

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 SENATE BILL 1729

By: Deevers

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5  
6 AS INTRODUCED

7 An Act relating to abortion; creating the Abolition  
8 of Abortion Act; providing short title; stating  
9 purpose of act; amending 21 O.S. 2021, Section 691,  
10 which relates to homicide; modifying applicability of  
11 provisions relating to homicide; specifying  
12 applicability and construction of certain provision;  
13 making enforcement of certain violations subject to  
14 specified factors; amending 21 O.S. 2021, Section  
15 156, which relates to duress defense; updating  
16 statutory language; specifying applicability of  
17 defense; amending 12 O.S. 2021, Section 1053, which  
18 relates to wrongful death; modifying applicability of  
19 certain provisions; making act prospective; providing  
20 for noncodification; providing for codification; and  
21 declaring an emergency.

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

23 SECTION 1. NEW LAW A new section of law not to be  
24 codified in the Oklahoma Statutes reads as follows:

25 This act shall be known and may be cited as the "Abolition of  
26 Abortion Act".

27 SECTION 2. NEW LAW A new section of law not to be  
28 codified in the Oklahoma Statutes reads as follows:

1 A. Acknowledging the sanctity of innocent human life, created  
2 in the image of God, the purpose of this act is to:

3 1. Follow the Constitution of the United States, which requires  
4 that "no state...shall deny to any person within its jurisdiction  
5 the equal protection of the laws";

6 2. Fulfill such constitutional requirement by protecting the  
7 lives of preborn persons with the same criminal and civil laws  
8 protecting the lives of born persons by repealing provisions that  
9 permit willful prenatal homicide or assault;

10 3. Protect pregnant mothers from being pressured to abort by  
11 repealing provisions that may otherwise allow a person to direct,  
12 advise, encourage, or solicit a mother to abort her child; and

13 4. Ensure that all persons potentially subject to such laws are  
14 entitled to due process protections.

15 SECTION 3. AMENDATORY 21 O.S. 2021, Section 691, is  
16 amended to read as follows:

17 Section 691. A. Homicide is the killing of one human being by  
18 another.

19 B. As used in this section, "human being" includes an unborn  
20 child, as defined in Section 1-730 of Title 63 of the Oklahoma  
21 Statutes.

22 C. Homicide shall not include~~+~~  
23  
24  
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1       ~~1. Acts which cause the death of an unborn child if those acts~~  
2 ~~were committed during a legal abortion to which the pregnant woman~~  
3 ~~consented; or~~

4       ~~2. Acts acts which are committed pursuant to the usual and~~  
5 ~~customary standards of medical practice during diagnostic testing or~~  
6 ~~therapeutic treatment.~~

7       ~~D. Under no circumstances shall the mother of the unborn child~~  
8 ~~be prosecuted for causing the death of the unborn child unless the~~  
9 ~~mother has committed a crime that caused the death of the unborn~~  
10 ~~child.~~

11       SECTION 4.       NEW LAW       A new section of law to be codified  
12 in the Oklahoma Statutes as Section 696 of Title 21, unless there is  
13 created a duplication in numbering, reads as follows:

14       A. This chapter applies even where the victim is an unborn  
15 child.

16       B. Enforcement where the victim is an unborn child is subject  
17 to the same presumptions, defenses, justifications, laws of parties,  
18 immunities, and clemencies as would apply when the victim is a  
19 person who had been born alive.

20       C. This chapter shall not apply to:

21       1. The undertaking of life-saving procedures to save the life  
22 of the mother when accompanied by reasonable steps to save the life  
23 of the unborn child; or

24       2. A spontaneous miscarriage.

1 D. This section prevails over other law to the extent of any  
2 conflict.

3 SECTION 5. AMENDATORY 21 O.S. 2021, Section 156, is  
4 amended to read as follows:

5 Section 156. A. A person is entitled to assert duress as a  
6 defense if that person committed a prohibited act or omission  
7 because of a reasonable belief that there was imminent danger of  
8 death or great bodily harm from another upon oneself, ~~ones~~ one's  
9 spouse, or ~~ones~~ one's child.

