

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1694

By: Hamilton

AS INTRODUCED

An Act relating to civil and criminal law; amending 12 O.S. 2001, Section 1053, which relates to wrongful death; making section available for death of an unborn child; providing exceptions; prohibiting certain prosecutions; amending 21 O.S. 2001, Sections 652, 713, 714 and 715, which relate to intentional and wrongful injuries to another; including unborn child in certain sections; providing definition; providing exceptions; prohibiting certain prosecutions; increasing certain penalties; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 1053, is amended to read as follows:

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

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

1. Medical and burial expenses, ~~which~~. Such expenses shall be distributed to the person or governmental agency as defined in Section ~~200~~ 5051.1 of Title ~~56~~ 63 of the Oklahoma Statutes, who paid these expenses, or to the decedent's estate if paid by the estate;;

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

3. The mental pain and anguish suffered by the decedent, ~~which.~~ Such damages shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent. ~~;~~

4. The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, ~~which must.~~ Such pecuniary loss shall inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss. ~~;~~ and

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

C. In proper cases, as provided by Section ~~9~~ 9.1 of Title 23 of the Oklahoma Statutes, punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or his or her representative if such person ~~be~~ is deceased. ~~Such~~ The damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

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

E. The ~~above-mentioned~~ distributions specified by this section shall be made after the payment of legal expenses and costs of the action.

F. 1. The provisions of this section shall also be available for the death of an unborn child, as such term is defined by Section

1-730 of Title 63 of the Oklahoma Statutes, due to prenatal injuries caused by:

- a. the wrongful act or omission of another person, and
  - b. the willful wrongful act or willful omission of another with the intent to cause the death of the unborn child.
2. a. The provisions of this subsection shall not apply to:
- (1) acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or
  - (2) acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.
- b. Under no circumstances shall the mother of an unborn child be prosecuted or found guilty for causing the death of her unborn child.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 652, is amended to read as follows:

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

B. Every person who uses any vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of any other person or persons including an unborn child as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction thereof be guilty of a felony punishable by imprisonment in the

State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

C. Any person who commits any assault and battery upon another person including an unborn child, as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another person including an unborn child as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, or in resisting the execution of any legal process, shall upon conviction thereof be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding twenty (20) years.

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

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

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

E. Under no circumstances may the mother of an unborn child be prosecuted or found guilty for causing the death of her unborn child.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 713, is amended to read as follows:

Section 713. ~~The willful killing of an~~ A. Except as otherwise provided by law, any person who willfully kills an unborn quick child by any injury committed upon the person of the mother of such child, and not prohibited in the next following section, is manslaughter in the first degree, as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, shall be guilty of a felony and, upon conviction thereof, shall be punished pursuant to the provisions of Section 715 of this title.

B. 1. The provisions of this section shall not apply to:

- a. acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or
- b. acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

2. Under no circumstances may the mother of an unborn child be prosecuted or found guilty for causing the death of her unborn child.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 714, is amended to read as follows:

Section 714. ~~Every~~ A. Any person who administers to any woman pregnant with ~~a quick~~ an unborn child as such term is defined by Section 1-730 of Title 63 of the Oklahoma Statutes, or who prescribes for such woman, or advises or procures any such woman to take any medicine, drug or any other substance ~~whatever~~, or who uses or employs any instrument or other means with intent thereby to destroy such unborn child, unless ~~the same shall have been~~ such substance is necessary to preserve the life of such the mother, upon conviction thereof, is guilty ~~in case the death of the child or of the mother is thereby produced, of manslaughter in the first degree of a felony and shall be punished pursuant to the provisions of~~ Section 715 of this title.

B. 1. The provisions of this section shall not apply to:

- a. acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or
- b. acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

2. Under no circumstances may the mother of an unborn child be prosecuted or found guilty for causing the death of her unborn child.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 715, is amended to read as follows:

Section 715. ~~Any~~ A. Except as provided by subsection B of this section, any person guilty of manslaughter in the first degree shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than four (4) years.

B. Any person guilty of violating Sections 713 and 714 of this title shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not to exceed life.

SECTION 6. This act shall become effective November 1, 2005.

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