

An Act

ENROLLED SENATE
BILL NO. 1503

By: Daniels and Jett of the
Senate

and

Russ and Crosswhite Hader
of the House

An Act relating to abortion; creating the Oklahoma Heartbeat Act; defining terms; prohibiting performance of abortion except under certain conditions; requiring certain test to meet specified criteria; requiring physician to record certain information; prohibiting performance of abortion under certain conditions; clarifying allowed conduct; specifying effect of certain provisions; providing exception for medical emergency; requiring physician to record certain information; providing exception for abortion performed at the behest of federal entities; providing for and prohibiting certain enforcement; allowing certain persons to bring certain civil action; requiring and prohibiting certain civil relief; establishing deadline for filing of civil action; allowing and disallowing certain defenses; prohibiting certain acts by specified persons and entities; specifying applicability of certain provisions; prohibiting certain civil actions; authorizing and prohibiting affirmative defense under certain conditions; specifying venue for civil action; prohibiting certain transfer of venue; granting specified entities certain immunities; prohibiting certain waiver of immunity; limiting jurisdiction of courts; establishing liability for court costs and attorney fees; defining term; establishing statute of limitation for bringing certain actions; prohibiting use of certain defenses; providing for severability; expressing legislative intent and declarations;

providing for certain interpretation and enforcement; providing certain construction; amending 12 O.S. 2021, Section 1439, which relates to the Oklahoma Citizens Participation Act; adding exception; amending 51 O.S. 2021, Section 255, which relates to the Oklahoma Religious Freedom Act; limiting applicability of act; providing for codification; and declaring an emergency.

SUBJECT: Abortion

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.31 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Heartbeat Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.32 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac;

2. "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period;

3. "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy;

4. "Physician" means an individual licensed to practice medicine in this state including a medical doctor and a doctor of osteopathic medicine;

5. "Pregnancy" means the human female reproductive condition that:

- a. begins with fertilization,
- b. occurs when the woman is carrying the developing human offspring, and
- c. is calculated from the first day of the woman's last menstrual period;

6. "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances;

7. "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth; and

8. "Woman" and "women" include any person whose biological sex is female including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person attempts to assert or claim.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.33 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

B. Except as provided by Sections 5 and 6 of this act, an abortion may not be performed or induced on a pregnant woman unless a physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

C. In making a determination under subsection B of this section, the physician must use a test that is:

1. Consistent with the physician's good faith and reasonable understanding of standard medical practice; and
2. Appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

D. A physician making a determination under subsection B of this section shall record in the pregnant woman's medical record:

1. The estimated gestational age of the unborn child;
2. The method used to estimate the gestational age; and
3. The test used for detecting a fetal heartbeat including the date, time, and results of the test.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.34 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as provided by Sections 5 and 6 of this act, a physician shall not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 3 of this act or failed to perform a test to detect a fetal heartbeat.

B. A physician shall not be in violation of this section if the physician performed a test for a fetal heartbeat as required by Section 3 of this act and did not detect a fetal heartbeat.

C. This section shall not affect any provision of state law that regulates or prohibits abortion including but not limited to any provision that restricts or regulates an abortion by a particular method or during a particular stage of pregnancy.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.35 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Sections 3 and 4 of this act shall not apply if a physician believes a medical emergency exists that prevents compliance with this act.

B. A physician who performs or induces an abortion under circumstances described by subsection A of this section shall make written notations in the pregnant woman's medical record of:

1. The physician's belief that a medical emergency necessitated the abortion; and

2. The medical condition of the pregnant woman that prevented compliance with this act.

C. A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under subsection B of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.36 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 3 and 4 of this act do not apply to an abortion performed at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.37 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall not be construed to:

1. Create or recognize a right to abortion before a fetal heartbeat is detected;

2. Authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this act;

3. Wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion; or

4. Restrict a political subdivision from regulating or prohibiting abortion in any manner.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.38 of Title 63, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other law, the requirements of this act shall be enforced exclusively through a private civil action described in Section 9 of this act. No direct or indirect enforcement of this act may be taken or threatened by the state, a political subdivision, a district attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person or entity, in any manner whatsoever, except as provided in Section 9 of this act, and no violation of this act may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 9 of this act; provided, that this section does not preclude enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.39 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person, other than the state, its political subdivisions, and any officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

1. Performs or induces an abortion in violation of this act;

2. Knowingly engages in conduct that aids or abets the performance or inducement of an abortion including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this act, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this act; or

3. Intends to engage in the conduct described by paragraph 1 or 2 of this subsection.

B. If a claimant prevails in an action brought under this section, the court shall award:

1. Injunctive relief sufficient to prevent the defendant from violating this act or engaging in acts that aid or abet violations of this act;

