

Bill Summary
2nd Session of the 58th Legislature

Bill No.:	SB 1503
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Author:	Sen. Daniels
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Bill Analysis

The CS for SB 1503 creates the Oklahoma Heartbeat Act. The measure provides that a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined whether the fetus has a detectable heartbeat. A physician may not perform or induce an abortion if a heartbeat is detected unless he or she believes a medical emergency exists. If the physician believes an emergency exists, he or she shall record the medical condition of the woman. The measure provides that the physician must use a test that is with the physician's good faith and reasonable understanding of standard medical practice and appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy. A physician making the determination is directed by the measure to record the estimated gestational age of the unborn child as well as the method and test used to determine the age.

The measure also clarifies that its provisions shall not be construed as to allow abortion in the state or to authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced. The measure shall not be construed to wholly or partly repeal any statute that prohibits abortion nor shall it be construed to prohibit a political subdivision from regulating or prohibiting abortion in any manner.

The provisions of this measure shall be exclusively enforced through private civil actions. No enforcement shall be undertaken by the state, a political subdivision, a district attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person. The measure authorizes any person to bring a civil action against any person who performs or induces an abortion as well as any person who engages in conduct that aids or abets the performance or inducement of an abortion. Claimants that prevail in actions brought under the provisions of this measure shall be entitled to relief sufficient to prevent the defendant from violating the provisions of this measure and statutory damages amounting to not less than \$10,000.00. for each abortion that the defendant performed, induced, or abetted. Court costs and fees in addition to nominal costs for emotional distress and loss of consortium shall be awarded to the claimants as well. No award will be made if the defendant previously paid not less than \$10,000.00 for the particular abortion named in the claim. Claims may be brought forward within 4 years of the date the alleged violation occurred.

The measure prohibits using ignorance of the law, a defendant's beliefs that the provisions of this measure are unconstitutional, prior court decisions, non-mutual issue preclusion or non-mutual claim preclusion, the consent of the mother, or any claim that enforcement would violate the constitutional rights of third parties as a defense. The measure provides that it is an affirmative

defense that a person sued reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would/will comply with the provisions of the measure. No state official shall intervene in an action brought under the provisions of this measure. Additionally, no court shall award court costs or attorney fees to a defendant.

The measure also provides that defendants may assert an affirmative defense a defense to liability if the Supreme Court holds that the courts of the state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law or the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court. The measure provides that a defendant may assert standing if the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion or the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman. The measure provides that a court shall not find an undue burden unless the defendant introduces evidence outlined in the measure.

Civil actions must be brought in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred, the county of residence for the defendant, the county of the principal office of any one of the defendants that is not a natural person, or county of residence for the claimant if the claimant is a natural person residing in the state.

The CS provides that physicians under contract with or employees of federal agencies shall not be required to detect a fetal heartbeat if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity. The CS also provides that civil actions brought under the provisions of this measure shall not be subject to the provisions of the Oklahoma Citizens Participation Act. Civil action may not be brought against the woman upon whom an abortion was performed or against common carriers transporting the woman. The CS provides that no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief to prevent any person from enforcing any provision or application of this measure. The CS provides for severability of the provisions in this measure and prevents any court from rewriting any provision in the measure.

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