

1 **SENATE FLOOR VERSION**

2 April 11, 2022

3 ENGROSSED HOUSE
4 BILL NO. 4327

By: Stearman, Roberts (Sean)
and McDugle of the House

5 and

6 Dahm and Bullard of the
7 Senate

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12 An Act relating to abortion; defining terms;
13 prohibiting abortion; providing exceptions; providing
14 for exceptions based upon performance of duties
15 pursuant to federal law; providing for civil actions
16 as exclusive method of enforcement; providing
17 exceptions; prohibiting governmental entities from
18 enforcement activity; providing an exception;
19 prohibiting violations of act to be used in
20 designated manner; providing exceptions; providing
21 for civil actions; designating persons or entities
22 authorized to file civil action; providing for
23 authorized judicial remedies; authorizing damages;
24 authorizing injunctive relief; authorizing court
costs; authorizing attorney fees; providing
exceptions for award of damages; prescribing statute
of limitations; excluding certain defenses;
specifying affirmative defense; providing for
statutory construction; prohibiting actions by
governmental entities; authorizing filing of amicus
brief; prohibiting award of costs or attorney fees in
certain actions; providing for inapplicability of
certain statutory provisions; prohibiting civil
actions with respect to certain defendants; providing
for affirmative defenses; prescribing standard of
proof; disallowing affirmative defense based upon

1 certain judicial action; providing for assertion of
2 constitutionally based rights; prescribing venue for
3 civil actions; prohibiting transfer of cases;
4 providing for sovereign immunity; prohibiting waiver
5 or abrogation of sovereign immunity; prescribing
6 limit on subject matter jurisdiction; authorizing
7 assertion of invalidity or unconstitutionality;
8 stating legislative intent; providing for
9 severability; making declarations; prohibiting
10 certain judicial action with respect to severability;
11 providing for effect of certain federal judicial
12 determinations; amending 12 O.S. 2021, Section 1439,
13 which relates to the Oklahoma Citizens Participation
14 Act; modifying scope of act; amending 51 O.S. 2021,
15 Section 255, which relates to the Oklahoma Religious
16 Freedom Act; modifying scope of act; providing for
17 codification; and declaring an emergency.

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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:

As used in this act:

1. "Abortion" means the act of using, prescribing,
administering, procuring, or selling of any instrument, medicine,
drug, or any other substance, device, or means with the purpose to
terminate the pregnancy of a woman, with knowledge that the
termination by any of those means will with reasonable likelihood
cause the death of an unborn child. It does not include the use,

1 prescription, administration, procuring, or selling of Plan B,
2 morning-after pills, or any other type of contraception or emergency
3 contraception. An act is not an abortion if the act is performed
4 with the purpose to:

- 5 a. save the life or preserve the health of the unborn
6 child,
- 7 b. remove a dead unborn child caused by spontaneous
8 abortion, or
- 9 c. remove an ectopic pregnancy;

10 2. "Fertilization" means the fusion of a human spermatozoon
11 with a human ovum;

12 3. "Medical emergency" means a condition in which an abortion
13 is necessary to preserve the life of a pregnant woman whose life is
14 endangered by a physical disorder, physical illness, or physical
15 injury, including a life-endangering physical condition caused by or
16 arising from the pregnancy itself;

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

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

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

4 Except as provided by Section 3 of this act, a person shall not
5 knowingly perform or attempt to perform an abortion unless:

6 1. The abortion is necessary to save the life of a pregnant
7 woman in a medical emergency; or

8 2. The pregnancy is the result of rape, sexual assault, or
9 incest that has been reported to law enforcement.

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

13 The prohibition in Section 2 of this act does not apply to an
14 abortion performed at the behest of federal agencies, contractors,
15 or employees that are carrying out duties under federal law, if a
16 prohibition on that abortion would violate the doctrines of
17 preemption or intergovernmental immunity.