2. Statutory damages in an amount of not less than Ten Thousand Dollars (\$10,000.00) for each abortion that the defendant performed or induced in violation of this act, and for each abortion performed or induced in violation of this act that the defendant aided or abetted;

3. Nominal and compensatory damages if the plaintiff has suffered harm from the defendant's conduct including but not limited to loss of consortium and emotional distress; and

4. Court costs and attorney fees.

C. Notwithstanding subsection B of this section, a court shall not award relief under paragraphs 2 or 4 of subsection B of this section in response to a violation of paragraph 1 or 2 of subsection A of this section if the defendant demonstrates that a court has already ordered the defendant to pay not less than Ten Thousand Dollars (\$10,000.00) of statutory damages as provided in paragraph 2 of subsection B of this section in a previous action for that particular abortion performed or induced in violation of this act, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this act.

D. Notwithstanding any other law, a person may bring an action under this section not later than six (6) years after the date the cause of action accrues.

E. Notwithstanding any other law, the following are not a defense to an action brought under this section:

1. Ignorance or mistake of law;

2. A defendant's belief that the requirements of this act are unconstitutional or were unconstitutional;

3. A defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this act;

4. A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

5. Non-mutual issue preclusion or non-mutual claim preclusion;

6. The consent of the unborn child's mother to the abortion; or

7. Any claim that the enforcement of this act or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 10 of this act.

F. 1. It is an affirmative defense if a person sued under paragraph 2 or 3 of subsection A of this section reasonably believed, after conducting a reasonable investigation, that the individuals and organizations involved with performing or facilitating the abortion would comply with this act.

2. The defendant has the burden of proving an affirmative defense under paragraph 1 of this subsection by a preponderance of the evidence.

G. This section shall not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Section 3 or 22 of Article II of the Oklahoma Constitution.

H. 1. Notwithstanding any other law, neither the state, nor any of its political subdivisions, nor any district or county

attorney, nor any executive or administrative officer or employee of this state or a political subdivision may:

- a. act in concert or participation with anyone who brings suit under this section,
- b. establish or attempt to establish any type of agency or fiduciary relationship with a plaintiff who brings suit under this section,
- c. make any attempt to control or influence a plaintiff's decision to bring suit under this section or the plaintiff's conduct of the litigation, or
- d. intervene in an action brought under this section.

2. This subsection shall not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of paragraph 1 of this subsection.

I. Notwithstanding any other law, a court shall not award court costs or attorney fees to a defendant in an action brought under this section.

J. Notwithstanding any other law, a civil action under this section shall not be subject to any provision of the Oklahoma Citizens Participation Act, Section 1430 et seq. of Title 12 of the Oklahoma Statutes, and shall not be subject to any provision of the Oklahoma Religious Freedom Act, Section 251 et seq. of Title 51 of the Oklahoma Statutes.

K. Notwithstanding any other law, a civil action under this section shall not be brought:

1. Against the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this act, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this act;

2. Against any person or entity that performs, aids or abets, or attempts to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;

3. Against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or

4. By a person who impregnated a woman seeking an abortion through an act of rape, sexual assault, incest, or any other act prohibited by state law.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.40 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. A defendant against whom an action is brought under Section 9 of this act may assert an affirmative defense to liability under this section if:

- a. the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court, and
- b. the imposition of civil liability on the defendant will result in an undue burden on a woman or group of women seeking an abortion.

2. The defendant shall bear the burden of proving the affirmative defense in this subsection by a preponderance of the evidence.

B. The affirmative defense under subsection A of this section shall not be available if the United States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 9 of this act occurred before the Supreme Court overruled either of those decisions.

C. Nothing in this section or this act shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 9 of this act, and a court shall not award relief under Section 9 of this act if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

D. Nothing in this section or this act shall limit or preclude a defendant from asserting the unconstitutionality of any provision of this act as a defense to liability under Section 9 of this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.41 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other law, a civil action brought under Section 9 of this act shall be brought in:

1. The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

2. The county of residence for any one of the natural person defendants at the time the cause of action accrued;

3. The county of the principal office in this state of any one of the defendants that is not a natural person; or

4. The county of residence for the claimant if the claimant is a natural person residing in this state.

B. If a civil action is brought under Section 9 of this act in any one of the venues described by subsection A of this section, the action shall not be transferred to a different venue without the written consent of all parties.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.42 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other law, this state has sovereign immunity, a political subdivision has governmental immunity, and

each officer and employee of this state or a political subdivision has official immunity in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this act, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or employee of this state or a political subdivision from enforcing any provision or application of this act, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States.

B. Notwithstanding any other law, no provision of state law may be construed to waive or abrogate an immunity described by subsection A of this section unless it expressly waives immunity with specific reference to this section.

C. Notwithstanding any other law, no attorney representing this state, a political subdivision, or any officer or employee of this state or a political subdivision is authorized or permitted to waive an immunity described in subsection A or take any action that would result in a waiver of that immunity.

