

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 4327

By: Stearman

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8 COMMITTEE SUBSTITUTE

9 An Act relating to abortion; defining terms;  
10 prohibition certain abortions; creating an exception;  
11 enabling a private cause of action against abortion  
12 providers; creating requirements; creating defenses  
13 to action; specifying damages; prohibiting official  
14 state claims; providing for codification; and  
15 providing an effective date.

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

17 SECTION 1. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 1-758 of Title 63, unless there  
19 is created a duplication in numbering, reads as follows:

20 A. As used in this section:

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

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

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

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

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

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

14       6. "Unborn child" means a human fetus or embryo in any stage of  
15 gestation from fertilization until birth.

16       B. A physician may not knowingly perform or induce an abortion  
17 on a pregnant woman, unless such abortion is performed to save the  
18 life of the mother.

19       C. This act shall be enforced exclusively through private civil  
20 actions.

21       D. Any person, other than an officer or employee of a state or  
22 local governmental entity in this state, may bring a civil action  
23 against any person who:

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

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

7           3. Intends to engage in the conduct described by this act.

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

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

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

18           3. Costs and attorney's fees.

19           A court may not award relief under this section in response to a  
20 violation of this act if the defendant demonstrates that the  
21 defendant previously paid the full amount of statutory damages in a  
22 previous action for that particular abortion performed or induced in  
23 violation of this act, or for the particular conduct that aided or  
24 abetted an abortion performed or induced in violation of this act.

1 Additionally, a court may not award relief under this section where  
2 the abortion in question was performed to save the life of the  
3 mother.

4 F. A person may bring an action under this section not later  
5 than the fourth anniversary of the date the cause of action accrues.

6 G. The following are not a defense to an action brought under  
7 this act:

8 1. Ignorance or mistake of law;

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

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

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

18 5. Nonmutual issue preclusion or nonmutual claim preclusion;

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

20 7. Any claim that the enforcement of this act or the imposition  
21 of civil liability against the defendant will violate the  
22 constitutional rights of third parties.

23 H. It shall be an affirmative defense if:  
24

1        1. A person sued under this act reasonably believed, after  
2 conducting a reasonable investigation, that the physician performing  
3 or inducing the abortion had complied or would comply with this act;  
4 or

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

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

10       I. Notwithstanding any other law, this state, a state official,  
11 or a district may not intervene in an action brought under this  
12 section. This subsection does not prohibit a person described by  
13 this subsection from filing an amicus curiae brief in the action.

14       J. A court shall not award costs or attorney's fees to a  
15 defendant in an action brought under this act.

16       K. A civil action under this section may not be brought by a  
17 person who impregnated the abortion patient through an act of rape,  
18 sexual assault, or incest.

19       L. A defendant against whom an action is brought under this act  
20 does not have standing to assert the rights of women seeking an  
21 abortion as a defense to liability under that section unless:

22       1. The United States Supreme Court holds that the courts of  
23 this state must confer standing on that defendant to assert the  
24

1 third-party rights of women seeking an abortion in state court as a  
2 matter of federal constitutional law; or

3 2. The defendant has standing to assert the rights of women  
4 seeking an abortion under the tests for third-party standing  
5 established by the United States Supreme Court.

6 The defense under this subsection of this section is not  
7 available if the United States Supreme Court overrules Roe v. Wade  
8 410 U.S. 113 (1973) or Planned Parenthood v. Casey, 505 U.S. 833  
9 (1992), regardless of whether the conduct on which the cause of  
10 action is based occurred before the Supreme Court overruled either  
11 of those decisions.

12 SECTION 2. This act shall become effective November 1, 2022.

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14 58-2-10911 KN 03/02/22

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