

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

HOUSE BILL 2088

By: Echols

AS INTRODUCED

An Act relating to abortion definition; amending 63 O.S. 2021, Section 1-737.8, which relates to definitions; clarifying terms; amending 63 O.S. 2021, Section 1-756.2, which relates to definitions; clarifying terms; amending 63 O.S. 2021, Section 1-757.2, which relates to definitions; clarifying terms; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, Section 1-737.8, is amended to read as follows:

Section 1-737.8 For the purposes of the Oklahoma Unborn Child Protection from Dismemberment Abortion Act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device:

- a. to purposely kill the unborn child of a woman known to be pregnant, or
- b. to purposely terminate the pregnancy of a woman known to be pregnant, with a purpose other than:

- 1 (1) after viability to produce a live birth and  
2 preserve the life and health of the child born  
3 alive, ~~or~~  
4 (2) to remove a dead unborn child, or  
5 (3) pre-inducement due to a terminal fetus;

6 2. "Attempt to perform an abortion" means to do or omit to do  
7 anything that, under the circumstances as the actor believes them to  
8 be, is an act or omission constituting a substantial step in a  
9 course of conduct planned to culminate in the actor performing an  
10 abortion. Such substantial steps include, but are not limited to:

- 11 a. agreeing with an individual to perform an abortion on  
12 that individual or on some other person, whether or  
13 not the term "abortion" is used in the agreement, and  
14 whether or not the agreement is contingent on another  
15 factor such as receipt of payment or a determination  
16 of pregnancy, or  
17 b. scheduling or planning a time to perform an abortion  
18 on an individual, whether or not the term "abortion"  
19 is used, and whether or not the performance is  
20 contingent on another factor such as receipt of  
21 payment or a determination of pregnancy.

22 This definition shall not be construed to require that an abortion  
23 procedure actually must be initiated for an attempt to occur;

1       3. "Dismemberment abortion" means, with the purpose of causing  
2 the death of an unborn child, purposely to dismember a living unborn  
3 child and extract him or her one piece at a time from the uterus  
4 through use of clamps, grasping forceps, tongs, scissors or similar  
5 instruments that, through the convergence of two rigid levers,  
6 slice, crush, and/or grasp a portion of the unborn child's body to  
7 cut or rip it off. This definition does not include an abortion  
8 which uses suction to dismember the body of the developing unborn  
9 child by sucking fetal parts into a collection container;

10       4. "Physician" means a person licensed to practice medicine and  
11 surgery or osteopathic medicine and surgery, or otherwise legally  
12 authorized to perform an abortion;

13       5. "Purposely" means the following: A person acts purposely  
14 with respect to a material element of an offense when:

- 15           a. if the element involves the nature of his or her  
16                conduct or a result thereof, it is his or her  
17                conscious objective to engage in conduct of that  
18                nature or to cause such a result, and
- 19           b. if the element involves the attendant circumstances,  
20                he or she is aware of the existence of such  
21                circumstances or he or she believes or hopes that they  
22                exist;

23       6. "Serious health risk to the unborn child's mother" means  
24 that in reasonable medical judgment she has a condition that so

1 complicates her medical condition that it necessitates the abortion  
2 of her pregnancy to avert her death or to avert serious risk of  
3 substantial and irreversible physical impairment of a major bodily  
4 function, not including psychological or emotional conditions. No  
5 such condition may be determined to exist if it is based on a claim  
6 or diagnosis that the woman will engage in conduct which she intends  
7 to result in her death or in substantial and irreversible physical  
8 impairment of a major bodily function; ~~and~~

9 7. "Terminal fetus" means a fetus who has a genetic abnormality  
10 and the fetus has no medical chance of survival post-delivery; and

11 8. "Woman" means a female human being whether or not she has  
12 reached the age of majority.

13 SECTION 2. AMENDATORY 63 O.S. 2021, Section 1-756.2, is  
14 amended to read as follows:

15 Section 1-756.2 As used in this act:

16 1. "Abortion" means the use or prescription of any instrument,  
17 medicine, drug or any other substance or device intentionally to  
18 terminate the pregnancy of a female known to be pregnant with an  
19 intention other than to increase the probability of a live birth, to  
20 preserve the life or health of the child after live birth, to remove  
21 an ectopic pregnancy ~~or~~, to remove a dead unborn child who died as  
22 the result of a spontaneous miscarriage, accidental trauma or a  
23 criminal assault on the pregnant female or her unborn child, or pre-  
24 inducement of a terminal fetus;

