

1 **SENATE FLOOR VERSION**

2 February 9, 2023

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 834

6 By: Daniels

7 An Act relating to abortion; amending 21 O.S. 2021,
8 Section 861, which relates to crimes and punishments;
9 adding and modifying circumstances under which
10 certain acts are not criminal offenses; listing
11 additional acts that are not criminal offenses;
12 requiring certain reporting of abortion; defining
13 terms; amending 59 O.S. 2021, Sections 509 and 637,
14 which relate to unprofessional conduct by physicians;
15 modifying and adding certain exceptions; requiring
16 certain reporting of abortion; defining terms;
17 amending 63 O.S. 2021, Section 1-731.3, which relates
18 to abortion; modifying and adding certain exceptions;
19 requiring certain reporting of abortion; defining
20 terms; amending Section 1, Chapter 11, O.S.L. 2022
21 (63 O.S. Supp. 2022, Section 1-731.4), which relates
22 to abortion; adding and modifying definitions;
23 clarifying applicability of certain provision; adding
24 and modifying exceptions to certain prohibition;
removing duplicative language; requiring certain
reporting of abortion; amending 63 O.S. 2021, Section
1-732, which relates to abortion; modifying and
adding certain exceptions; removing duplicative
language; modifying applicability of certain
provisions; making language gender neutral; requiring
certain reporting of abortion; defining terms;
amending 63 O.S. 2021, Section 1-745.2, which relates
to definitions used in the Pain-Capable Unborn Child
Protection Act; modifying definitions; amending 63
O.S. 2021, Section 1-745.4, which relates to abortion
requirements; modifying applicability of certain
provision; modifying and adding certain exceptions;
requiring certain reporting of abortion; amending 63
O.S. 2021, Section 1-745.5, which relates to
abortion; modifying applicability of certain
provision; amending Section 2, Chapter 190, O.S.L.

1 2022 (63 O.S. Supp. 2022, Section 1-745.32), which
2 relates to definitions used in the Oklahoma Heartbeat
3 Act; updating statutory reference; defining terms;
4 amending Section 3, Chapter 190, O.S.L. 2022 (63 O.S.
5 Supp. 2022, Section 1-745.33), which relates to
6 determining presence of fetal heartbeat; clarifying
7 applicability of certain provision; adding and
8 updating statutory references; amending Section 4,
9 Chapter 190, O.S.L. 2022 (63 O.S. Supp. 2022, Section
10 1-745.34), which relates to abortion prohibition if
11 heartbeat detected; clarifying applicability of
12 certain provision; adding and updating statutory
13 references; amending Section 5, Chapter 190, O.S.L.
14 2022 (63 O.S. Supp. 2022, Section 1-745.35), which
15 relates to medical emergency; modifying exception;
16 updating statutory references; adding certain
17 exception; requiring certain reporting of abortion;
18 amending Section 1, Chapter 321, O.S.L. 2022 (63 O.S.
19 Supp. 2022, Section 1-745.51), which relates to
20 definitions; adding and modifying definitions;
21 amending Section 2, Chapter 321, O.S.L. 2022 (63 O.S.
22 Supp. 2022, Section 1-745.52), which relates to
23 abortion prohibition; clarifying applicability of
24 certain provision; modifying exceptions; updating
statutory references; requiring certain reporting of
abortion; requiring abortion performed under certain
exceptions to be reported to State Department of
Health on certain form; restricting type of
information requested; requiring abortion provider to
state proper exception and include other required
information; requiring Department to compile reported
information into annual statistical report; directing
certain publication and submission of report;
requiring promulgation of certain rules; repealing 63
O.S. 2021, Sections 1-733 and 1-745.6, which relate
to abortion; updating statutory language; providing
for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 861, is
amended to read as follows:

1 Section 861. A. Every person who administers to any woman, or
2 who prescribes for any woman, or advises or procures any woman to
3 take any medicine, drug or substance, or uses or employs any
4 instrument, or other means whatever, with intent thereby to procure
5 ~~the miscarriage of such woman~~ an abortion, unless ~~the same~~ :

6 1. The abortion is necessary to preserve her life due to a
7 medical emergency as defined in subsection D of this section; or

8 2. The pregnancy is the result of:

9 a. rape or sexual assault that has been reported to law
10 enforcement, or

11 b. incest of a minor that has been reported to law
12 enforcement,

13 shall be guilty of a felony punishable by imprisonment in the State
14 Penitentiary for not less than two (2) years nor more than five (5)
15 years.

16 B. 1. The use, prescription, administration, procuring, or
17 selling of any type of contraception shall not be a violation of
18 subsection A of this section if the contraception is administered
19 before the time when a pregnancy could be determined through
20 conventional medical testing.

21 2. An act related to in vitro fertilization or otherwise
22 related to the diagnosis or treatment of infertility or the
23 preservation of fertility by a licensed healthcare provider acting

24

1 lawfully and within the scope of his or her practice shall not be a
2 violation of subsection A of this section.

3 3. An act is not a violation of subsection A of this section if
4 performed 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 whose death was caused by
8 miscarriage or spontaneous abortion, or

9 c. remove an ectopic pregnancy.

10 C. Any abortion performed or induced under an exception
11 provided by subsection A of this section or performed or induced to
12 remove an ectopic pregnancy shall be reported by the abortion
13 provider to the State Department of Health in accordance with
14 Section 18 of this act.

15 D. As used in this section:

16 1. "Medical emergency" means a condition that, in reasonable
17 medical judgment:

18 a. cannot be remedied by delivery of the child, and

19 b. so complicates the medical condition of the pregnant
20 woman as to necessitate the immediate abortion of her
21 pregnancy to avert her death or for which a delay will
22 create serious risk of substantial and irreversible
23 physical impairment of a major bodily function, not
24 including psychological or emotional conditions. A

1 condition is not a medical emergency if it is based on
2 a claim, diagnosis, or determination that the woman
3 may engage in conduct which she intends to result in
4 her death or in the substantial and irreversible
5 physical impairment of a major bodily function; and

6 2. "Reasonable medical judgment" means a medical judgment that
7 would be made by a reasonably prudent physician who is knowledgeable
8 about the case and the treatment possibilities with respect to the
9 medical conditions involved.

