

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

COMMITTEE SUBSTITUTE  
FOR

SENATE BILL 1728

By: Bullard and Boggs of the  
Senate

and

Gann and Olsen of the House

COMMITTEE SUBSTITUTE

An Act relating to abortion; creating the Unborn  
Person Wrongful Death Act; providing short title;  
amending 12 O.S. 2011, Section 1053, which relates to  
wrongful death actions; modifying requirements for  
award of certain damages; defining term; modifying  
persons with standing to bring certain actions;  
construing provisions; providing exceptions;  
prohibiting certain waiver of liability; modifying  
statutory language; amending 63 O.S. 2011, Section 1-  
730, which relates to definitions; modifying  
definitions; providing for certain enforcement under  
certain circumstances; providing for noncodification;  
and providing an effective date.

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 "Unborn Person  
Wrongful Death Act".

SECTION 2. AMENDATORY 12 O.S. 2011, Section 1053, is amended to read as follows:

Section 1053. A. When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, or his or her personal representative if he or she 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 wrongful death as provided in this section shall include the following:

1. Medical and burial expenses, which shall be distributed to the person or governmental agency as defined in Section 5051.1 of Title 63 of the Oklahoma Statutes who paid these expenses, or to the decedent's estate if paid by the estate. The provisions of this paragraph shall not apply to the cost of an abortion in actions maintained pursuant to subsection F of this section;

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

3. The mental pain and anguish suffered by the decedent, which 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. For the purposes of actions maintained pursuant to

1 subsection F of this section, "next of kin" as used in this  
2 paragraph shall mean the parent or grandparent who maintained the  
3 action as provided for in paragraph 3 of subsection F of this  
4 section;

5     4. The pecuniary loss to the survivors based upon properly  
6 admissible evidence with regard thereto including, but not limited  
7 to, the age, occupation, earning capacity, health habits, and  
8 probable duration of the decedent's life, which must inure to the  
9 exclusive benefit of the surviving spouse and children, if any, or  
10 next of kin, and shall be distributed to them according to their  
11 pecuniary loss. For the purposes of actions maintained pursuant to  
12 subsection F of this section, "next of kin" as used in this  
13 paragraph shall mean the parent or grandparent who maintained the  
14 action as provided for in paragraph 3 of subsection F of this  
15 section; and

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

19     C. In proper cases, as provided by Section 9.1 of Title 23 of  
20 the Oklahoma Statutes, punitive or exemplary damages may also be  
21 recovered against the person proximately causing the wrongful death  
22 or the person's representative if such person is deceased. Such  
23 damages, if recovered, shall be distributed to the surviving spouse  
24 and children, if any, or next of kin in the same proportion as

1 personal property of the decedent. For the purposes of actions  
2 maintained pursuant to subsection F of this section, "next of kin"  
3 as used in this paragraph shall mean the parent or grandparent who  
4 maintained the action as provided for in paragraph 3 of subsection F  
5 of this section.

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

9 E. The above-mentioned distributions shall be made after the  
10 payment of legal expenses and costs of the action.

11 F. 1. The provisions of this section shall also be available  
12 for the death of an unborn ~~child~~ person as defined in Section 1-730  
13 of Title 63 of the Oklahoma Statutes.

14 2. The provisions of this subsection shall ~~not~~ apply to:

15 ~~a. acts which cause the death of an unborn child if those~~  
16 ~~acts were committed during a legal abortion to which~~  
17 ~~the pregnant woman consented, or~~

18 ~~b. acts which are committed pursuant to the usual and~~  
19 ~~customary standards of medical practice during~~  
20 ~~diagnostic testing or therapeutic treatment~~

21 person in utero if:

22 a. the physician who performed the abortion or the  
23 referring physician fails to obtain and document the  
24 voluntary and informed consent of the pregnant woman

1           pursuant to Section 1-738.2 of Title 63 of the  
2           Oklahoma Statutes,

3       b.   the pregnant woman withdraws her consent to the  
4       abortion prior to performance of the abortion,

5       c.   the pregnant woman undergoes the abortion due to  
6       coercion from a third party,

7       d.   the physician fails to obtain and document proof of  
8       age demonstrating that the pregnant woman is not a  
9       minor, or, in the case of a minor, fails to obtain:

10       (1)  parental consent to the abortion pursuant to  
11       Section 1-740.2 of Title 63 of the Oklahoma  
12       Statutes,

13       (2)  proof that the pregnant woman, although a minor,  
14       is emancipated, or

