided or abetted an abortion
9 performed or induced in violation of this act.

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

13 E. Notwithstanding any other law, the following are not a
14 defense to an action brought under this section:

15 1. Ignorance or mistake of law;

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

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

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

1 5. Non-mutual issue preclusion or non-mutual claim preclusion;
2 6. The consent of the unborn child's mother to the abortion; or
3 7. Any claim that the enforcement of this act or the imposition
4 of civil liability against the defendant will violate the
5 constitutional rights of third parties, except as provided by
6 Section 10 of this act.

7 F. 1. It is an affirmative defense if:

8 a. a person sued under paragraph 2 of subsection A of
9 this section reasonably believed, after conducting a
10 reasonable investigation, that the physician
11 performing or inducing the abortion had complied or
12 would comply with this act, or

13 b. a person sued under paragraph 3 of subsection A of
14 this section reasonably believed, after conducting a
15 reasonable investigation, that the physician
16 performing or inducing the abortion will comply with
17 this act.

18 2. The defendant has the burden of proving an affirmative
19 defense under paragraph 1 of this subsection by a preponderance of
20 the evidence.

21 G. This section shall not be construed to impose liability on
22 any speech or conduct protected by the First Amendment of the United
23 States Constitution, as made applicable to the states through the
24 United States Supreme Court's interpretation of the Fourteenth

1 Amendment of the United States Constitution, or by Section 3 or 22
2 of Article II of the Oklahoma Constitution.

3 H. Notwithstanding any other law, this state, a state official,
4 or a district attorney shall not intervene in an action brought
5 under this section. This subsection shall not prohibit a person
6 described by this subsection from filing an amicus curiae brief in
7 the action.

8 I. Notwithstanding any other law, a court shall not award court
9 costs or attorney fees to a defendant in an action brought under
10 this section.

11 J. Notwithstanding any other law, a civil action under this
12 section shall not be brought by a person who impregnated the
13 abortion patient through an act of rape, sexual assault, incest, or
14 any other act prohibited by state law.

15 SECTION 10. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-745.40 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 A. A defendant against whom an action is brought under Section
19 9 of this act shall not have standing to assert the rights of women
20 seeking an abortion as a defense to liability under that section
21 unless:

22 1. The United States Supreme Court holds that the courts of
23 this state must confer standing on that defendant to assert the
24

1 third-party rights of women seeking an abortion in state court as a
2 matter of federal constitutional law; or

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

6 B. A defendant in an action brought under Section 9 of this act
7 may assert an affirmative defense to liability under this section
8 if:

9 1. The defendant has standing to assert the third-party rights
10 of a woman or group of women seeking an abortion in accordance with
11 subsection A of this section; and

12 2. The defendant demonstrates that the relief sought by the
13 claimant will impose an undue burden on that woman or that group of
14 women seeking an abortion.

15 C. A court shall not find an undue burden under subsection B of
16 this section unless the defendant introduces evidence proving that:

17 1. An award of relief will prevent a woman or a group of women
18 from obtaining an abortion; or

19 2. An award of relief will place a substantial obstacle in the
20 path of a woman or a group of women who are seeking an abortion.

21 D. A defendant shall not establish an undue burden under this
22 section by:

1 1. Merely demonstrating that an award of relief will prevent
2 women from obtaining support or assistance, financial or otherwise,
3 from others in their effort to obtain an abortion; or

4 2. Arguing or attempting to demonstrate that an award of relief
5 against other defendants or other potential defendants will impose
6 an undue burden on women seeking an abortion.

7 E. The affirmative defense under subsection B of this section
8 shall not be available if the United States Supreme Court overrules
9 *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505
10 U.S. 833 (1992), regardless of whether the conduct on which the
11 cause of action is based under Section 9 of this act occurred before
12 the Supreme Court overruled either of those decisions.

13 F. Nothing in this section shall in any way limit or preclude a
14 defendant from asserting the defendant's personal constitutional
15 rights as a defense to liability under Section 9 of this act, and a
16 court shall not award relief under Section 9 of this act if the
17 conduct for which the defendant has been sued was an exercise of
18 state or federal constitutional rights that personally belong to the
19 defendant.

20 SECTION 11. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-745.41 of Title 63, unless
22 there is created a duplication in numbering, reads as follows:

23 A. Notwithstanding any other law, a civil action brought under
24 Section 9 of this act shall be brought in:
25

1 1. The county in which all or a substantial part of the events
2 or omissions giving rise to the claim occurred;

3 2. The county of residence for any one of the natural person
4 defendants at the time the cause of action accrued;

5 3. The county of the principal office in this state of any one
6 of the defendants that is not a natural person; or

7 4. The county of residence for the claimant if the claimant is
8 a natural person residing in this state.

9 B. If a civil action is brought under Section 9 of this act in
10 any one of the venues described by subsection A of this section, the
11 action shall not be transferred to a different venue without the
12 written consent of all parties.

13 SECTION 12. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-745.42 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 A. This section prevails over any conflicting law.

17 B. This state has sovereign immunity, a political subdivision
18 has governmental immunity, and each officer and employee of this
19 state or a political subdivision has official immunity in any
20 action, claim, or counterclaim or any type of legal or equitable
21 action that challenges the validity of any provision or application
22 of this act, on constitutional grounds or otherwise.

1 C. A provision of state law shall not be construed to waive or
2 abrogate an immunity described by subsection A of this section
3 unless it expressly waives immunity under this section.

4 SECTION 13. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-745.43 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 A. Notwithstanding any other law, any party including an
8 entity, attorney, or law firm, who seeks declaratory or injunctive
9 relief to prevent this state, a political subdivision, any
10 governmental entity or public official in this state, or any person
11 in this state from enforcing any statute, ordinance, rule,
12 regulation, or any other type of law that regulates or restricts
13 abortion or that limits taxpayer funding for individuals or entities
14 that perform or promote abortions, in any state or federal court, or
15 that represents any litigant seeking such relief in any state or
16 federal court, shall be liable for court costs and attorney fees of
17 the prevailing party.

18 B. For purposes of this section, a party is considered a
19 prevailing party if a state or federal court:

20 1. Dismisses any claim or cause of action brought against the
21 party that seeks the declaratory or injunctive relief described by
22 subsection A of this section, regardless of the reason for the
23 dismissal; or
24

1 2. Enters judgment in the party's favor on any such claim or
2 cause of action.

3 C. Regardless of whether a prevailing party sought to recover
4 court costs or attorney fees in the underlying action, a prevailing
5 party under this section may bring a civil action to recover court
6 costs and attorney fees against a party including an entity,
7 attorney, or law firm, that sought declaratory or injunctive relief
8 described by subsection A of this section not later than three (3)
9 years after the date on which, as applicable:

10 1. The dismissal or judgment described by subsection B of this
11 section becomes final on the conclusion of appellate review; or

12 2. The time for seeking appellate review expires.

13 D. It is not a defense to an action brought under subsection C
14 of this section that:

15 1. A prevailing party under this section failed to seek
16 recovery of court costs or attorney fees in the underlying action;

17 2. The court in the underlying action declined to recognize or
18 enforce the requirements of this section; or

19 3. The court in the underlying action held that any provisions
20 of this section are invalid, unconstitutional, or preempted by
21 federal law, notwithstanding the doctrines of issue or claim
22 preclusion.

23 SECTION 14. This act shall become effective November 1, 2022.

24 58-2-2728 DC 1/20/2022 8:04:16 AM