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

21 Notwithstanding any other law, the requirements of this act
22 shall be enforced exclusively through the private civil actions
23 described in Section 5 of this act. No direct or indirect
24 enforcement of this act may be taken or threatened by the state, a

1 political subdivision, a district attorney, or an executive or
2 administrative officer or employee of this state or a political
3 subdivision against any person or entity, in any manner whatsoever,
4 except as provided in Section 5 of this act, and no violation of
5 this act may be used to justify or trigger the enforcement of any
6 other law or any type of adverse consequence under any other law,
7 except as provided in Section 5 of this act; provided, that this
8 section does not preclude the enforcement of any other law or
9 regulation against conduct that is independently prohibited by such
10 other law or regulation, and that would remain prohibited by such
11 other law or regulation in the absence of this act.

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

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

- 19 1. Performs or induces an abortion in violation of this act;
- 20 2. Knowingly engages in conduct that aids or abets the
21 performance or inducement of an abortion, including paying for or
22 reimbursing the costs of an abortion through insurance or otherwise,
23 if the abortion is performed or induced in violation of this act,

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1 regardless of whether the person knew or should have known that the
2 abortion would be performed or induced in violation of this act; or

3 3. Intends to engage in the conduct described by paragraph 1 or
4 2 of this subsection.

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

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

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

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

18 4. Court costs and attorney fees.

19 C. Notwithstanding subsection B of this section, a court shall
20 not award relief under paragraph 2 or 4 of subsection B of this
21 section in response to a violation of paragraph 1 or 2 of subsection
22 A of this section if the defendant demonstrates that a court has
23 already ordered the defendant to pay not less than Ten Thousand
24 Dollars (\$10,000.00) of statutory damages as provided in paragraph 2

1 of subsection B of this section in a previous action for that
2 particular abortion performed or induced in violation of this act,
3 or for the particular conduct that aided or abetted an abortion
4 performed or induced in violation of this act.

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

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

10 1. Ignorance or mistake of law;

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

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

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

20 5. Nonmutual issue preclusion or nonmutual claim preclusion;

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

22 7. Any claim that the enforcement of this act or the imposition
23 of civil liability against the defendant will violate the
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1 constitutional rights of third parties, except as provided by
2 Section 6 of this act.

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

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

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

17 H. 1. Notwithstanding any other law, neither the state, nor
18 any of its political subdivisions, nor any district attorney, nor
19 any executive or administrative officer or employee of this state or
20 a political subdivision may:

21 a. act in concert or participation with anyone who brings
22 suit under this section,
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1 b. establish or attempt to establish any type of agency
2 or fiduciary relationship with a plaintiff who brings
3 suit under this section,

4 c. make any attempt to control or influence a plaintiff's
5 decision to bring suit under this section or the
6 plaintiff's conduct of the litigation, or

7 d. intervene in an action brought under this section.

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

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

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

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

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

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

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

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

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

19 A. 1. A defendant against whom an action is brought under
20 Section 5 of this act may assert an affirmative defense to liability
21 under this section if:

22 a. the defendant has standing to assert the rights of
23 women seeking an abortion under the tests for third-

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1 party standing established by the United States
2 Supreme Court, and

3 b. the imposition of civil liability on the defendant
4 will result in an undue burden on a woman or group of
5 women seeking an abortion.

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

9 B. The affirmative defense under subsection A of this section
10 shall not be available if the United States Supreme Court overrules
11 *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505
12 U.S. 833 (1992), regardless of whether the conduct on which the
13 cause of action is based under Section 5 of this act occurred before
14 the Supreme Court overruled either of those decisions.

15 C. Nothing in this section or this act shall in any way limit
16 or preclude a defendant from asserting the defendant's personal
17 constitutional rights as a defense to liability under Section 5 of
18 this act, and a court shall not award relief under Section 5 of this
19 act if the conduct for which the defendant has been sued was an
20 exercise of state or federal constitutional rights that personally
21 belong to the defendant.