10 SECTION 2. AMENDATORY 59 O.S. 2021, Section 509, is
11 amended to read as follows:

12 Section 509. The words "unprofessional conduct" as used in
13 Sections 481 through 518.1 of this title are hereby declared to
14 include, but shall not be limited to, the following:

- 15 1. Procuring, aiding or abetting a criminal operation;
- 16 2. The obtaining of any fee or offering to accept any fee,
17 present or other form of remuneration whatsoever, on the assurance
18 or promise that a manifestly incurable disease can or will be cured;
- 19 3. Willfully betraying a professional secret to the detriment
20 of the patient;
- 21 4. Habitual intemperance or the habitual use of habit-forming
22 drugs;

1 5. Conviction or confession of, or plea of guilty, nolo
2 contendere, no contest or Alford plea to a felony or any offense
3 involving moral turpitude;

4 6. All advertising of medical business in which statements are
5 made which are grossly untrue or improbable and calculated to
6 mislead the public;

7 7. Conviction or confession of, or plea of guilty, nolo
8 contendere, no contest or Alford plea to a crime involving violation
9 of:

10 a. the antinarcotic or prohibition laws and regulations
11 of the federal government,

12 b. the laws of this state,

13 c. State Commissioner of Health rules, or

14 d. a determination by a judge or jury;

15 8. Dishonorable or immoral conduct which is likely to deceive,
16 defraud, or harm the public;

17 9. The commission of any act which is a violation of the
18 criminal laws of any state when such act is connected with the
19 physician's practice of medicine. A complaint, indictment or
20 confession of a criminal violation shall not be necessary for the
21 enforcement of this provision. Proof of the commission of the act
22 while in the practice of medicine or under the guise of the practice
23 of medicine shall be unprofessional conduct;

24

1 10. Failure to keep complete and accurate records of purchase
2 and disposal of controlled drugs or of narcotic drugs;

3 11. The writing of false or fictitious prescriptions for any
4 drugs or narcotics declared by the laws of this state to be
5 controlled or narcotic drugs;

6 12. Prescribing or administering a drug or treatment without
7 sufficient examination and the establishment of a valid physician-
8 patient relationship and not prescribing in a safe, medically
9 accepted manner;

10 13. The violation, or attempted violation, direct or indirect,
11 of any of the provisions of the Oklahoma Allopathic Medical and
12 Surgical Licensure and Supervision Act, either as a principal,
13 accessory or accomplice;

14 14. Aiding or abetting, directly or indirectly, the practice of
15 medicine by any person not duly authorized under the laws of this
16 state;

17 15. The inability to practice medicine with reasonable skill
18 and safety to patients by reason of age, illness, drunkenness,
19 excessive use of drugs, narcotics, chemicals, or any other type of
20 material or as a result of any mental or physical condition. In
21 enforcing this section the State Board of Medical Licensure and
22 Supervision may, upon probable cause, request a physician to submit
23 to a mental or physical examination by physicians designated by it.
24 If the physician refuses to submit to the examination, the Board

1 shall issue an order requiring the physician to show cause why the
2 physician will not submit to the examination and shall schedule a
3 hearing on the order within thirty (30) days after notice is served
4 on the physician, exclusive of the day of service. The physician
5 shall be notified by either personal service or by certified mail
6 with return receipt requested. At the hearing, the physician and
7 the physician's attorney are entitled to present any testimony and
8 other evidence to show why the physician should not be required to
9 submit to the examination. After a complete hearing, the Board
10 shall issue an order either requiring the physician to submit to the
11 examination or withdrawing the request for examination. The medical
12 license of a physician ordered to submit for examination may be
13 suspended until the results of the examination are received and
14 reviewed by the Board;

15 16. a. Prescribing, dispensing or administering of controlled
16 substances or narcotic drugs in excess of the amount
17 considered good medical practice,

18 b. Prescribing, dispensing or administering controlled
19 substances or narcotic drugs without medical need in
20 accordance with pertinent licensing board standards,
21 or

22 c. Prescribing, dispensing or administering opioid drugs
23 in excess of the maximum limits authorized in Section
24 2-309I of Title 63 of the Oklahoma Statutes;

1 17. Engaging in physical conduct with a patient which is sexual
2 in nature, or in any verbal behavior which is seductive or sexually
3 demeaning to a patient;

4 18. Failure to maintain an office record for each patient which
5 accurately reflects the evaluation, treatment, and medical necessity
6 of treatment of the patient;

7 19. Failure to provide necessary ongoing medical treatment when
8 a doctor-patient relationship has been established, which
9 relationship can be severed by either party providing a reasonable
10 period of time is granted;

11 20. a. Performance of an abortion as ~~defined by Section 1-730~~
12 ~~of Title 63 of the Oklahoma Statutes, except for an~~
13 ~~abortion necessary to prevent the death of the mother~~
14 ~~or to prevent substantial or irreversible physical~~
15 ~~impairment of the mother that substantially increases~~
16 ~~the risk of death. The performance of an abortion on~~
17 ~~the basis of the mental or emotional health of the~~
18 ~~mother shall be a violation of this paragraph,~~
19 ~~notwithstanding a claim or diagnosis that the woman~~
20 ~~may engage in conduct which she intends to result in~~
21 ~~her death, unless:~~

- 22 (1) the abortion is necessary due to a medical
23 emergency as defined in subparagraph d of this
24 paragraph, or

1 (2) the pregnancy is the result of:

2 (a) rape or sexual assault that has been
3 reported to law enforcement, or

4 (b) incest of a minor that has been reported to
5 law enforcement.

6 b. The Board shall impose a penalty as provided in
7 Section 509.1 of this title on a licensee who violates
8 this paragraph. The penalty shall include, but not be
9 limited to, suspension of the license for a period ~~of~~
10 not less than one (1) year.

11 c. Any abortion performed or induced under an exception
12 provided by subparagraph a of this paragraph or
13 performed or induced to remove an ectopic pregnancy
14 shall be reported by the physician to the State
15 Department of Health in accordance with Section 18 of
16 this act.

