

1 ENGROSSED SENATE  
2 BILL NO. 1728

By: Bullard, Boggs, Dahm,  
3 Scott, Rader, Daniels,  
Howard and Pederson of the  
Senate

4 and

5 Gann and Olsen of the House

6  
7 An Act relating to abortion; creating the Unborn  
Person Wrongful Death Act; providing short title;  
8 amending 12 O.S. 2011, Section 1053, which relates to  
wrongful death actions; modifying requirements for  
9 award of certain damages; defining term; modifying  
persons with standing to bring certain actions;  
10 construing provisions; providing exceptions;  
prohibiting certain waiver of liability; modifying  
11 statutory language; amending 63 O.S. 2011, Section 1-  
730, which relates to definitions; modifying  
12 definitions; providing for certain enforcement under  
certain circumstances; providing for noncodification;  
13 and providing an effective date.

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15  
16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

19 This act shall be known and may be cited as the "Unborn Person  
20 Wrongful Death Act".

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

23 Section 1053. A. When the death of one is caused by the  
24 wrongful act or omission of another, the personal representative of

1 the former may maintain an action therefor against the latter, or  
2 his or her personal representative if he or she is also deceased, if  
3 the former might have maintained an action, had he or she lived,  
4 against the latter, or his or her representative, for an injury for  
5 the same act or omission. The action must be commenced within two  
6 (2) years.

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

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

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

17 3. The mental pain and anguish suffered by the decedent, which  
18 shall be distributed to the surviving spouse and children, if any,  
19 or next of kin in the same proportion as personal property of the  
20 decedent. For the purposes of actions maintained pursuant to  
21 subsection F of this section, "next of kin" as used in this  
22 paragraph shall mean the parent or grandparent who maintained the  
23 action as provided for in paragraph 3 of subsection F of this  
24 section;

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

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

15        C. In proper cases, as provided by Section 9.1 of Title 23 of  
16 the Oklahoma Statutes, punitive or exemplary damages may also be  
17 recovered against the person proximately causing the wrongful death  
18 or the person's representative if such person is deceased. Such  
19 damages, if recovered, shall be distributed to the surviving spouse  
20 and children, if any, or next of kin in the same proportion as  
21 personal property of the decedent. For the purposes of actions  
22 maintained pursuant to subsection F of this section, "next of kin"  
23 as used in this paragraph shall mean the parent or grandparent who  
24

1 maintained the action as provided for in paragraph 3 of subsection F  
2 of this section.

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

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

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

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

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

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

18 person in utero if:

19 a. the physician who performed the abortion or the  
20 referring physician fails to obtain and document the  
21 voluntary and informed consent of the pregnant woman  
22 pursuant to Section 1-738.2 of Title 63 of the  
23 Oklahoma Statutes,

- 1        b. the pregnant woman withdraws her consent to the  
2        abortion prior to performance of the abortion,
- 3        c. the pregnant woman undergoes the abortion due to  
4        coercion from a third party,
- 5        d. the physician fails to obtain and document proof of  
6        age demonstrating that the pregnant woman is not a  
7        minor, or, in the case of a minor, fails to obtain:  
8        (1) parental consent to the abortion pursuant to  
9        Section 1-740.2 of Title 63 of the Oklahoma  
10       Statutes,  
11       (2) proof that the pregnant woman, although a minor,  
12       is emancipated, or  
13       (3) judicial authorization of the abortion without  
14       parental notification pursuant to Section 1-740.3  
15       of Title 63 of the Oklahoma Statutes,
- 16       e. the physician who performed the abortion causes the  
17       woman physical or psychological harm, the possibility  
18       of which she did not foresee or was not informed of at  
19       the time of her consent,
- 20       f. the physician who performed the abortion fails to  
21       screen the pregnant woman and document such screening  
22       for risk factors associated with a heightened risk of  
23       adverse consequences from abortion which a reasonably  
24       prudent physician would screen for,

- 1        g. the physician fails to screen the pregnant woman and  
2        document such screening for physical or psychological  
3        impairment of judgment due to factors including, but  
4        not limited to, drugs, alcohol, illness or fatigue,  
5        h. the physician fraudulently induces the pregnant woman  
6        to obtain the abortion or gives misleading or false  
7        information in response to a pregnant woman's inquiry,  
8        or  
9        i. there exist any other circumstances which violate  
10       state law.

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

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

22       4. Liability for wrongful death by the physician under this  
23       section shall not be waived by the pregnant woman prior to  
24       performance of the abortion. A physician shall not request, orally,

1 on a written form or in any other manner, that the pregnant woman  
2 waive the liability of the physician for wrongful death related to  
3 the abortion as a condition of performing an abortion.

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

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

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

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

19 2. "Attempt to perform an abortion" means an act, or an  
20 omission of a statutorily required act, that under the circumstances  
21 as the actor believes them to be constitutes a substantial step in a  
22 course of conduct planned to culminate in the performance of an  
23 abortion;

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

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

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

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

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

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

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

21       10. "Inducing an abortion" means the administration by any  
22 person, including the pregnant woman, of any substance designed or  
23 intended to cause an expulsion of the unborn child, effecting an  
24 abortion as defined above.



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

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

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

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

14 Passed the Senate the 5th day of March, 2020.

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16 \_\_\_\_\_  
17 Presiding Officer of the Senate

18 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
19 2020.

20  
21 \_\_\_\_\_  
22 Presiding Officer of the House  
23 of Representatives  
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