22 D. Nothing in this section or this act shall limit or preclude
23 a defendant from asserting the unconstitutionality of any provision
24 of this act as a defense to liability under Section 5 of this act.

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

4 A. Notwithstanding any other law, a civil action brought under
5 Section 5 of this act shall be brought in:

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

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

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

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

14 B. If a civil action is brought under Section 5 of this act in
15 any one of the venues described by subsection A of this section, the
16 action shall not be transferred to a different venue without the
17 written consent of all parties.

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

21 A. Notwithstanding any other law, this state has sovereign
22 immunity, a political subdivision has governmental immunity, and
23 each officer and employee of this state or a political subdivision
24 has official immunity in any action, claim, counterclaim, or any

1 type of legal or equitable action that challenges the validity of
2 any provision or application of this act, on constitutional grounds
3 or otherwise, or that seeks to prevent or enjoin the state, its
4 political subdivisions, or any officer or employee of this state or
5 a political subdivision from enforcing any provision or application
6 of this act, unless that immunity has been abrogated or preempted by
7 federal law in a manner consistent with the Constitution of the
8 United States.

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

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

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

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

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

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

16 B. If any application of any provision in this act to any
17 person, group of persons, or circumstances is found by a court to be
18 invalid, preempted, unconstitutional, or to impose an undue burden
19 on any woman or group of women seeking an abortion, then the
20 remaining applications of that provision to all other persons and
21 circumstances shall be severed and preserved, and shall remain in
22 effect. All constitutionally valid applications of the provisions
23 in this act, and every application of those provisions that can be
24 enforced without imposing an undue burden on women seeking

1 abortions, shall be severed from any applications that a court finds
2 to be invalid, preempted, unconstitutional, or to impose an undue
3 burden on women seeking abortions, and the valid applications shall
4 remain in force, because it is the Legislature's intent and priority
5 that every valid application be allowed to stand alone. Even if a
6 reviewing court finds a provision of this act to impose an undue
7 burden in a large or substantial fraction of relevant cases, the
8 applications that do not present an undue burden shall be severed
9 from the remaining applications and shall remain in force, and shall
10 be treated as if the Legislature had enacted a statute limited to
11 the persons, group of persons, or circumstances for which the
12 statute's application does not impose an undue burden.

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

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

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

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

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

14 3. Does no more rewrites of a statute than a decision by the
15 executive not to enforce a duly enacted statute in a limited and
16 defined set of circumstances.

17 F. If any state or federal court disregards the severability
18 requirements of subsections A, B, C, D, and E of this section, and
19 declares or finds any provision of this act facially
20 unconstitutional, when there are discrete applications of that
21 provision that can be enforced against a person, group of persons,
22 or circumstances without violating federal law, the federal or state
23 constitutions, or imposing an undue burden on women seeking
24 abortions, then that provision shall be interpreted, as a matter of

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

8 SECTION 10. AMENDATORY 12 O.S. 2021, Section 1439, is
9 amended to read as follows:

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

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

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

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

23 ~~or~~

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

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

4 SECTION 11. AMENDATORY 51 O.S. 2021, Section 255, is
5 amended to read as follows:

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

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

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

11 3. Affect, interpret, or in any way address those portions of
12 Article ~~1~~ I, Section ~~27~~ and Article ~~2~~ II, Section ~~57~~ of the
13 Constitution of the State of Oklahoma, the Oklahoma Religious
14 Freedom Act, or the First Amendment to the Constitution of the
15 United States that prohibit laws respecting the establishment of
16 religion.

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

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1 C. A civil action brought under Section 5 of this act shall not
2 be subject to any provision of the Oklahoma Religious Freedom Act.

3 SECTION 12. It being immediately necessary for the preservation
4 of the public peace, health or safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

7 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
8 April 11, 2022 - DO PASS
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