

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 834

By: Daniels

AS INTRODUCED

An Act relating to abortion; amending 21 O.S. 2021, Section 861, which relates to crimes and punishments; adding and modifying circumstances under which certain acts are not criminal offenses; listing additional acts that are not criminal offenses; requiring certain reporting of abortion; defining terms; amending Section 1, Chapter 11, O.S.L. 2022 (63 O.S. Supp. 2022, Section 1-731.4), which relates to abortion; adding and modifying definitions; clarifying applicability of certain provision; adding and modifying exceptions to certain prohibition; removing duplicative language; requiring certain reporting of abortion; amending Section 2, Chapter 190, O.S.L. 2022 (63 O.S. Supp. 2022, Section 1-745.32), which relates to definitions used in the Oklahoma Heartbeat Act; defining terms; amending Section 3, Chapter 190, O.S.L. 2022 (63 O.S. Supp. 2022, Section 1-745.33), which relates to determining presence of fetal heartbeat; clarifying applicability of certain provision; adding and updating statutory references; amending Section 4, Chapter 190, O.S.L. 2022 (63 O.S. Supp. 2022, Section 1-745.34), which relates to abortion prohibition if heartbeat detected; clarifying applicability of certain provision; adding and updating statutory references; amending Section 5, Chapter 190, O.S.L. 2022 (63 O.S. Supp. 2022, Section 1-745.35), which relates to medical emergency; modifying exception; updating statutory references; adding certain exception; requiring certain reporting of abortion; amending Section 1, Chapter 321, O.S.L. 2022 (63 O.S. Supp. 2022, Section 1-745.51), which relates to definitions; defining and modifying terms; amending Section 2, Chapter 321, O.S.L. 2022 (63 O.S. Supp. 2022, Section 1-745.52), which relates to abortion

1 prohibition; clarifying applicability of certain
2 provision; modifying exceptions; updating statutory
3 references; requiring certain reporting of abortion;
4 requiring abortion performed under certain exceptions
5 to be reported to State Department of Health on
6 certain form; restricting type of information
7 requested; requiring abortion provider to state
8 proper exception and include other required
9 information; requiring Department to compile reported
10 information into annual statistical report; directing
11 certain publication and submission of report;
12 requiring promulgation of certain rules; repealing 63
13 O.S. 2021, Section 1-733, which relates to self-
14 induced abortions; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 861, is amended to read as follows:

Section 861. A. Every person who administers to any woman, or who prescribes for any woman, or advises or procures any woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless ~~the~~:

1. The same is necessary to preserve her the life of a pregnant woman in a medical emergency as defined in subsection E of this section; or

2. The pregnancy is the result of:

a. rape or sexual assault that has been reported to law enforcement, or

1 b. incest of a minor that has been reported to law
2 enforcement,

3 shall be guilty of a felony punishable by imprisonment in the State
4 Penitentiary for not less than two (2) years nor more than five (5)
5 years.

6 B. 1. The use, prescription, administration, procuring, or
7 selling of any type of contraception shall not be a violation of
8 subsection A of this section.

9 2. An act related to in vitro fertilization or otherwise
10 related to the diagnosis or treatment of infertility or the
11 preservation of fertility by a licensed healthcare provider acting
12 lawfully and within the scope of his or her practice shall not be a
13 violation of subsection A of this section.

14 3. An act is not a violation of subsection A of this section if
15 performed with the purpose to:

16 a. save the life or preserve the health of the unborn
17 child,

18 b. remove a dead unborn child whose death was caused by
19 spontaneous abortion, or

20 c. remove an ectopic pregnancy.

21 C. Any abortion performed under an exception provided by
22 subsection A of this section or performed to remove an ectopic
23 pregnancy shall be reported by the abortion provider to the State
24 Department of Health in accordance with Section 11 of this act.

1 D. As used in this section:

2 1. "Medical emergency" means a condition that, in reasonable
3 medical judgment:

4 a. cannot be remedied by delivery of the child, and

5 b. so complicates the medical condition of the pregnant

6 woman as to necessitate the immediate abortion of her

7 pregnancy to avert her death or for which a delay will

8 create serious risk of substantial and irreversible

9 physical impairment of a major bodily function, not

10 including psychological or emotional conditions. A

11 condition is not a medical emergency if it is based on

12 a claim, diagnosis, or determination that the woman

13 may engage in conduct which she intends to result in

14 her death or in the substantial and irreversible

15 physical impairment of a major bodily function; and

16 2. "Reasonable medical judgment" means a medical judgment,

17 based upon the facts known to the physician at the time, that would

18 be made by a reasonably prudent physician who is knowledgeable about

19 the case and the treatment possibilities with respect to the medical

20 conditions involved.

