

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 402

By: Hamilton

AS INTRODUCED

An Act relating to abortion; creating the Prenatal Equal Protection Act; providing short title; stating purpose of act; amending 21 O.S. 2021, Sections 652 and 691, which relate to crimes and punishments; modifying applicability of provisions relating to assault and battery with deadly weapon and homicide; making certain conduct justifiable; specifying applicability of certain provisions; amending 12 O.S. 2021, Section 1053, which relates to wrongful death; modifying applicability of certain provisions; amending 63 O.S. 2021, Section 1-738.3f, which relates to civil actions; modifying applicability of section; making act prospective; providing for codification; providing for noncodification; and declaring an emergency.

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

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

This act shall be known and may be cited as the "Prenatal Equal Protection Act".

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

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

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

6 2. To 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 striking provisions that  
9 permit willful prenatal homicide or assault;

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

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

15 SECTION 3. AMENDATORY 21 O.S. 2021, Section 652, is  
16 amended to read as follows:

17 Section 652. A. Every person who intentionally and wrongfully  
18 shoots another with or discharges any kind of firearm, with intent  
19 to kill any person, including an unborn child as defined in Section  
20 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be  
21 guilty of a felony punishable by imprisonment in the State  
22 Penitentiary not exceeding life.

23 B. Every person who uses any vehicle to facilitate the  
24 intentional discharge of any kind of firearm, crossbow or other  
25

1 weapon in conscious disregard for the safety of any other person or  
2 persons, including an unborn child as defined in Section 1-730 of  
3 Title 63 of the Oklahoma Statutes, shall upon conviction be guilty  
4 of a felony punishable by imprisonment in the custody of the  
5 Department of Corrections for a term not less than two (2) years nor  
6 exceeding life.

7 C. Any person who commits any assault and battery upon another,  
8 including an unborn child as defined in Section 1-730 of Title 63 of  
9 the Oklahoma Statutes, by means of any deadly weapon, or by such  
10 other means or force as is likely to produce death, or in any manner  
11 attempts to kill another, including an unborn child as defined in  
12 Section 1-730 of Title 63 of the Oklahoma Statutes, or in resisting  
13 the execution of any legal process, shall upon conviction be guilty  
14 of a felony punishable by imprisonment in the State Penitentiary not  
15 exceeding life.

16 D. The provisions of this section shall not apply to:

17 ~~1. Acts which cause the death of an unborn child if those acts~~  
18 ~~were committed during a legal abortion to which the pregnant woman~~  
19 ~~consented; or~~

20 ~~2. Acts~~ acts which are committed pursuant to usual and  
21 customary standards of medical practice during diagnostic testing or  
22 therapeutic treatment.

23 ~~E. Under no circumstances shall the mother of the unborn child~~  
24 ~~be prosecuted for causing the death of the unborn child unless the~~

1 ~~mother has committed a crime that caused the death of the unborn~~  
2 ~~child.~~

3 SECTION 4. AMENDATORY 21 O.S. 2021, Section 691, is  
4 amended to read as follows:

5 Section 691. A. Homicide is the killing of one human being by  
6 another.

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

10 C. Homicide shall not include:

11 ~~1. Acts which cause the death of an unborn child if those acts~~  
12 ~~were committed during a legal abortion to which the pregnant woman~~  
13 ~~consented; or~~

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

17 ~~D. Under no circumstances shall the mother of the unborn child~~  
18 ~~be prosecuted for causing the death of the unborn child unless the~~  
19 ~~mother has committed a crime that caused the death of the unborn~~  
20 ~~child.~~

21 SECTION 5. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 161 of Title 21, unless there is  
23 created a duplication in numbering, reads as follows:

1           Conduct which would otherwise constitute an offense is  
2 justifiable and not criminal when it is a lawful medical procedure:

3           1. Performed by a licensed physician;

4           2. Performed on a pregnant female to avert the death of the  
5 pregnant female;

6           3. That results in the accidental or unintentional death of the  
7 unborn child the pregnant female is carrying; and

8           4. Performed when all reasonable alternatives to save the life  
9 of the unborn child:

10           a. are unavailable, or

11           b. were attempted unsuccessfully before the performance  
12 of the medical procedure.

13           SECTION 6.       NEW LAW       A new section of law to be codified  
14 in the Oklahoma Statutes as Section 696 of Title 21, unless there is  
15 created a duplication in numbering, reads as follows:

16           A. Section 691 et seq. of Title 21 of the Oklahoma Statutes  
17 applies even where the victim is an unborn 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 section prevails over other law to the extent of any  
23 conflict.

1 SECTION 7. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 650.12 of Title 21, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. Section 641 et seq. of Title 21 of the Oklahoma Statutes  
5 applies even where the victim is an unborn child.

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

10 C. This section prevails over other law to the extent of any  
11 conflict.

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

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

22 B. The damages recoverable in actions for wrongful death as  
23 provided in this section shall include the following:  
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1           1. Medical and burial expenses, which shall be distributed to  
2 the person or governmental agency as defined in Section 5051.1 of  
3 Title 63 of the Oklahoma Statutes who paid these expenses, or to the  
4 decedent's estate if paid by the estate. The provisions of this  
5 paragraph shall not apply to the cost of an abortion in actions  
6 maintained pursuant to subsection F of this section;

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

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

17           4. The pecuniary loss to the survivors based upon properly  
18 admissible evidence with regard thereto including, but not limited  
19 to, the age, occupation, earning capacity, health habits, and  
20 probable duration of the decedent's life, which must inure to the  
21 exclusive benefit of the surviving spouse and children, if any, or  
22 next of kin, and shall be distributed to them according to their  
23 pecuniary loss. For the purposes of actions maintained pursuant to  
24 subsection F of this section, "next of kin" as used in this

1 paragraph shall mean the parent or grandparent who maintained the  
2 action as provided for in paragraph 3 of subsection F of this  
3 section; and

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

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

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

21 E. The above-mentioned distributions shall be made after the  
22 payment of legal expenses and costs of the action.  
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1 F. 1. The provisions of this section shall also be available  
2 for the death of an unborn person as defined in Section 1-730 of  
3 Title 63 of the Oklahoma Statutes.