17 d. As used in this paragraph:

18 (1) "abortion" means the act of using, prescribing,
19 administering, procuring, or selling of any
20 instrument, medicine, drug, or any other
21 substance, device, or means with the purpose to
22 terminate the pregnancy of a woman, with
23 knowledge that the termination by any of those
24 means will with reasonable likelihood cause the

1 death of an unborn child. It does not include
2 the use, prescription, administration, procuring,
3 or selling of any type of contraception if the
4 contraception is administered before the time
5 when a pregnancy could be determined through
6 conventional medical testing. It does not
7 include any act related to in vitro fertilization
8 or otherwise related to the diagnosis or
9 treatment of infertility or the preservation of
10 fertility by a licensed healthcare provider
11 acting lawfully and within the scope of his or
12 her practice. An act is not an abortion if the
13 act is performed with the purpose to:

14 (a) save the life or preserve the health of the
15 unborn child,

16 (b) remove a dead unborn child whose death was
17 caused by miscarriage or spontaneous
18 abortion, or

19 (c) remove an ectopic pregnancy,

20 (2) "medical emergency" means a condition that, in
21 reasonable medical judgment:

22 (a) cannot be remedied by delivery of the child,
23 and

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1 (b) so complicates the medical condition of the
2 pregnant woman as to necessitate the
3 immediate abortion of her pregnancy to avert
4 her death or for which a delay will create
5 serious risk of substantial and irreversible
6 physical impairment of a major bodily
7 function, not including psychological or
8 emotional conditions. A condition is not a
9 medical emergency if it is based on a claim,
10 diagnosis, or determination that the woman
11 may engage in conduct which she intends to
12 result in her death or in the substantial
13 and irreversible physical impairment of a
14 major bodily function, and

15 (3) "reasonable medical judgment" means a medical
16 judgment that would be made by a reasonably
17 prudent physician who is knowledgeable about the
18 case and the treatment possibilities with respect
19 to the medical conditions involved; or

20 21. Failure to provide a proper and safe medical facility
21 setting and qualified assistive personnel for a recognized medical
22 act, including but not limited to an initial in-person patient
23 examination, office surgery, diagnostic service or any other medical
24 procedure or treatment. Adequate medical records to support

1 diagnosis, procedure, treatment or prescribed medications must be
2 produced and maintained.

3 SECTION 3. AMENDATORY 59 O.S. 2021, Section 637, is
4 amended to read as follows:

5 Section 637. A. The State Board of Osteopathic Examiners may
6 refuse to admit a person to an examination or may refuse to issue or
7 reinstate or may suspend or revoke any license issued or reinstated
8 by the Board upon proof that the applicant or holder of such a
9 license:

10 1. Has obtained a license, license renewal or authorization to
11 sit for an examination, as the case may be, through fraud,
12 deception, misrepresentation or bribery; or has been granted a
13 license, license renewal or authorization to sit for an examination
14 based upon a material mistake of fact;

15 2. Has engaged in the use or employment of dishonesty, fraud,
16 misrepresentation, false promise, false pretense, unethical conduct
17 or unprofessional conduct, as may be determined by the Board, in the
18 performance of the functions or duties of an osteopathic physician,
19 including but not limited to the following:

20 a. obtaining or attempting to obtain any fee, charge,
21 tuition or other compensation by fraud, deception or
22 misrepresentation; willfully and continually
23 overcharging or overtreating patients; or charging for
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1 visits to the physician's office which did not occur
2 or for services which were not rendered,

3 b. using intimidation, coercion or deception to obtain or
4 retain a patient or discourage the use of a second
5 opinion or consultation,

6 c. willfully performing inappropriate or unnecessary
7 treatment, diagnostic tests or osteopathic medical or
8 surgical services,

9 d. delegating professional responsibilities to a person
10 who is not qualified by training, skill, competency,
11 age, experience or licensure to perform them, noting
12 that delegation may only occur within an appropriate
13 doctor-patient relationship, wherein a proper patient
14 record is maintained including, but not limited to, at
15 the minimum, a current history and physical,

16 e. misrepresenting that any disease, ailment, or
17 infirmity can be cured by a method, procedure,
18 treatment, medicine or device,

19 f. acting in a manner which results in final disciplinary
20 action by any professional society or association or
21 hospital or medical staff of such hospital in this or
22 any other state, whether agreed to voluntarily or not,
23 if the action was in any way related to professional
24 conduct, professional competence, malpractice or any

1 other violation of the Oklahoma Osteopathic Medicine
2 Act,

3 g. signing a blank prescription form; or dispensing,
4 prescribing, administering or otherwise distributing
5 any drug, controlled substance or other treatment
6 without sufficient examination or the establishment of
7 a physician-patient relationship, or for other than
8 medically accepted therapeutic or experimental or
9 investigational purpose duly authorized by a state or
10 federal agency, or not in good faith to relieve pain
11 and suffering, or not to treat an ailment, physical
12 infirmity or disease, or violating any state or
13 federal law on controlled dangerous substances
14 including, but not limited to, prescribing, dispensing
15 or administering opioid drugs in excess of the maximum
16 limits authorized in Section 2-309I of Title 63 of the
17 Oklahoma Statutes,

18 h. engaging in any sexual activity within a physician-
19 patient relationship,

20 i. terminating the care of a patient without adequate
21 notice or without making other arrangements for the
22 continued care of the patient,

23 j. failing to furnish a copy of a patient's medical
24 records upon a proper request from the patient or

1 legal agent of the patient or another physician; or
2 failing to comply with any other law relating to
3 medical records,

4 k. failing to comply with any subpoena issued by the
5 Board,

6 l. violating a probation agreement or order with this
7 Board or any other agency, and

8 m. failing to keep complete and accurate records of
9 purchase and disposal of controlled drugs or narcotic
10 drugs;

11 3. Has engaged in gross negligence, gross malpractice or gross
12 incompetence;

13 4. Has engaged in repeated acts of negligence, malpractice or
14 incompetence;

15 5. Has been finally adjudicated and found guilty, or entered a
16 plea of guilty or nolo contendere in a criminal prosecution, for any
17 offense reasonably related to the qualifications, functions or
18 duties of an osteopathic physician, whether or not sentence is
19 imposed, and regardless of the pendency of an appeal;

20 6. Has had the authority to engage in the activities regulated
21 by the Board revoked, suspended, restricted, modified or limited, or
22 has been reprimanded, warned or censured, probated or otherwise
23 disciplined by any other state or federal agency whether or not
24 voluntarily agreed to by the physician including, but not limited

1 to, the denial of licensure, surrender of the license, permit or
2 authority, allowing the license, permit or authority to expire or
3 lapse, or discontinuing or limiting the practice of osteopathic
4 medicine pending disposition of a complaint or completion of an
5 investigation;

6 7. Has violated or failed to comply with provisions of any act
7 or regulation administered by the Board;