21 SECTION 2. AMENDATORY Section 1, Chapter 11, O.S.L. 2022

22 (63 O.S. Supp. 2022, Section 1-731.4), is amended to read as

23 follows:

24 Section 731.4. A. As used in this section:

1 1. ~~The terms "abortion" and "unborn child" shall have the same~~
2 ~~meaning as provided by Section 1-730 of Title 63 of the Oklahoma~~
3 ~~Statutes~~ "Abortion" means the act of using, prescribing,
4 administering, procuring, or selling of any instrument, medicine,
5 drug, or any other substance, device, or means with the purpose to
6 terminate the pregnancy of a woman, with knowledge that the
7 termination by any of those means will with reasonable likelihood
8 cause the death of an unborn child. It does not include the use,
9 prescription, administration, procuring, or selling of any type of
10 contraception. It does not include any act related to in vitro
11 fertilization or otherwise related to the diagnosis or treatment of
12 infertility or the preservation of fertility by a licensed
13 healthcare provider acting lawfully and within the scope of his or
14 her practice. An act is not an abortion if the act is performed
15 with the purpose to:

16 a. save the life or preserve the health of the unborn
17 child,

18 b. remove a dead unborn child whose death was caused by
19 spontaneous abortion, or

20 c. remove an ectopic pregnancy; and

21 2. "Medical emergency" means a condition ~~which~~ that, in
22 reasonable medical judgment:

23 a. cannot be remedied by delivery of the child in which
24 ~~an abortion is necessary to preserve the life of a~~

1 ~~pregnant woman whose life is endangered by a physical~~
2 ~~disorder, physical illness or physical injury~~
3 ~~including a life-endangering physical condition caused~~
4 ~~by or arising from the pregnancy itself, and~~

5 b. so complicates the medical condition of the pregnant
6 woman as to necessitate the immediate abortion of her
7 pregnancy to avert her death or for which a delay will
8 create serious risk of substantial and irreversible
9 physical impairment of a major bodily function, not
10 including psychological or emotional conditions. A
11 condition is not a medical emergency if it is based on
12 a claim, diagnosis, or determination that the woman
13 may engage in conduct which she intends to result in
14 her death or in the substantial and irreversible
15 physical impairment of a major bodily function;

16 3. "Reasonable medical judgment" means a medical judgment,
17 based upon the facts known to the physician at the time, that would
18 be made by a reasonably prudent physician who is knowledgeable about
19 the case and the treatment possibilities with respect to the medical
20 conditions involved; and

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

1 B. ~~1.~~ Notwithstanding any other provision of law, a person
2 shall not purposely perform, induce, or attempt to perform or induce
3 an abortion except ~~to save~~:

4 1. To preserve the life of a pregnant woman in a medical
5 emergency as defined in subsection A of this section; or

6 2. If the pregnancy is the result of:

7 a. rape or sexual assault that has been reported to law
8 enforcement, or

9 b. incest of a minor that has been reported to law
10 enforcement.

11 ~~2.~~ C. 1. A person convicted of performing or attempting to
12 perform an abortion shall be guilty of a felony punishable by a fine
13 not to exceed One Hundred Thousand Dollars (\$100,000.00), or by
14 confinement in the custody of the Department of Corrections for a
15 term not to exceed ten (10) years, or by such fine and imprisonment.

16 ~~3.~~ 2. This section does not:

17 ~~a.~~ authorize the charging or conviction of a woman with
18 any criminal offense in the death of her own unborn
19 child, ~~or~~

20 ~~b.~~ ~~prohibit the sale, use, prescription or administration~~
21 ~~of a contraceptive measure, drug or chemical if the~~
22 ~~contraceptive measure, drug or chemical is~~
23 ~~administered before the time when a pregnancy could be~~
24 ~~determined through conventional medical testing and if~~

1 ~~the contraceptive measure, drug or chemical is sold,~~
2 ~~used, prescribed or administered in accordance with~~
3 ~~manufacturer instructions.~~

4 4. 3. It is an affirmative defense to prosecution under this
5 section if a licensed physician provides medical treatment to a
6 pregnant woman which results in the accidental or unintentional
7 injury or death to the unborn child.

