

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2020

By: Grau, Sullivan and Ritze

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8 COMMITTEE SUBSTITUTE

9 An Act relating to public health and safety; creating
10 the Unborn Wrongful Death Act; providing short title;
11 making legislative findings; defining terms;
12 providing that cause of action not be foreclosed
13 under certain circumstances; prohibiting cause of
14 action for wrongful death of unborn child when
15 abortion is permitted by law; prohibiting cause of
16 action for wrongful death of unborn child based upon
17 alleged misconduct under certain circumstances;
18 providing for intent; providing for severability;
19 permitting certain individuals to maintain action
20 including injunctive relief; providing for
21 codification; and providing an effective date.

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

23 SECTION 1. NEW LAW A new section of law to be codified
24 in the Oklahoma Statutes as Section 1-740A.1 of Title 63, unless
25 there is created a duplication in numbering, reads as follows:

26 This act shall be known and may be cited as the "Unborn Wrongful
27 Death Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-740A.2 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. The Legislature of the State of Oklahoma finds that:

5 1. This state has statutorily recognized a wrongful death civil
6 cause of action, Section 1053 of Title 12 of the Oklahoma Statutes,
7 since 1910;

8 2. The wrongful death cause of action is intended to correct a
9 flaw in the common law: at common law, no cause of action survived
10 a victim's death. Thus, a tortfeasor could escape liability merely
11 because he or she inflicted injuries so severe that they resulted in
12 the death of his or her victim;

13 3. The wrongful death cause of action provides for damages to
14 be paid by the tortfeasor to his or her victim's survivors, thus
15 deterring tortuous and harmful behavior and providing for
16 restitution to the victim's estate;

17 4. This state has an interest in protecting every human being
18 including unborn children from tortious and harmful acts;

19 5. Parents of unborn children have protectable interests in the
20 life, health, and well-being of their children; and

21 6. Tortious behavior which results in the death of an unborn
22 child carries the same social and emotional cost as that which
23 results in the death of a born and living human being including
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1 bereavement, a loss to society, and the lawlessness and disregard
2 for life which characterizes all negligent, harmful, and wrongful
3 behavior.

4 B. For these reasons, the Legislature finds that the exclusion
5 of unborn children from coverage under the state's wrongful death
6 cause of action is at cross-purposes with the justifications for the
7 law and that a cause of action for the wrongful death of an unborn
8 child should be permitted under the laws of this state.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-740A.3 of Title 63, unless
11 there is created a duplication in numbering, reads as follows:

12 For the purposes of the Unborn Wrongful Death Act only:

13 1. "Abortion" means the act of using or prescribing any
14 instrument, medicine, drug, or any other substance, device, or means
15 with the intent to terminate the clinically diagnosable pregnancy of
16 a woman with knowledge that the termination by those means will with
17 reasonable likelihood cause the death of the unborn child. Such
18 use, prescription, or means is not an abortion if done with the
19 intent to:

- 20 a. save the life or preserve the health of the unborn
21 child,
22 b. remove a dead unborn child caused by spontaneous
23 abortion, or

1 c. remove an ectopic pregnancy;

2 2. "Born-alive" means the substantial expulsion or extraction
3 of an infant from its mother, regardless of the duration of the
4 pregnancy, that after expulsion or extraction, whether or not the
5 umbilical cord has been cut or the placenta is attached, and
6 regardless of whether the expulsion or extraction occurs as a result
7 of natural or induced labor, cesarean section, or induced abortion,
8 shows any evidence of life, including, but not limited to, one or
9 more of the following:

10 a. breathing,

11 b. a heartbeat,

12 c. umbilical cord pulsation, or

13 d. definite movement of voluntary muscles;

14 3. "Conception" means the fusion of a human spermatozoon with a
15 human ovum;

16 4. "Physician" means a doctor legally authorized to practice
17 medicine or surgery in this state, or any other individual legally
18 authorized by this state to perform abortions; provided, however,
19 that any individual who is not a physician and not otherwise legally
20 authorized by this state to perform abortions, but who nevertheless
21 performs an abortion, shall be subject to the provisions of this
22 act; and

1 5. "Unborn child" means the offspring of human beings from
2 conception until birth.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-740A.4 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 The state or location of gestation or development of an unborn
7 child when an injury is caused, when an injury takes effect, or at
8 death, shall not foreclose maintenance of a cause of action under
9 the law of this state arising from the death of the unborn child
10 caused by wrongful act, neglect, carelessness, lack of skill, or
11 default.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-740A.5 of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

15 A. There shall be no cause of action against a physician or a
16 medical institution for the wrongful death of an unborn child caused
17 by an abortion if the abortion was permitted by law and the
18 requisite consent was lawfully given; provided, however, that a
19 cause of action is not prohibited if an abortion is performed in
20 violation of state law or if the child is born alive and
21 subsequently dies.

22 B. There shall be no cause of action against a physician or a
23 medical institution for the wrongful death of an unborn child in
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1 utero based on the alleged misconduct of the physician or medical
2 institution if the defendant did not know and, under the applicable
3 standard of good medical care, had no medical reason to know of the
4 pregnancy of the mother or the existence of the unborn child.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-740A.6 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

8 A. The Unborn Wrongful Death Act does not create, recognize,
9 endorse, or condone a right to an abortion.

10 B. It is not the intent of the Unborn Wrongful Death Act to
11 make lawful an abortion that is currently unlawful.

12 SECTION 7. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-740A.7 of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

15 Any provision of the Unborn wrongful Death Act held to be
16 invalid or unenforceable by its terms, or as applied to any person
17 or circumstance, shall be construed so as to give it the maximum
18 effect permitted by law, unless such holding shall be one of utter
19 invalidity or unenforceability, in which event such provision shall
20 be deemed severable herefrom and shall not affect the remainder
21 hereof or the application of such provision to other persons not
22 similarly situated or to other, dissimilar circumstances.

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1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-740A.8 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 The Legislature, by joint resolution, may appoint one or more of
5 its members who sponsored or cosponsored the Unborn Wrongful Death
6 Act in his or her official capacity to intervene as a matter of
7 right to defend this law in any case in which its constitutionality
8 is challenged.

9 SECTION 9. This act shall become effective November 1, 2011.

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11 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 03-03-2011 -
12 DO PASS, As Amended and Coauthored.

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