8 8. Is incapable, for medical or psychiatric or any other good
9 cause, of discharging the functions of an osteopathic physician in a
10 manner consistent with the public's health, safety and welfare;

11 9. Has been guilty of advertising by means of knowingly false
12 or deceptive statements;

13 10. Has been guilty of advertising, practicing, or attempting
14 to practice under a name other than one's own;

15 11. Has violated or refused to comply with a lawful order of
16 the Board;

17 12. Has been guilty of habitual drunkenness, or habitual
18 addiction to the use of morphine, cocaine or other habit-forming
19 drugs;

20 13. Has been guilty of personal offensive behavior, which would
21 include, but not be limited to, obscenity, lewdness, and
22 molestation;

23 14. a. Has performed an abortion ~~as defined by Section 1-730~~
24 ~~of Title 63 of the Oklahoma Statutes, except for an~~

1 ~~abortion necessary to prevent the death of the mother~~
2 ~~or to prevent substantial or irreversible physical~~
3 ~~impairment of the mother that substantially increases~~
4 ~~the risk of death. The performance of an abortion on~~
5 ~~the basis of the mental or emotional health of the~~
6 ~~mother shall be a violation of this paragraph,~~
7 ~~notwithstanding a claim or diagnosis that the woman~~
8 ~~may engage in conduct which she intends to result in~~
9 ~~her death, unless:~~

10 (1) the abortion is necessary due to a medical
11 emergency as defined in subparagraph d of this
12 paragraph, or

13 (2) the pregnancy is the result of:

14 (a) rape or sexual assault that has been
15 reported to law enforcement, or

16 (b) incest of a minor that has been reported to
17 law enforcement.

18 b. The Board shall impose a penalty as provided in this
19 section and in Section 637.1 of this title on a
20 licensee who violates this paragraph. The penalty
21 shall include, but not be limited to, suspension of
22 the license for a period of not less than one (1)
23 year.

1 c. Any abortion performed or induced under an exception
2 provided by subparagraph a of this paragraph or
3 performed or induced to remove an ectopic pregnancy
4 shall be reported by the physician to the State
5 Department of Health in accordance with Section 18 of
6 this act.

7 d. As used in this paragraph:

8 (1) "abortion" means the act of using, prescribing,
9 administering, procuring, or selling of any
10 instrument, medicine, drug, or any other
11 substance, device, or means with the purpose to
12 terminate the pregnancy of a woman, with
13 knowledge that the termination by any of those
14 means will with reasonable likelihood cause the
15 death of an unborn child. It does not include
16 the use, prescription, administration, procuring,
17 or selling of any type of contraception if the
18 contraception is administered before the time
19 when a pregnancy could be determined through
20 conventional medical testing. It does not
21 include any act related to in vitro fertilization
22 or otherwise related to the diagnosis or
23 treatment of infertility or the preservation of
24 fertility by a licensed healthcare provider

1 acting lawfully and within the scope of his or
2 her practice. An act is not an abortion if the
3 act is performed with the purpose to:

4 (a) save the life or preserve the health of the
5 unborn child,

6 (b) remove a dead unborn child whose death was
7 caused by miscarriage or spontaneous
8 abortion, or

9 (c) remove an ectopic pregnancy,

10 (2) "medical emergency" means a condition that, in
11 reasonable medical judgment:

12 (a) cannot be remedied by delivery of the child,
13 and

14 (b) so complicates the medical condition of the
15 pregnant woman as to necessitate the
16 immediate abortion of her pregnancy to avert
17 her death or for which a delay will create
18 serious risk of substantial and irreversible
19 physical impairment of a major bodily
20 function, not including psychological or
21 emotional conditions. A condition is not a
22 medical emergency if it is based on a claim,
23 diagnosis, or determination that the woman
24 may engage in conduct which she intends to

1 result in her death or in the substantial
2 and irreversible physical impairment of a
3 major bodily function, and

4 (3) "reasonable medical judgment" means a medical
5 judgment that would be made by a reasonably
6 prudent physician who is knowledgeable about the
7 case and the treatment possibilities with respect
8 to the medical conditions involved; or

9 15. Has been adjudicated to be insane, or incompetent, or
10 admitted to an institution for the treatment of psychiatric
11 disorders.

12 B. The State Board of Osteopathic Examiners shall neither
13 refuse to renew, nor suspend, nor revoke any license, however, for
14 any of these causes, unless the person accused has been given at
15 least twenty (20) days' notice in writing of the charge against him
16 or her and a public hearing by the Board; provided, three-fourths
17 (3/4) of a quorum present at a meeting may vote to suspend a license
18 in an emergency situation if the licensee affected is provided a
19 public hearing within thirty (30) days of the emergency suspension.

20 C. The State Board of Osteopathic Examiners shall have the
21 power to order or subpoena the attendance of witnesses, the
22 inspection of records and premises and the production of relevant
23 books and papers for the investigation of matters that may come
24 before them. The presiding officer of the Board shall have the

1 authority to compel the giving of testimony as is conferred on
2 courts of justice.

3 D. Any osteopathic physician in ~~the State of Oklahoma~~ this
4 state whose license to practice osteopathic medicine is revoked or
5 suspended under this section shall have the right to seek judicial
6 review of a ruling of the Board pursuant to the Administrative
7 Procedures Act.

8 E. The Board may enact rules and regulations pursuant to the
9 Administrative Procedures Act setting out additional acts of
10 unprofessional conduct, which acts shall be grounds for refusal to
11 issue or reinstate, or for action to condition, suspend or revoke a
12 license.

13 SECTION 4. AMENDATORY 63 O.S. 2021, Section 1-731.3, is
14 amended to read as follows:

15 Section 1-731.3. A. No person shall perform or induce an
16 abortion upon a pregnant woman without first detecting whether or
17 not her unborn child has a heartbeat. No person shall perform or
18 induce an abortion upon a pregnant woman after such time as her
19 unborn child has been determined to have a detectable heartbeat
20 ~~except if, in reasonable medical judgment, she has a condition that~~
21 ~~so complicates her medical condition that it necessitates the~~
22 ~~abortion of her pregnancy to avert her death or to avert serious~~
23 ~~risk of substantial and irreversible physical impairment of a major~~
24 ~~bodily function, not including psychological or emotional~~

1 ~~conditions. No such condition may be determined to exist if it is~~
2 ~~based on a claim or diagnosis that the woman will engage in conduct~~
3 ~~which she intends to result in her death or in substantial and~~
4 ~~irreversible physical impairment of a major bodily function.~~

5 B. ~~A "detectable heartbeat" shall mean~~ Subsection A of this
6 section shall not apply:

7 1. If the abortion is necessary due to a medical emergency as
8 defined in subsection D of this section; or

9 2. If the pregnancy is the result of:

10 a. rape or sexual assault that has been reported to law
11 enforcement, or

12 b. incest of a minor that has been reported to law
13 enforcement.