1           2. "Abortion-inducing drug" means a medicine, drug or any other  
2 substance prescribed or dispensed with the intent of terminating the  
3 pregnancy of a woman known to be pregnant, with knowledge that the  
4 termination will with reasonable likelihood cause the death of the  
5 unborn child. This includes the off-label use of drugs known to  
6 have abortion-inducing properties, which are prescribed specifically  
7 with the intent of causing an abortion, such as mifepristone  
8 (Mifeprex), misoprostol (Cytotec) and methotrexate. This definition  
9 does not apply to drugs that may be known to cause an abortion, but  
10 which are prescribed for other medical indications, such as  
11 chemotherapeutic agents and diagnostic drugs. The use of such drugs  
12 to induce abortion is also known as "medical", "medication", "RU-  
13 486", "chemical", "Mifeprex regimen" or "drug-induced" abortion;

14           3. "Adverse Event", according to the Food and Drug  
15 Administration, means any untoward medical occurrence associated  
16 with the use of a drug in humans, whether or not considered drug-  
17 related. It does not include an adverse event or suspected adverse  
18 reaction that, had it occurred in a more severe form, might have  
19 caused death;

20           4. "Associated physician" means a person licensed to practice  
21 medicine in the state including medical doctors and doctors of  
22 osteopathy, that has entered into an associated physician agreement;

23           5. "Complication" means any adverse physical or psychological  
24 condition arising from the performance of an abortion which

1 includes, but is not limited to, uterine perforation, cervical  
2 perforation, infection, heavy or uncontrolled bleeding, hemorrhage,  
3 blood clots resulting in pulmonary embolism or deep vein thrombosis,  
4 failure to actually terminate the pregnancy, incomplete abortion  
5 (retained tissue), pelvic inflammatory disease, endometritis, missed  
6 ectopic pregnancy, cardiac arrest, respiratory arrest, renal  
7 failure, metabolic disorder, shock, embolism, coma, placenta previa  
8 in subsequent pregnancies, preterm delivery in subsequent  
9 pregnancies, free fluid in the abdomen, hemolytic reaction due to  
10 the administration of ABO-incompatible blood or blood products,  
11 adverse reactions to anesthesia and other drugs, subsequent  
12 development of breast cancer, psychological complications such as  
13 depression, suicidal ideation, anxiety, sleeping disorders, death  
14 and any other adverse event as defined by the Food and Drug  
15 Administration criteria provided in the Medwatch Reporting System;

16 6. "Gestational age" means the time that has elapsed since the  
17 first day of the woman's last menstrual period, also known as "last  
18 menstrual period" or "LMP";

19 7. "Hospital" means an institution providing medical and  
20 surgical treatment and nursing care for sick or injured people, or  
21 institutions defined under Section 1-701 of Title 63 of the Oklahoma  
22 Statutes;

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1 8. "Physician" means any person licensed to practice medicine  
2 in this state. The term includes medical doctors and doctors of  
3 osteopathy;

4 9. "Pregnant" or "pregnancy" means that female reproductive  
5 condition of having an unborn child in the mother's uterus;

6 10. "Provide" or "provision" means, when used regarding  
7 abortion-inducing drugs, any act of giving, selling, dispensing,  
8 administering, transferring possession to or otherwise providing or  
9 prescribing an abortion-inducing drug;

10 11. "Qualified physician" means a physician licensed in this  
11 state who has the ability to:

- 12 a. identify and document a viable intrauterine pregnancy,
- 13 b. assess the gestational age of pregnancy and to inform  
14 the patient of gestational age-specific risks,
- 15 c. diagnose ectopic pregnancy,
- 16 d. determine blood type and administer RhoGAM if a woman  
17 is Rh negative,
- 18 e. assess for signs of domestic abuse, reproductive  
19 control, human trafficking and other signals of  
20 coerced abortion,
- 21 f. provide surgical intervention or has entered into a  
22 contract with another qualified physician to provide  
23 surgical intervention, and  
24

1 g. supervise and bear legal responsibility for any agent,  
2 employee or contractor who is participating in any  
3 part of procedure including, but not limited to, pre-  
4 procedure evaluation and care;

5 12. "Reasonable medical judgment" means a medical judgment that  
6 would be made by a reasonably prudent physician knowledgeable about  
7 the case and the treatment possibilities with respect to the medical  
8 conditions involved; ~~and~~

9 13. "Terminal fetus" means a fetus who has a genetic  
10 abnormality and the fetus has no medical chance of survival post-  
11 delivery; and

12 14. "Unborn child" means an individual organism of the species  
13 homo sapiens, beginning at fertilization, until the point of being  
14 born-alive as defined in Title 1 U.S.C., Section 8(b).