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

6 ~~a. the physician who performed the abortion or the~~  
7 ~~referring physician fails to obtain and document the~~  
8 ~~voluntary and informed consent of the pregnant woman~~  
9 ~~pursuant to Section 1-738.2 of Title 63 of the~~  
10 ~~Oklahoma Statutes,~~

11 ~~b. the pregnant woman withdraws her consent to the~~  
12 ~~abortion prior to performance of the abortion,~~

13 ~~c. the pregnant woman undergoes the abortion due to~~  
14 ~~coercion from a third party,~~

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

18 ~~(1) parental consent to the abortion pursuant to~~  
19 ~~Section 1-740.2 of Title 63 of the Oklahoma~~  
20 ~~Statutes,~~

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

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

4 ~~e. the physician who performed the abortion causes the~~  
5 ~~woman physical or psychological harm, the possibility~~  
6 ~~of which she did not foresee or was not informed of at~~  
7 ~~the time of her consent,~~

8 ~~f. the physician who performed the abortion fails to~~  
9 ~~screen the pregnant woman and document such screening~~  
10 ~~for risk factors associated with a heightened risk of~~  
11 ~~adverse consequences from abortion which a reasonably~~  
12 ~~prudent physician would screen for,~~

13 ~~g. the physician fails to screen the pregnant woman and~~  
14 ~~document such screening for physical or psychological~~  
15 ~~impairment of judgment due to factors including, but~~  
16 ~~not limited to, drugs, alcohol, illness or fatigue,~~

17 ~~h. the physician fraudulently induces the pregnant woman~~  
18 ~~to obtain the abortion or gives misleading or false~~  
19 ~~information in response to a pregnant woman's inquiry,~~

20 ~~or~~

21 ~~i. there exist any other circumstances which violate~~  
22 ~~state law.~~

23 The provisions of this paragraph shall not be construed to apply  
24 to cases in which a physician licensed to practice medicine in this

1 state attempts, in a reasonably prudent manner, to prevent the death  
2 of an unborn person or a pregnant woman.

3 3. A parent or grandparent of the deceased unborn person is  
4 entitled to maintain an action against the physician who caused the  
5 death of an unborn person ~~under the conditions provided by~~  
6 ~~subparagraphs a through i of paragraph 2 of this subsection;~~  
7 provided, however, the parent or grandparent may not maintain such  
8 action if the parent or grandparent coerced the mother of the unborn  
9 person to abort the unborn person.

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

16 ~~5. Under no circumstances shall the mother of the unborn person~~  
17 ~~be found liable for causing the death of the unborn person unless~~  
18 ~~the mother has committed a crime that caused the death of the unborn~~  
19 ~~person.~~

20 SECTION 9. AMENDATORY 63 O.S. 2021, Section 1-738.3f, is  
21 amended to read as follows:

22 Section 1-738.3f. A woman upon whom an abortion has been  
23 performed in negligent violation of Section 1-738.2, 1-738.3d, 1-  
24 738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, or

1 the parent or legal guardian of the woman if she is an unemancipated  
2 minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma  
3 Statutes, may commence a civil action against the abortion provider,  
4 against the prescriber of any drug or chemical intended to induce  
5 abortion, and against any person or entity which referred the woman  
6 to the abortion provider or prescriber and which knew or reasonably  
7 should have known that the abortion provider or prescriber had acted  
8 in violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-  
9 740.4b of Title 63 of the Oklahoma Statutes for actual damages and,  
10 in cases of gross negligence, for punitive damages. The measure of  
11 damages shall include damages for the mental anguish and emotional  
12 distress of the plaintiff, in addition to all damages available for  
13 the wrongful death of the child whose life was aborted in negligent  
14 violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b  
15 of Title 63 of the Oklahoma Statutes, ~~notwithstanding any exception~~  
16 ~~for abortion provided in Section 1053 of Title 12 of the Oklahoma~~  
17 ~~Statutes.~~ Whether the individual or entity committed an abortion in  
18 negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2  
19 or 1-740.4b of Title 63 of the Oklahoma Statutes shall be determined  
20 by the trier of fact in the civil action by the greater weight of  
21 the evidence. Unless the defendant can prove to the trier of fact  
22 by the greater weight of the evidence that the abortion was  
23 performed on a child who was already dead from natural causes before  
24 the abortion, and that the defendant informed the plaintiff that the

1 child was already dead at the time of the abortion, it shall be a  
2 rebuttable presumption that if an abortion was performed, that the  
3 child whose life was aborted was alive until the abortion was  
4 performed, and was capable eventually of living a normal human  
5 lifespan had the abortion not occurred.

6 SECTION 10. NEW LAW A new section of law not to be  
7 codified in the Oklahoma Statutes reads as follows:

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

10 SECTION 11. 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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