14 C. Any abortion performed or induced under an exception
15 provided by subsection B of this section, performed or induced to
16 remove an ectopic pregnancy, or performed or induced in compliance
17 with subsection A of this section shall be reported by the abortion
18 provider to the State Department of Health in accordance with
19 Section 18 of this act.

20 D. As used in this section:

21 1. "Abortion" means the act of using, prescribing,
22 administering, procuring, or selling of any instrument, medicine,
23 drug, or any other substance, device, or means with the purpose to
24 terminate the pregnancy of a woman, with knowledge that the

1 termination by any of those means will with reasonable likelihood
2 cause the death of an unborn child. It does not include the use,
3 prescription, administration, procuring, or selling of any type of
4 contraception if the contraception is administered before the time
5 when a pregnancy could be determined through conventional medical
6 testing. It does not include any act related to in vitro
7 fertilization or otherwise related to the diagnosis or treatment of
8 infertility or the preservation of fertility by a licensed
9 healthcare provider acting lawfully and within the scope of his or
10 her practice. An act is not an abortion if the act is performed
11 with the purpose to:

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

14 b. remove a dead unborn child whose death was caused by
15 miscarriage or spontaneous abortion, or

16 c. remove an ectopic pregnancy;

17 2. "Detectable heartbeat" means embryonic or fetal cardiac
18 activity or the steady or repetitive rhythmic ~~contract~~ contractions
19 of the heart within the gestational sac;

20 3. "Medical emergency" means a condition that, in reasonable
21 medical judgment:

22 a. cannot be remedied by delivery of the child, and

23 b. so complicates the medical condition of the pregnant
24 woman as to necessitate the immediate abortion of her

1 pregnancy to avert her death or for which a delay will
2 create serious risk of substantial and irreversible
3 physical impairment of a major bodily function, not
4 including psychological or emotional conditions. A
5 condition is not a medical emergency if it is based on
6 a claim, diagnosis, or determination that the woman
7 may engage in conduct which she intends to result in
8 her death or in the substantial and irreversible
9 physical impairment of a major bodily function; and

10 ~~C.~~ 4. "Reasonable medical judgment" means a medical judgment
11 that would be made by a reasonably prudent physician, who is
12 knowledgeable about the case and the treatment possibilities with
13 respect to the medical conditions involved.

14 ~~D.~~ E. Any person violating subsection A of this section shall
15 be guilty of homicide.

16 SECTION 5. AMENDATORY Section 1, Chapter 11, O.S.L. 2022
17 (63 O.S. Supp. 2022, Section 1-731.4), is amended to read as
18 follows:

19 Section 1-731.4. A. As used in this section:

20 1. ~~The terms "abortion" and "unborn child" shall have the same~~
21 ~~meaning as provided by Section 1-730 of Title 63 of the Oklahoma~~
22 ~~Statutes~~ "Abortion" means the act of using, prescribing,
23 administering, procuring, or selling of any instrument, medicine,
24 drug, or any other substance, device, or means with the purpose to

1 terminate the pregnancy of a woman, with knowledge that the
2 termination by any of those means will with reasonable likelihood
3 cause the death of an unborn child. It does not include the use,
4 prescription, administration, procuring, or selling of any type of
5 contraception if the contraception is administered before the time
6 when a pregnancy could be determined through conventional medical
7 testing. It does not include any act related to in vitro
8 fertilization or otherwise related to the diagnosis or treatment of
9 infertility or the preservation of fertility by a licensed
10 healthcare provider acting lawfully and within the scope of his or
11 her practice. An act is not an abortion if the act is performed
12 with the purpose to:

- 13 a. save the life or preserve the health of the unborn
14 child,
15 b. remove a dead unborn child whose death was caused by
16 miscarriage or spontaneous abortion, or
17 c. remove an ectopic pregnancy; and

18 2. "Medical emergency" means a condition ~~which~~ that, in
19 reasonable medical judgment:

- 20 a. cannot be remedied by delivery of the child ~~in which~~
21 ~~an abortion is necessary to preserve the life of a~~
22 ~~pregnant woman whose life is endangered by a physical~~
23 ~~disorder, physical illness or physical injury~~

24

1 ~~including a life-endangering physical condition caused~~
2 ~~by or arising from the pregnancy itself, and~~

3 b. so complicates the medical condition of the pregnant
4 woman as to necessitate the immediate abortion of her
5 pregnancy to avert her death or for which a delay will
6 create serious risk of substantial and irreversible
7 physical impairment of a major bodily function, not
8 including psychological or emotional conditions. A
9 condition is not a medical emergency if it is based on
10 a claim, diagnosis, or determination that the woman
11 may engage in conduct which she intends to result in
12 her death or in the substantial and irreversible
13 physical impairment of a major bodily function;

14 3. "Reasonable medical judgment" means a medical judgment that
15 would be made by a reasonably prudent physician who is knowledgeable
16 about the case and the treatment possibilities with respect to the
17 medical conditions involved; and

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

20 B. ~~1.~~ Notwithstanding any other provision of law, a person
21 shall not purposely perform, induce, or attempt to perform or induce
22 an abortion except ~~to save the life of a pregnant woman in:~~

23 1. If the abortion is necessary due to a medical emergency as
24 defined in subsection A of this section; or

1 2. If the pregnancy is the result of:

2 a. rape or sexual assault that has been reported to law
3 enforcement, or

4 b. incest of a minor that has been reported to law
5 enforcement.

6 ~~2.~~ C. 1. A person convicted of performing or attempting to
7 perform an abortion shall be guilty of a felony punishable by a fine
8 not to exceed One Hundred Thousand Dollars (\$100,000.00), or by
9 confinement in the custody of the Department of Corrections for a
10 term not to exceed ten (10) years, or by such fine and imprisonment.