8 D. Any abortion performed or induced under an exception
9 provided by subsection B of this section or performed to remove an
10 ectopic pregnancy shall be reported by the abortion provider to the
11 State Department of Health in accordance with Section 11 of this
12 act.

13 SECTION 3. AMENDATORY Section 2, Chapter 190, O.S.L.
14 2022 (63 O.S. Supp. 2022, Section 1-745.32), is amended to read as
15 follows:

16 Section 1-745.32. As used in this act:

17 1. "Abortion" means the act of using, prescribing,
18 administering, procuring, or selling of any instrument, medicine,
19 drug, or any other substance, device, or means with the purpose to
20 terminate the pregnancy of a woman, with knowledge that the
21 termination by any of those means will with reasonable likelihood
22 cause the death of an unborn child. It does not include the use,
23 prescription, administration, procuring, or selling of any type of
24 contraception. It does not include any act related to in vitro

1 fertilization or otherwise related to the diagnosis or treatment of
2 infertility or the preservation of fertility by a licensed
3 healthcare provider acting lawfully and within the scope of his or
4 her practice. An act is not an abortion if the act is performed
5 with the purpose to:

6 a. save the life or preserve the health of the unborn
7 child,

8 b. remove a dead unborn child whose death was caused by
9 spontaneous abortion, or

10 c. remove an ectopic pregnancy;

11 2. "Fetal heartbeat" means cardiac activity or the steady and
12 repetitive rhythmic contraction of the fetal heart within the
13 gestational sac;

14 ~~2.~~ 3. "Gestational age" means the amount of time that has
15 elapsed from the first day of a woman's last menstrual period;

16 ~~3.~~ 4. "Gestational sac" means the structure comprising the
17 extraembryonic membranes that envelop the unborn child and that is
18 typically visible by ultrasound after the fourth week of pregnancy;

19 ~~4.~~ 5. "Medical emergency" means a condition that, in reasonable
20 medical judgment:

21 a. cannot be remedied by delivery of the child, and

22 b. so complicates the medical condition of the pregnant
23 woman as to necessitate the immediate abortion of her
24 pregnancy to avert her death or for which a delay will

1 create serious risk of substantial and irreversible
2 physical impairment of a major bodily function, not
3 including psychological or emotional conditions. A
4 condition is not a medical emergency if it is based on
5 a claim, diagnosis, or determination that the woman
6 may engage in conduct which she intends to result in
7 her death or in the substantial and irreversible
8 physical impairment of a major bodily function;

9 6. "Physician" means an individual licensed to practice
10 medicine in this state including a medical doctor and a doctor of
11 osteopathic medicine;

12 ~~5.~~ 7. "Pregnancy" means the human female reproductive condition
13 that:

- 14 a. begins with fertilization,
- 15 b. occurs when the woman is carrying the developing human
16 offspring, and
- 17 c. is calculated from the first day of the woman's last
18 menstrual period;

19 ~~6.~~ 8. "Reasonable medical judgment" means a medical judgment,
20 based upon the facts known to the physician at the time, that would
21 be made by a reasonably prudent physician who is knowledgeable about
22 the case and the treatment possibilities with respect to the medical
23 conditions involved;

1 9. "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;

4 ~~7.~~ 10. "Unborn child" means a human fetus or embryo in any
5 stage of gestation from fertilization until birth; and

6 ~~8.~~ 11. "Woman" and "women" include any person whose biological
7 sex is female including any person with XX chromosomes and any
8 person with a uterus, regardless of any gender identity that the
9 person attempts to assert or claim.

10 SECTION 4. AMENDATORY Section 3, Chapter 190, O.S.L.
11 2022 (63 O.S. Supp. 2022, Section 1-745.33), is amended to read as
12 follows:

13 Section 1-745.33. A. For the purposes of determining the
14 presence of a fetal heartbeat under this section, "standard medical
15 practice" includes employing the appropriate means of detecting the
16 heartbeat based on the estimated gestational age of the unborn child
17 and the condition of the woman and her pregnancy.