D. Notwithstanding any other law, no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief to prevent this state, a political subdivision, any officer or employee of this state or a political subdivision, or any person from enforcing any provision or application of this act, or from filing a civil action under this act.

E. Nothing in this section or this act shall be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this act as a defense to any action, claim, or counterclaim brought against that litigant.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.43 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other law, any party including an entity, attorney, or law firm, who seeks declaratory or injunctive

relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, shall be jointly and severally liable for court costs and attorney fees of the prevailing party.

B. For purposes of this section, a party is considered a prevailing party with respect to a claim or cause of action if a state or federal court:

1. Dismisses that claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by subsection A of this section, regardless of the reason for the dismissal; or

2. Enters judgment in the party's favor on that claim or cause of action.

C. Regardless of whether a prevailing party sought to recover court costs or attorney fees in the underlying action, a prevailing party under this section may bring a civil action to recover court costs and attorney fees against a party including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by subsection A of this section not later than three (3) years after the date on which, as applicable:

1. The dismissal or judgment described by subsection B of this section becomes final on the conclusion of appellate review; or

2. The time for seeking appellate review expires.

D. It is not a defense to an action brought under subsection C of this section that:

1. A prevailing party under this section failed to seek recovery of court costs or attorney fees in the underlying action;

2. The court in the underlying action declined to recognize or enforce the requirements of this section; or

3. The court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.44 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the Legislature that every provision, section, subsection, sentence, clause, phrase, or word in this act, and every application of the provisions in this act to every person, group of persons, or circumstances, are severable from each other.

B. If any application of any provision in this act to any person, group of persons, or circumstances is found by a court to be invalid, preempted, unconstitutional, or to impose an undue burden on any woman or group of women seeking an abortion, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this act, and every application of those provisions that can be enforced without imposing an undue burden on women seeking abortions, shall be severed from any applications that a court finds to be invalid, preempted, unconstitutional, or to impose an undue burden on women seeking abortions, and the valid applications shall remain in force, because it is the Legislature's intent and priority that every valid application be allowed to stand alone. Even if a reviewing court finds a provision of this act to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the Legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not impose an undue burden.

C. The Legislature further declares that it would have enacted this act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this act were to be declared invalid, preempted, unconstitutional, or to impose an undue burden.

D. If any provision of this act is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of subsections A, B, and C of this section.

E. No court may decline to enforce the severability requirements of subsections A, B, C, and D of this section on the ground that severance would "rewrite" the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

1. Is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Oklahoma Constitution or United States Constitution;

2. Is not a formal amendment of the language in a statute; and

3. No more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

F. If any state or federal court disregards the severability requirements of subsections A, B, C, D, and E of this section, and declares or finds any provision of this act facially unconstitutional, when there are discrete applications of that provision that can be enforced against a person, group of persons, or circumstances without violating federal law, the federal or state constitutions, or imposing an undue burden on women seeking

abortions, then that provision shall be interpreted, as a matter of state law, as if the Legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law, the federal or state constitutions, or impose an undue burden on women seeking abortions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially unconstitutional is vacated or overruled.

SECTION 15. AMENDATORY 12 O.S. 2021, Section 1439, is amended to read as follows:

Section 1439. The Oklahoma Citizens Participation Act shall not apply to:

1. An enforcement action that is brought in the name of this state or a political subdivision of this state by the Attorney General or a district attorney;

2. A legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct the action is based upon arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer;

3. A legal action seeking recovery for bodily injury, wrongful death or survival or to statements made regarding that legal action;
~~or~~

4. A legal action brought under the Oklahoma Insurance Code or arising out of an insurance contract; or

5. A civil action brought under Section 9 of this act.

SECTION 16. AMENDATORY 51 O.S. 2021, Section 255, is amended to read as follows:

Section 255. A. Nothing in this act shall be construed to:

1. Authorize any government entity to substantially burden any religious belief;

2. Authorize same sex marriages, unions, or the equivalent thereof; or

3. Affect, interpret, or in any way address those portions of Article 1, Section 2, and Article 2, Section 5, of the Constitution of the State of Oklahoma, the Oklahoma Religious Freedom Act, or the First Amendment to the Constitution of the United States that prohibit laws respecting the establishment of religion.

B. Granting governmental funds, benefits, or exemptions to the extent permissible under paragraph 3 of subsection A of this section shall not constitute a violation of this section. As used in this subsection, "granting government funds, benefits, or exemptions" shall not include the denial of government funding, benefits, or exemptions. This provision does not in and of itself require vouchers.

C. A civil action brought under Section 9 of this act shall not be subject to any provision of the Oklahoma Religious Freedom Act.

SECTION 17. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 10th day of March, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 28th day of April, 2022.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____