11 ~~3.~~ 2. This section does not:

12 ~~a.~~ authorize the charging or conviction of a woman with
13 any criminal offense in the death of her own unborn
14 child, ~~or~~

15 ~~b.~~ ~~prohibit the sale, use, prescription or administration~~
16 ~~of a contraceptive measure, drug or chemical if the~~
17 ~~contraceptive measure, drug or chemical is~~
18 ~~administered before the time when a pregnancy could be~~
19 ~~determined through conventional medical testing and if~~
20 ~~the contraceptive measure, drug or chemical is sold,~~
21 ~~used, prescribed or administered in accordance with~~
22 ~~manufacturer instructions.~~

23 ~~4.~~ 3. It is an affirmative defense to prosecution under this
24 section if a licensed physician provides medical treatment to a

1 pregnant woman which results in the accidental or unintentional
2 injury or death to the unborn child.

3 D. Any abortion performed or induced under an exception
4 provided by subsection B of this section or performed or induced to
5 remove an ectopic pregnancy shall be reported by the abortion
6 provider to the State Department of Health in accordance with
7 Section 18 of this act.

8 SECTION 6. AMENDATORY 63 O.S. 2021, Section 1-732, is
9 amended to read as follows:

10 Section 1-732. A. No person shall perform or induce an
11 abortion upon a pregnant woman after such time as her unborn child
12 has become viable unless ~~such~~:

13 1. The abortion is necessary to prevent the death of the
14 pregnant woman or to prevent impairment to her health due to a
15 medical emergency as defined in subsection I of this section; or

16 2. The pregnancy is the result of:

17 a. rape or sexual assault that has been reported to law
18 enforcement, or

19 b. incest of a minor that has been reported to law
20 enforcement.

21 B. An unborn child shall be presumed to be viable if more than
22 twenty-four (24) weeks have elapsed since the probable beginning of
23 the last menstrual period of the pregnant woman, based upon either
24 information provided by her or by an examination by her attending

1 physician. If it is the judgment of the attending physician that a
2 particular unborn child is not viable where the presumption of
3 viability exists as to that particular unborn child, then he or she
4 shall certify in writing the precise medical criteria upon which he
5 has determined that the particular unborn child is not viable before
6 an abortion may be performed or induced-

7 ~~C. No abortion of a viable unborn child shall be performed or~~
8 ~~induced except after written certification by the attending~~
9 ~~physician that in his best medical judgment the abortion is~~
10 ~~necessary to prevent the death of the pregnant woman or to prevent~~
11 ~~an impairment to her health. The physician shall further certify in~~
12 writing the medical indications for such abortion and the probable
13 health consequences if the abortion is not performed or induced.

14 ~~D. C.~~ C. The physician who shall perform or induce an abortion
15 upon a pregnant woman after such time as her unborn child has become
16 viable shall utilize the available method or technique of abortion
17 most likely to preserve the life and health of the unborn child,
18 unless he or she shall first certify in writing that in his or her
19 best medical judgment such method or technique shall present a
20 significantly greater danger to the life or health of the pregnant
21 woman than another available method or technique.

22 ~~E. D.~~ D. An abortion of a viable unborn child performed solely
23 under the exception provided by paragraph 2 of subsection A of this
24 section shall be performed or induced only when there is in

1 attendance a physician other than the physician performing or
2 inducing the abortion who shall take control of and provide
3 immediate medical care for the child.

4 E. During the performance or inducing of the abortion, the
5 physician performing it, and subsequent to it, the physician
6 required by this section to be in attendance, if applicable under
7 subsections D and F of this section, shall take all reasonable steps
8 in keeping with good medical practice, consistent with the procedure
9 used, to preserve the life and health of the child, in the same
10 manner as if the child had been born naturally or spontaneously.

11 F. The requirement of the attendance of a second physician ~~may~~
12 ~~be waived when in the best judgment of the attending physician a~~
13 shall not apply to an abortion performed due to a medical emergency
14 ~~exists and further delay would result in a serious threat to the~~
15 ~~life or physical health of the pregnant woman~~ under the exception
16 provided by paragraph 1 of subsection A of this section. Provided
17 that, under such emergency circumstances ~~and waiver~~, the attending
18 physician shall have the duty to take all reasonable steps to
19 preserve the life and health of the child before, during and after
20 the abortion procedure, unless such steps shall, in the best medical
21 judgment of the physician, present a significantly greater danger to
22 the life or health of the pregnant woman.

23 ~~F.~~ G. Any person violating subsection A of this section shall
24 be guilty of homicide.

1 H. Any abortion performed or induced under an exception
2 provided by subsection A of this section, performed or induced to
3 remove an ectopic pregnancy, or performed or induced before the
4 unborn child has become viable shall be reported by the abortion
5 provider to the State Department of Health in accordance with
6 Section 18 of this act.

7 I. As used in this section:

8 1. "Abortion" means the act of using, prescribing,
9 administering, procuring, or selling of any instrument, medicine,
10 drug, or any other substance, device, or means with the purpose to
11 terminate the pregnancy of a woman, with knowledge that the
12 termination by any of those means will with reasonable likelihood
13 cause the death of an unborn child. It does not include the use,
14 prescription, administration, procuring, or selling of any type of
15 contraception if the contraception is administered before the time
16 when a pregnancy could be determined through conventional medical
17 testing. It does not include any act related to in vitro
18 fertilization or otherwise related to the diagnosis or treatment of
19 infertility or the preservation of fertility by a licensed
20 healthcare provider acting lawfully and within the scope of his or
21 her practice. An act is not an abortion if the act is performed
22 with the purpose to:

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

1 b. remove a dead unborn child whose death was caused by
2 miscarriage or spontaneous abortion, or

3 c. remove an ectopic pregnancy;

4 2. "Medical emergency" means a condition that, in reasonable
5 medical judgment:

6 a. cannot be remedied by delivery of the child, and

7 b. so complicates the medical condition of the pregnant
8 woman as to necessitate the immediate abortion of her
9 pregnancy to avert her death or for which a delay will
10 create serious risk of substantial and irreversible
11 physical impairment of a major bodily function, not
12 including psychological or emotional conditions. A
13 condition is not a medical emergency if it is based on
14 a claim, diagnosis, or determination that the woman
15 may engage in conduct which she intends to result in
16 her death or in the substantial and irreversible
17 physical impairment of a major bodily function; and

18 3. "Reasonable medical judgment" means a medical judgment that
19 would be made by a reasonably prudent physician who is knowledgeable
20 about the case and the treatment possibilities with respect to the
21 medical conditions involved.

