1	STATE OF OKLAHOMA
2	2nd Session of the 58th Legislature (2022)
3	HOUSE BILL 4327 By: Stearman
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6	AS INTRODUCED
7	An Act relating to abortion; defining terms;
8	prohibition certain abortions; creating an exception; enabling a private cause of action against abortion
9	providers; creating requirements; creating defenses to action; specifying damages; prohibiting official
10	state claims; providing for codification; and providing an effective date.
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13	BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
14	SECTION 1. NEW LAW A new section of law to be codified
15	in the Oklahoma Statutes as Section 1-758 of Title 63, unless there
16	is created a duplication in numbering, reads as follows:
17	A. As used in this section:
18	1. "Gestational age" means the amount of time that has elapsed
19	from the first day of a woman's last menstrual period;
20	2. "Gestational sac" means the structure comprising the
21	extraembryonic membranes that envelop the unborn child and that is
22	typically visible by ultrasound after the fourth week of pregnancy;
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Req. No. 9989 Page 1

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- 3. "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine;
- 4. "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;
- 5. "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; and
- 6. "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.
- B. A physician may not knowingly perform or induce an abortion on a pregnant woman.
- C. This act shall be enforced exclusively through private civil actions.
- D. Any person, other than an 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 this act.
- E. 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; and
 - 3. Costs and attorney's fees.

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A court may not award relief under this section in response to a violation of this act if the defendant demonstrates that the defendant previously paid the full amount of statutory damages 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.

- F. A person may bring an action under this section not later
 than the fourth anniversary of the date the cause of action accrues.
 - G. The following are not a defense to an action brought under this act:
 - 1. Ignorance or mistake of law;

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- 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. Nonmutual issue preclusion or nonmutual 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.
 - H. It shall be an affirmative defense if:
- 1. A person sued under this act reasonably believed, after
 conducting a reasonable investigation, that the physician performing
 or inducing the abortion had complied or would comply with this act;
 or

2. A person sued under this act reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this act;

The defendant shall have the burden of proving an affirmative defense by a preponderance of the evidence.

- I. Notwithstanding any other law, this state, a state official, or a district may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.
- J. A court shall not award costs or attorney's fees to a defendant in an action brought under this act.
- K. A civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, or incest.
- L. A defendant against whom an action is brought under this act does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:
- 1. The United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or
- 2. 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.

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The defense under this subsection of this section is not
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    available if the United States Supreme Court overrules Roe v. Wade
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    410 U.S. 113 (1973) or Planned Parenthood v. Casey, 505 U.S. 833
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    (1992), regardless of whether the conduct on which the cause of
 5
    action is based occurred before the Supreme Court overruled either
    of those decisions.
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        SECTION 2. This act shall become effective November 1, 2022.
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