18 B. Except as provided by ~~Sections 5 and 6 of this act~~ Sections
19 1-745.35 and 1-745.36 of this title and Section 7 of this act, an
20 abortion may not be performed ~~or~~, induced, or attempted to be
21 performed or induced on a pregnant woman unless a physician has
22 determined, in accordance with this section, whether the woman's
23 unborn child has a detectable fetal heartbeat.

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

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

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

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

9 1. The estimated gestational age of the unborn child;

10 2. The method used to estimate the gestational age; and

11 3. The test used for detecting a fetal heartbeat including the
12 date, time, and results of the test.

13 SECTION 5. AMENDATORY Section 4, Chapter 190, O.S.L.
14 2022 (63 O.S. Supp. 2022, Section 1-745.34), is amended to read as
15 follows:

16 Section 1-745.34. A. Except as provided by ~~Sections 5 and 6 of~~
17 ~~this act~~ Sections 1-745.35 and 1-745.36 of this title and Section 7
18 of this act, a physician shall not knowingly perform ~~or~~, induce, or
19 attempt to perform or induce an abortion on a pregnant woman if the
20 physician detected a fetal heartbeat for the unborn child as
21 required by ~~Section 3 of this act~~ Section 1-745.33 of this title or
22 failed to perform a test to detect a fetal heartbeat.

1 B. A physician shall not be in violation of this section if the
2 physician performed a test for a fetal heartbeat as required by
3 Section 3 of this act and did not detect a fetal heartbeat.

4 C. This section shall not affect any provision of state law
5 that regulates or prohibits abortion including but not limited to
6 any provision that restricts or regulates an abortion by a
7 particular method or during a particular stage of pregnancy.

8 SECTION 6. AMENDATORY Section 5, Chapter 190, O.S.L.
9 2022 (63 O.S. Supp. 2022, Section 1-745.35), is amended to read as
10 follows:

11 Section 1-745.35. A. ~~Sections 3 and 4 of this act~~ Sections 1-
12 745.35 and 1-745.36 of this title shall not apply if ~~a physician~~
13 ~~believes a medical emergency exists that prevents compliance with~~
14 ~~this act~~ an abortion is necessary to preserve the life of a pregnant
15 woman in a medical emergency as defined in Section 1-745.32 of this
16 title.

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

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

22 2. The medical condition of the pregnant woman that prevented
23 compliance with this act.

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

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

7 Sections 1-745.33 and 1-745.34 of Title 63 of the Oklahoma
8 Statutes shall not apply if the pregnancy is the result of:

9 1. Rape or sexual assault that has been reported to law
10 enforcement; or

11 2. Incest of a minor that has been reported to law enforcement.

12 SECTION 8. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-745.36a of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

15 Any abortion performed or induced under an exception provided by
16 Section 1-745.35 or 1-745.36 of this title or Section 7 of this act
17 or performed to remove an ectopic pregnancy shall be reported by the
18 abortion provider to the State Department of Health in accordance
19 with Section 11 of this act.

20 SECTION 9. AMENDATORY Section 1, Chapter 321, O.S.L.
21 2022 (63 O.S. Supp. 2022, Section 1-745.51), is amended to read as
22 follows:

23 Section 1-745.51. As used in this act:
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1 1. "Abortion" means the act of using, prescribing,
2 administering, procuring, or selling of any instrument, medicine,
3 drug, or any other substance, device, or means with the purpose to
4 terminate the pregnancy of a woman, with knowledge that the
5 termination by any of those means will with reasonable likelihood
6 cause the death of an unborn child. It does not include the use,
7 prescription, administration, procuring, or selling of ~~Plan B,~~
8 ~~morning-after pills, or any other type of contraception or emergency~~
9 ~~contraception.~~ It does not include any act related to in vitro
10 fertilization or otherwise related to the diagnosis or treatment of
11 infertility or the preservation of fertility by a licensed
12 healthcare provider acting lawfully and within the scope of his or
13 her practice. An act is not an abortion if the act is performed
14 with the purpose to:

- 15 a. save the life or preserve the health of the unborn
- 16 child,
- 17 b. remove a dead unborn child whose death was caused by
- 18 spontaneous abortion, or
- 19 c. remove an ectopic pregnancy;

20 2. "Fertilization" means the fusion of a human spermatozoon
21 with a human ovum;