10 B. Even where the charge is murder, the provisions of this  
11 section shall apply if the victim is an unborn child and the  
12 defendant is the child's mother.

13 SECTION 6. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 650.12 of Title 21, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. This chapter applies even where the victim is an unborn  
17 child.

18 B. Enforcement where the victim is an unborn child is subject  
19 to the same presumptions, defenses, justifications, laws of parties,  
20 immunities, and clemencies as would apply where the victim is a  
21 person who had been born alive.

22 C. This chapter shall not apply to:  
23  
24  
25

1 1. The undertaking of life-saving procedures to save the life  
2 of the mother when accompanied by reasonable steps to save the life  
3 of the unborn child; or

4 2. A spontaneous miscarriage.

5 D. This section prevails over other law to the extent of any  
6 conflict.

7 SECTION 7. AMENDATORY 12 O.S. 2021, Section 1053, is  
8 amended to read as follows:

9 Section 1053. A. When the death of one is caused by the  
10 wrongful act or omission of another, the personal representative of  
11 the former may maintain an action therefor against the latter, or  
12 his or her personal representative if he or she is also deceased, if  
13 the former might have maintained an action, had he or she lived,  
14 against the latter, or his or her representative, for an injury for  
15 the same act or omission. The action must be commenced within two  
16 (2) years.

17 B. The damages recoverable in actions for wrongful death as  
18 provided in this section shall include the following:

19 1. Medical and burial expenses, which shall be distributed to  
20 the person or governmental agency as defined in Section 5051.1 of  
21 Title 63 of the Oklahoma Statutes who paid these expenses, or to the  
22 decedent's estate if paid by the estate. The provisions of this  
23 paragraph shall not apply to the cost of an abortion in actions  
24 maintained pursuant to subsection F of this section;

1           2. The loss of consortium and the grief of the surviving  
2 spouse, which shall be distributed to the surviving spouse;

3           3. The mental pain and anguish suffered by the decedent, which  
4 shall be distributed to the surviving spouse and children, if any,  
5 or next of kin in the same proportion as personal property of the  
6 decedent. For the purposes of actions maintained pursuant to  
7 subsection F of this section, "next of kin" as used in this  
8 paragraph shall mean the parent or grandparent who maintained the  
9 action as provided for in paragraph 3 of subsection F of this  
10 section;

11           4. The pecuniary loss to the survivors based upon properly  
12 admissible evidence with regard thereto including, but not limited  
13 to, the age, occupation, earning capacity, health habits, and  
14 probable duration of the decedent's life, which must inure to the  
15 exclusive benefit of the surviving spouse and children, if any, or  
16 next of kin, and shall be distributed to them according to their  
17 pecuniary loss. For the purposes of actions maintained pursuant to  
18 subsection F of this section, "next of kin" as used in this  
19 paragraph shall mean the parent or grandparent who maintained the  
20 action as provided for in paragraph 3 of subsection F of this  
21 section; and

22           5. The grief and loss of companionship of the children and  
23 parents of the decedent, which shall be distributed to them  
24 according to their grief and loss of companionship.

1 C. In proper cases, as provided by Section 9.1 of Title 23 of  
2 the Oklahoma Statutes, punitive or exemplary damages may also be  
3 recovered against the person proximately causing the wrongful death  
4 or the person's representative if such person is deceased. Such  
5 damages, if recovered, shall be distributed to the surviving spouse  
6 and children, if any, or next of kin in the same proportion as  
7 personal property of the decedent. For the purposes of actions  
8 maintained pursuant to subsection F of this section, "next of kin"  
9 as used in this paragraph shall mean the parent or grandparent who  
10 maintained the action as provided for in paragraph 3 of subsection F  
11 of this section.

12 D. Where the recovery is to be distributed according to a  
13 person's pecuniary loss or loss of companionship, the judge shall  
14 determine the proper division.

15 E. The above-mentioned distributions shall be made after the  
16 payment of legal expenses and costs of the action.

17 F. 1. The provisions of this section shall also be available  
18 for the death of an unborn person as defined in Section 1-730 of  
19 Title 63 of the Oklahoma Statutes.