22 SECTION 7. AMENDATORY 63 O.S. 2021, Section 1-745.2, is
23 amended to read as follows:

1 Section 1-745.2. As used in the Pain-Capable Unborn Child
2 Protection Act only:

3 1. "Abortion" means the ~~use or prescription~~ act of using,
4 prescribing, administering, procuring, or selling of any instrument,
5 medicine, drug, or any other substance or, device, or means with the
6 purpose to terminate the pregnancy of a woman ~~known to be pregnant~~
7 ~~with an intention other than to increase the probability of a live~~
8 ~~birth, to preserve,~~ with knowledge that the termination by any of
9 those means will with reasonable likelihood cause the death of an
10 unborn child. It does not include the use, prescription,
11 administration, procuring, or selling of any type of contraception
12 if the contraception is administered before the time when a
13 pregnancy could be determined through conventional medical testing.
14 It does not include any act related to in vitro fertilization or
15 otherwise related to the diagnosis or treatment of infertility or
16 the preservation of fertility by a licensed healthcare provider
17 acting lawfully and within the scope of his or her practice. An act
18 is not an abortion if the act is performed with the purpose to:

19 a. save the life or preserve the health of the unborn
20 child after live birth, or to,

21 b. remove a dead unborn child ~~who died as the result of~~
22 ~~natural causes in utero, accidental trauma, or a~~
23 ~~criminal assault on the pregnant woman or her unborn~~
24 ~~child, and which causes the premature termination of~~

1 ~~the pregnancy~~ whose death was caused by miscarriage or
2 spontaneous abortion, or

3 c. remove an ectopic pregnancy;

4 2. "Attempt to perform or induce an abortion" means an act, or
5 an omission of a statutorily required act, that, under the
6 circumstances as the actor believes them to be, constitutes a
7 substantial step in a course of conduct planned to culminate in the
8 performance or induction of an abortion in this state in violation
9 of the Pain-Capable Unborn Child Protection Act;

10 3. "Postfertilization age" means the age of the unborn child as
11 calculated from the fertilization of the human ovum;

12 4. "Fertilization" means the fusion of a human spermatozoon
13 with a human ovum;

14 5. "Medical emergency" means a condition that, in reasonable
15 medical judgment,

16 a. cannot be remedied by delivery of the child, and

17 b. so complicates the medical condition of the pregnant

18 ~~woman that it necessitates~~ as to necessitate the
19 ~~immediate abortion of her pregnancy without first~~

20 ~~determining postfertilization age~~ to avert her death

21 ~~or for which the delay necessary to determine~~

22 ~~postfertilization age~~ a delay will create serious risk

23 of substantial and irreversible physical impairment of

24 a major bodily function, not including psychological

1 or emotional conditions. ~~No condition shall be deemed~~
2 A condition is not a medical emergency if it is based
3 on a claim ~~or~~, diagnosis, or determination that the
4 woman ~~will~~ may engage in conduct which she intends to
5 result in her death or in substantial and irreversible
6 physical impairment of a major bodily function;

7 6. "Reasonable medical judgment" means a medical judgment that
8 would be made by a reasonably prudent physician, who is
9 knowledgeable about the case and the treatment possibilities with
10 respect to the medical conditions involved;

11 7. "Physician" means any person licensed to practice medicine
12 and surgery or osteopathic medicine and surgery in this state;

13 8. "Probable postfertilization age of the unborn child" means
14 what, in reasonable medical judgment, will with reasonable
15 probability be the postfertilization age of the unborn child at the
16 time the abortion is planned to be performed or induced;

17 9. "Unborn child" or "fetus" each means an individual organism
18 of the species homo sapiens from fertilization until live birth; and

19 10. "Woman" means a female human being whether or not she has
20 reached the age of majority.

21 SECTION 8. AMENDATORY 63 O.S. 2021, Section 1-745.4, is
22 amended to read as follows:

23 Section 1-745.4. A. ~~Except in the case of a medical emergency~~
24 as provided by subsection C of this section, no abortion shall be

1 performed or induced or be attempted to be performed or induced
2 unless the physician performing or inducing it has first made a
3 determination of the probable postfertilization age of the unborn
4 child or relied upon such a determination made by another physician.
5 In making such a determination, the physician shall make such
6 inquiries of the woman and perform or cause to be performed such
7 medical examinations and tests as a reasonably prudent physician,
8 knowledgeable about the case and the medical conditions involved,
9 would consider necessary to perform in making an accurate diagnosis
10 with respect to postfertilization age.

11 B. Knowing or reckless failure by any physician to conform to
12 any requirement of this section constitutes "unprofessional
13 conduct".

14 C. Subsection A of this section shall not apply:

15 1. If the abortion is necessary due to a medical emergency as
16 defined in subsection D of this section; or

17 2. If the pregnancy is the result of:

18 a. rape or sexual assault that has been reported to law
19 enforcement, or

20 b. incest of a minor that has been reported to law
21 enforcement.

22 D. Any abortion performed or induced under an exception
23 provided by subsection C of this section, performed or induced to
24 remove an ectopic pregnancy, or performed or induced in compliance

1 with subsection A of this section shall be reported by the abortion
2 provider to the State Department of Health in accordance with
3 Section 18 of this act.

4 SECTION 9. AMENDATORY 63 O.S. 2021, Section 1-745.5, is
5 amended to read as follows:

6 Section 1-745.5. A. ~~No~~ Except as provided by subsection C of
7 Section 1-745.4 of this title, no person shall perform or induce or
8 attempt to perform or induce an abortion upon a woman when it has
9 been determined, by the physician performing or inducing or
10 attempting to perform or induce the abortion or by another physician
11 upon whose determination that physician relies, that the probable
12 postfertilization age of the woman's unborn child is twenty (20) or
13 more weeks, ~~unless, in reasonable medical judgment, she has a~~
14 ~~condition which so complicates her medical condition as to~~
15 ~~necessitate the abortion of her pregnancy to avert her death or to~~
16 ~~avert serious risk of substantial and irreversible physical~~
17 ~~impairment of a major bodily function, not including psychological~~
18 ~~or emotional conditions. No such condition shall be deemed to exist~~
19 ~~if it is based on a claim or diagnosis that the woman will engage in~~
20 ~~conduct which she intends to result in her death or in substantial~~
21 ~~and irreversible physical impairment of a major bodily function.~~

22 B. When an abortion upon a woman whose unborn child has been
23 determined to have a probable postfertilization age of twenty (20)
24 or more weeks is not prohibited by this section, the physician shall

1 terminate the pregnancy in the manner which, in reasonable medical
2 judgment, provides the best opportunity for the unborn child to
3 survive, unless, in reasonable medical judgment, termination of the
4 pregnancy in that manner would pose a greater risk either of the
5 death of the pregnant woman or of the substantial and irreversible
6 physical impairment of a major bodily function, not including
7 psychological or emotional conditions, of the woman than would other
8 available methods. No such greater risk shall be deemed to exist if
9 it is based on a claim or diagnosis that the woman will engage in
10 conduct which she intends to result in her death or in substantial
11 and irreversible physical impairment of a major bodily function.