15 SECTION 3. AMENDATORY 63 O.S. 2021, Section 1-757.2, is  
16 amended to read as follows:

17 Section 1-757.2 As used in this act:

18 1. "Abortion" means the act of using or prescribing any  
19 instrument, medicine, drug or any other substance, device or means  
20 with the intent to terminate the pregnancy of a woman known to be  
21 pregnant, with knowledge that the termination by those means will  
22 with reasonable likelihood cause the death of the unborn child.  
23 Such use, prescription or means is not an abortion if done with the  
24 intent to:

- a. save the life or preserve the health of the unborn child,
- b. remove a dead unborn child caused by spontaneous abortion, accidental trauma or a criminal assault on the pregnant woman or her unborn child,
- c. remove an ectopic pregnancy, ~~or~~
- d. treat a maternal disease or illness for which the prescribed drug is indicated, or
- e. pre-induce due to a terminal fetus;

2. "Abortion-inducing drug" means a medicine, drug or any other substance prescribed or dispensed with the intent of terminating the pregnancy of a woman known to be pregnant, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as mifepristone (Mifeprex), misoprostol (Cytotec) and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications, such as chemotherapeutic agents and diagnostic drugs. The use of such drugs to induce abortion is also known as "medical", "medication", "RU-486", "chemical", "Mifeprex regimen" or "drug-induced" abortion;

3. "Adverse event", according to the Food and Drug Administration, means any untoward medical occurrence associated

1 with the use of a drug in humans, whether or not considered drug-  
2 related. It does not include an adverse event or suspected adverse  
3 reaction that, had it occurred in a more severe form, might have  
4 caused death;

5 4. "Associated physician" means a person fully licensed and in  
6 good standing to practice medicine in the state including medical  
7 doctors and doctors of osteopathy, who has entered into an  
8 associated physician agreement;

9 5. "Complication" means any adverse physical or psychological  
10 condition arising from the performance of an abortion which  
11 includes, but is not limited to, uterine perforation, cervical  
12 perforation, infection, heavy or uncontrolled bleeding, hemorrhage,  
13 blood clots resulting in pulmonary embolism or deep vein thrombosis,  
14 failure to actually terminate the pregnancy, incomplete abortion  
15 (retained tissue), pelvic inflammatory disease, endometritis, missed  
16 ectopic pregnancy, cardiac arrest, respiratory arrest, renal  
17 failure, metabolic disorder, shock, embolism, coma, placenta previa  
18 in subsequent pregnancies, preterm delivery in subsequent  
19 pregnancies, free fluid in the abdomen, hemolytic reaction due to  
20 the administration of ABO-incompatible blood or blood products,  
21 adverse reactions to anesthesia and other drugs, subsequent  
22 development of breast cancer, psychological complications such as  
23 depression, suicidal ideation, anxiety, sleeping disorders, death

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1 and any other adverse event as defined by the Food and Drug  
2 Administration criteria provided in the Medwatch Reporting System;

3 6. "Gestational age" means the time that has elapsed since the  
4 first day of the woman's last menstrual period, also known as "last  
5 menstrual period" or "LMP";

6 7. "Hospital" means an institution providing medical and  
7 surgical treatment and nursing care for sick or injured people, or  
8 institutions defined under Section 1-701 of Title 63 of the Oklahoma  
9 Statutes;

10 8. "Manufacturers and distributors" means individuals or  
11 entities that create, produce, supply, transport or sell drugs,  
12 which include:

- 13 a. any substances recognized by an official pharmacopoeia  
14 or formulary,
- 15 b. any substances intended for use in the diagnosis,  
16 cure, mitigation, treatment or prevention of disease,
- 17 c. any substances other than food intended to affect the  
18 structure or any function of the body, or
- 19 d. any substances intended for use as a component of a  
20 medicine but not a device or a component, part or  
21 accessory of a device;

22 9. "Obstetrician/gynecologist", also known as OB/GYN, means a  
23 licensed physician who specializes in the care of women during  
24 pregnancy and childbirth and in the diagnosis and treatment of

1 diseases of the female reproductive organs and specializes in other  
2 women's health issues such as menopause, hormone problems,  
3 contraception or birth control, and infertility;

4 10. "Physician" means any person fully licensed by and in good  
5 standing with the State Board of Medical Licensure and Supervision  
6 or the State Board of Osteopathic Examiners to practice medicine in  
7 this state. The term includes medical doctors and doctors of  
8 osteopathy;

9 11. "Pregnant" or "pregnancy" means that female reproductive  
10 condition of having an unborn child in the mother's uterus;

11 12. "Provide" or "provision" means, when used regarding  
12 abortion-inducing drugs, any act of giving, selling, dispensing,  
13 administering, transferring possession to or otherwise providing or  
14 prescribing an abortion-inducing drug; ~~and~~

15 13. "Terminal fetus" means a fetus who has a genetic  
16 abnormality and the fetus has no medical chance of survival post-  
17 delivery; and

18 14. "Unborn child" means an individual organism of the species  
19 Homo sapiens, beginning at fertilization, until the point of being  
20 born-alive as defined in Title 1 U.S.C., Section 8(b).

21 SECTION 4. This act shall become effective November 1, 2023.

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23 59-1-7169 TJ 01/18/23

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