20 2. The provisions of this subsection shall apply to acts which  
21 cause the death of an unborn person in utero ~~if:~~

- 22 ~~a. the physician who performed the abortion or the~~  
23 ~~referring physician fails to obtain and document the~~  
24 ~~voluntary and informed consent of the pregnant woman~~

1                   ~~pursuant to Section 1-738.2 of Title 63 of the~~  
2                   ~~Oklahoma Statutes,~~

3                   ~~b. the pregnant woman withdraws her consent to the~~  
4                   ~~abortion prior to performance of the abortion,~~

5                   ~~e. the pregnant woman undergoes the abortion due to~~  
6                   ~~coercion from a third party,~~

7                   ~~d. the physician fails to obtain and document proof of~~  
8                   ~~age demonstrating that the pregnant woman is not a~~  
9                   ~~minor, or, in the case of a minor, fails to obtain:~~

10                   ~~(1) parental consent to the abortion pursuant to~~  
11                   ~~Section 1-740.2 of Title 63 of the Oklahoma~~  
12                   ~~Statutes,~~

13                   ~~(2) proof that the pregnant woman, although a minor,~~  
14                   ~~is emancipated, or~~

15                   ~~(3) judicial authorization of the abortion without~~  
16                   ~~parental notification pursuant to Section 1-740.3~~  
17                   ~~of Title 63 of the Oklahoma Statutes,~~

18                   ~~e. the physician who performed the abortion causes the~~  
19                   ~~woman physical or psychological harm, the possibility~~  
20                   ~~of which she did not foresee or was not informed of at~~  
21                   ~~the time of her consent,~~

22                   ~~f. the physician who performed the abortion fails to~~  
23                   ~~screen the pregnant woman and document such screening~~  
24                   ~~for risk factors associated with a heightened risk of~~



1           ~~adverse consequences from abortion which a reasonably~~  
2           ~~prudent physician would screen for,~~  
3           ~~g. the physician fails to screen the pregnant woman and~~  
4           ~~document such screening for physical or psychological~~  
5           ~~impairment of judgment due to factors including, but~~  
6           ~~not limited to, drugs, alcohol, illness or fatigue,~~  
7           ~~h. the physician fraudulently induces the pregnant woman~~  
8           ~~to obtain the abortion or gives misleading or false~~  
9           ~~information in response to a pregnant woman's inquiry,~~  
10          ~~or~~  
11          ~~i. there exist any other circumstances which violate~~  
12          ~~state law.~~

13           The provisions of this paragraph shall not be construed to apply  
14 to cases in which a physician licensed to practice medicine in this  
15 state attempts, in a reasonably prudent manner, to prevent the death  
16 of an unborn person or a pregnant woman.

17           3. A parent or grandparent of the deceased unborn person is  
18 entitled to maintain an action against the physician who caused the  
19 death of an unborn person ~~under the conditions provided by~~  
20 ~~subparagraphs a through i of paragraph 2 of this subsection;~~  
21 provided, however, the parent or grandparent may not maintain such  
22 action if the parent or grandparent coerced the mother of the unborn  
23 person to abort the unborn person.

1           4. Liability for wrongful death by the physician under this  
2 section shall not be waived by the pregnant woman prior to  
3 performance of the abortion. A physician shall not request, orally,  
4 on a written form or in any other manner, that the pregnant woman  
5 waive the liability of the physician for wrongful death related to  
6 the abortion as a condition of performing an abortion.

7           ~~5. Under no circumstances shall the mother of the unborn person~~  
8 ~~be found liable for causing the death of the unborn person unless~~  
9 ~~the mother has committed a crime that caused the death of the unborn~~  
10 ~~person.~~

11           SECTION 8.           NEW LAW           A new section of law not to be  
12 codified in the Oklahoma Statutes reads as follows:

13           This act is prospective only and shall not apply to conduct  
14 committed prior to the effective date of this act.

15           SECTION 9. It being immediately necessary for the preservation  
16 of the public peace, health or safety, an emergency is hereby  
17 declared to exist, by reason whereof this act shall take effect and  
18 be in full force from and after its passage and approval.

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