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

18       e.   the physician who performed the abortion causes the  
19       woman physical or psychological harm, the possibility  
20       of which she did not foresee or was not informed of at  
21       the time of her consent,

22       f.   the physician who performed the abortion fails to  
23       screen the pregnant woman and document such screening  
24       for risk factors associated with a heightened risk of

1           adverse consequences from abortion which a reasonably  
2           prudent physician would screen for,

3           g. the physician fails to screen the pregnant woman and  
4           document such screening for physical or psychological  
5           impairment of judgment due to factors including, but  
6           not limited to, drugs, alcohol, illness or fatigue,

7           h. the physician fraudulently induces the pregnant woman  
8           to obtain the abortion or gives misleading or false  
9           information in response to a pregnant woman's inquiry,  
10          or

11          i. there exist any other circumstances which violate  
12          state law.

13          The provisions of this paragraph shall not be construed to apply  
14          to cases in which a physician licensed to practice medicine in this  
15          state attempts, in a reasonably prudent manner, to prevent the death  
16          of an unborn person or a pregnant woman.

17          3. A parent or grandparent of the deceased unborn person is  
18          entitled to maintain an action against the physician who caused the  
19          death of an unborn person under the conditions provided by  
20          subparagraphs a through i of paragraph 2 of this subsection;  
21          provided, however, the parent or grandparent may not maintain such  
22          action if the parent or grandparent coerced the mother of the unborn  
23          person to abort the unborn person.

1        4. Liability for wrongful death by the physician under this  
2 section shall not be waived by the pregnant woman prior to  
3 performance of the abortion. A physician shall not request, orally,  
4 on a written form or in any other manner, that the pregnant woman  
5 wave the liability of the physician for wrongful death related to  
6 the abortion as a condition of performing an abortion.

7        5. Under no circumstances shall the mother of the unborn ~~child~~  
8 person be found liable for causing the death of the unborn ~~child~~  
9 person unless the mother has committed a crime that caused the death  
10 of the unborn ~~child~~ person.

11        SECTION 3.        AMENDATORY        63 O.S. 2011, Section 1-730, is  
12 amended to read as follows:

13        Section 1-730. A. As used in this article:

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

22        2. "Attempt to perform an abortion" means an act, or an  
23 omission of a statutorily required act, that under the circumstances  
24 as the actor believes them to be constitutes a substantial step in a

1 course of conduct planned to culminate in the performance of an  
2 abortion;

3 3. "Certified technician" means a Registered Diagnostic Medical  
4 Sonographer who is certified in obstetrics and gynecology by the  
5 American Registry for Diagnostic Medical Sonography (ARDMS) or a  
6 Nurse Midwife or Advance Practice Nurse Practitioner in Obstetrics  
7 with certification in obstetrical ultrasonography;

8 4. "Unborn child" or "unborn person" means the unborn offspring  
9 of human beings from the moment of conception, through pregnancy,  
10 and until live birth including the human conceptus, zygote, morula,  
11 blastocyst, embryo and fetus;

12 5. "Unemancipated minor" means any person less than eighteen  
13 (18) years of age who is not or has not been married or who is under  
14 the care, custody, and control of the person's parent or parents,  
15 guardian, or juvenile court of competent jurisdiction;

16 6. "Viable" means potentially able to live outside of the womb  
17 of the mother upon premature birth, whether resulting from natural  
18 causes or an abortion;

19 7. "Conception" means the fertilization of the ovum of a female  
20 individual by the sperm of a male individual;

21 8. "Health" means physical or mental health;

22 9. "Department" means the State Department of Health; and

23 10. "Inducing an abortion" means the administration by any  
24 person, including the pregnant woman, of any substance designed or



1 intended to cause an expulsion of the unborn child, effecting an  
2 abortion as defined above.

3 B. Nothing contained herein shall be construed in any manner to  
4 include any ~~birth control~~ contraceptive device or medication or  
5 sterilization procedure.

6 SECTION 4. NEW LAW A new section of law not to be  
7 codified in the Oklahoma Statutes reads as follows:

8 If some or all of the provisions of Section 2 or 3 of this act  
9 are ever temporarily or permanently restrained or enjoined by court  
10 order, the remaining provisions of such section shall be enforced as  
11 though the restrained or enjoined provisions had not been adopted;  
12 provided, however, if such temporary or permanent restraining order  
13 or injunction is stayed or dissolved, or otherwise ceases to have  
14 effect, such provisions shall have full force and effect.

15 SECTION 5. This act shall become effective November 1, 2020.

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