

An Act

ENROLLED HOUSE
BILL NO. 4327

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

and

Daniels, Dahm, Bullard,
Bergstrom, Rogers, David,
Garvin, Hall, Jech, Kidd,
Leewright, Murdock,
Pemberton, Rader, Rosino,
Simpson, Standridge,
Stanley, Stephens, Taylor,
Weaver, and Pederson of the
Senate

An Act relating to abortion; defining terms; prohibiting abortion; providing exceptions; providing for exceptions based upon performance of duties pursuant to federal law; providing for civil actions as exclusive method of enforcement; providing exceptions; prohibiting governmental entities from enforcement activity; providing an exception; prohibiting violations of act to be used in designated manner; providing exceptions; providing for civil actions; designating persons or entities authorized to file civil action; providing for authorized judicial remedies; authorizing damages; 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 certain judicial action; providing for assertion of constitutionally based rights; prescribing venue for civil actions; prohibiting transfer of cases; providing for sovereign immunity; prohibiting waiver or abrogation of sovereign immunity; prescribing limit on subject matter jurisdiction; authorizing assertion of invalidity or unconstitutionality; stating legislative intent; providing for severability; making declarations; prohibiting certain judicial action with respect to severability; providing for effect of certain federal judicial determinations; amending 12 O.S. 2021, Section 1439, which relates to the Oklahoma Citizens Participation Act; modifying scope of act; amending 51 O.S. 2021, Section 255, which relates to the Oklahoma Religious Freedom Act; modifying scope 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:

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

- a. save the life or preserve the health of the unborn child,

b. remove a dead unborn child caused by spontaneous abortion, or

c. remove an ectopic pregnancy;

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

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

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

5. "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 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:

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

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

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

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:

The prohibition in Section 2 of this act does 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 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:

Notwithstanding any other law, the requirements of this act shall be enforced exclusively through the private civil actions described in Section 5 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 5 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 5 of this act; provided, that this section does not preclude the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this act.

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. 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 paragraph 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. 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, except as provided by Section 6 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 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 may 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 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:

A. 1. A defendant against whom an action is brought under Section 5 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 5 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 5 of this act, and a court shall not award relief under Section 5 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 5 of this act.

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:

A. Notwithstanding any other law, a civil action brought under Section 5 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 5 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 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:

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 of this section 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 against the state, a political subdivision, or any officer or employee of this state or a political subdivision in relation to this act.

E. 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 a private individual from enforcing any provision or application of this act, or from filing a civil action under this act.

F. Nothing in this section or 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 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. 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. Does no more rewrites of 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 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:

This act 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 11. 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 5 of this act.

SECTION 12. 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~~ I, Section ~~27~~ and Article ~~2~~ II, Section ~~57~~ 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 5 of this act shall not be subject to any provision of the Oklahoma Religious Freedom Act.

SECTION 13. 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 House of Representatives the 19th day of May, 2022.

Presiding Officer of the House
of Representatives

Passed the Senate the 28th day of April, 2022.

Presiding Officer of the Senate

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: _____