22 3. "Medical emergency" means a condition ~~in which an abortion~~
23 ~~is necessary to preserve the life of a pregnant woman whose life is~~
24 ~~endangered by a physical disorder, physical illness, or physical~~

1 ~~injury, including a life-endangering physical condition caused by or~~
2 ~~arising from the pregnancy itself~~ that, in reasonable medical
3 judgment:

4 a. cannot be remedied by delivery of the child, and

5 b. so complicates the medical condition of the pregnant
6 woman as to necessitate the immediate abortion of her
7 pregnancy to avert her death or for which a delay will
8 create serious risk of substantial and irreversible
9 physical impairment of a major bodily function, not
10 including psychological or emotional conditions. A
11 condition is not a medical emergency if it is based on
12 a claim, diagnosis, or determination that the woman
13 may engage in conduct which she intends to result in
14 her death or in the substantial and irreversible
15 physical impairment of a major bodily function;

16 4. "Reasonable medical judgment" means a medical judgment,
17 based upon the facts known to the physician at the time, that would
18 be made by a reasonably prudent physician who is knowledgeable about
19 the case and the treatment possibilities with respect to the medical
20 conditions involved;

21 ~~4.~~ 5. "Unborn child" means a human fetus or embryo in any stage
22 of gestation from fertilization until birth; and

23 ~~5.~~ 6. "Woman" and "women" include any person whose biological
24 sex is female, including any person with XX chromosomes and any

1 person with a uterus, regardless of any gender identity that the
2 person attempts to assert or claim.

3 SECTION 10. AMENDATORY Section 2, Chapter 321, O.S.L.
4 2022 (63 O.S. Supp. 2022, Section 1-745.52), is amended to read as
5 follows:

6 Section 1-745.52. A. Except as provided by ~~Section 3 of this~~
7 ~~act~~ Section 1-745.53 of this title, a person shall not knowingly
8 perform ~~or~~, induce, or attempt to perform or induce an abortion
9 unless:

10 1. The abortion is necessary to ~~save~~ preserve the life of a
11 pregnant woman in a medical emergency; or

12 2. The pregnancy is the result of:

13 a. rape, or sexual assault that has been reported to law
14 enforcement, or

15 b. incest of a minor that has been reported to law
16 enforcement.

17 B. Any abortion performed or induced under an exception
18 provided by subsection A of this section or Section 1-745.53 of this
19 title or performed to remove an ectopic pregnancy shall be reported
20 by the abortion provider to the State Department of Health in
21 accordance with Section 11 of this act.

22 SECTION 11. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-738r of Title 63, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Any abortion performed or induced under an exception
2 provided by Section 861 of Title 21 of the Oklahoma Statutes,
3 Section 731.4 of Title 63 of the Oklahoma Statutes, Section 1-745.31
4 et seq. of Title 63 of the Oklahoma Statutes, or Section 1-745.51 of
5 Title 63 of the Oklahoma Statutes shall be reported by the abortion
6 provider to the State Department of Health on a form prescribed by
7 the State Commissioner of Health. The form shall not request the
8 name of the woman who obtained the abortion or any other potentially
9 identifying information that could lead to the identification of the
10 woman.

11 B. The abortion provider shall state on the form the specific
12 exception under which the abortion was performed and shall provide a
13 detailed explanation of the justification for performing such
14 abortion including any relevant supporting documentation. The
15 completed form shall include all other information as may be
16 required by the Commissioner.

17 C. The Department shall compile the information received under
18 this section into an annual statistical report which shall be
19 published on the Department's Internet website and submitted to the
20 President Pro Tempore of the Senate and the Speaker of the House of
21 Representatives each year.

22 D. The Commissioner shall promulgate rules to implement this
23 section. Such rules shall include, but not limited to:

- 24 1. The manner of reporting;

1 2. Information to be reported; and

2 3. Patient privacy protections that ensure the anonymity of
3 women who obtain an abortion under an exception provided by Section
4 861 of Title 21 of the Oklahoma Statutes, Section 731.4 of Title 63
5 of the Oklahoma Statutes, Section 1-745.31 et seq. of Title 63 of
6 the Oklahoma Statutes, or Section 1-745.51 of Title 63 of the
7 Oklahoma Statutes.

8 SECTION 12. REPEALER 63 O.S. 2021, Section 1-733, is
9 hereby repealed.

10 SECTION 13. It being immediately necessary for the preservation
11 of the public peace, health or safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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