12 SECTION 10. AMENDATORY Section 2, Chapter 190, O.S.L.
13 2022 (63 O.S. Supp. 2022, Section 1-745.32), is amended to read as
14 follows:

15 Section 1-745.32. As used in ~~this act~~ the Oklahoma Heartbeat
16 Act:

17 1. "Abortion" means the act of using, prescribing,
18 administering, procuring, or selling of any instrument, medicine,
19 drug, or any other substance, device, or means with the purpose to
20 terminate the pregnancy of a woman, with knowledge that the
21 termination by any of those means will with reasonable likelihood
22 cause the death of an unborn child. It does not include the use,
23 prescription, administration, procuring, or selling of any type of
24 contraception if the contraception is administered before the time

1 when a pregnancy could be determined through conventional medical
2 testing. It does not include any act related to in vitro
3 fertilization or otherwise related to the diagnosis or treatment of
4 infertility or the preservation of fertility by a licensed
5 healthcare provider acting lawfully and within the scope of his or
6 her practice. An act is not an abortion if the act is performed
7 with the purpose to:

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

10 b. remove a dead unborn child whose death was caused by
11 miscarriage or spontaneous abortion, or

12 c. remove an ectopic pregnancy;

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

16 ~~2.~~ 3. "Gestational age" means the amount of time that has
17 elapsed from the first day of a woman's last menstrual period;

18 ~~3.~~ 4. "Gestational sac" means the structure comprising the
19 extraembryonic membranes that envelop the unborn child and that is
20 typically visible by ultrasound after the fourth week of pregnancy;

21 ~~4.~~ 5. "Medical emergency" means a condition that, in reasonable
22 medical judgment:

23 a. cannot be remedied by delivery of the child, and
24

1 b. so complicates the medical condition of the pregnant
2 woman as to necessitate the immediate abortion of her
3 pregnancy to avert her death or for which a delay will
4 create serious risk of substantial and irreversible
5 physical impairment of a major bodily function, not
6 including psychological or emotional conditions. A
7 condition is not a medical emergency if it is based on
8 a claim, diagnosis, or determination that the woman
9 may engage in conduct which she intends to result in
10 her death or in the substantial and irreversible
11 physical impairment of a major bodily function;

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

15 ~~5.~~ 7. "Pregnancy" means the human female reproductive condition
16 that:

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

22 ~~6.~~ 8. "Reasonable medical judgment" means a medical judgment
23 that would be made by a reasonably prudent physician who is
24

1 knowledgeable about the case and the treatment possibilities with
2 respect to the medical conditions involved;

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

6 ~~7.~~ 10. "Unborn child" means a human fetus or embryo in any
7 stage of gestation from fertilization until birth; and

8 ~~8.~~ 11. "Woman" and "women" include any person whose biological
9 sex is female including any person with XX chromosomes and any
10 person with a uterus, regardless of any gender identity that the
11 person attempts to assert or claim.

12 SECTION 11. AMENDATORY Section 3, Chapter 190, O.S.L.
13 2022 (63 O.S. Supp. 2022, Section 1-745.33), is amended to read as
14 follows:

15 Section 1-745.33. A. For the purposes of determining the
16 presence of a fetal heartbeat under this section, "standard medical
17 practice" includes employing the appropriate means of detecting the
18 heartbeat based on the estimated gestational age of the unborn child
19 and the condition of the woman and her pregnancy.

20 B. Except as provided by ~~Sections 5 and 6 of this act~~ Sections
21 1-745.35 and 1-745.36 of this title or Section 14 of this act, an
22 abortion may not be performed ~~or~~, induced, or attempted to be
23 performed or induced on a pregnant woman unless a physician has

24

1 determined, in accordance with this section, whether the woman's
2 unborn child has a detectable fetal heartbeat.

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

5 1. Consistent with the physician's good faith and reasonable
6 understanding of standard medical practice; and

7 2. Appropriate for the estimated gestational age of the unborn
8 child and the condition of the pregnant woman and her pregnancy.

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

11 1. The estimated gestational age of the unborn child;

12 2. The method used to estimate the gestational age; and

13 3. The test used for detecting a fetal heartbeat including the
14 date, time, and results of the test.

15 SECTION 12. AMENDATORY Section 4, Chapter 190, O.S.L.
16 2022 (63 O.S. Supp. 2022, Section 1-745.34), is amended to read as
17 follows:

18 Section 1-745.34. A. Except as provided by ~~Sections 5 and 6 of~~
19 ~~this act~~ Sections 1-745.35 and 1-745.36 of this title or Section 14
20 of this act, a physician shall not knowingly perform ~~or~~, induce, or
21 attempt to perform or induce an abortion on a pregnant woman if the
22 physician detected a fetal heartbeat for the unborn child as
23 required by ~~Section 3 of this act~~ Section 1-745.33 of this title or
24 failed to perform a test to detect a fetal heartbeat.

1 B. A physician shall not be in violation of this section if the
2 physician performed a test for a fetal heartbeat as required by
3 ~~Section 3 of this act~~ Section 1-745.33 of this title and did not
4 detect a fetal heartbeat.

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

9 SECTION 13. AMENDATORY Section 5, Chapter 190, O.S.L.
10 2022 (63 O.S. Supp. 2022, Section 1-745.35), is amended to read as
11 follows:

12 Section 1-745.35. A. ~~Sections 3 and 4 of this act~~ Sections 1-
13 745.33 and 1-745.34 of this title shall not apply if ~~a physician~~
14 ~~believes~~ an abortion is necessary due to a medical emergency exists
15 ~~that prevents compliance with this act~~ as defined in Section 1-
16 745.32 of this title.

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

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

22 2. The medical condition of the pregnant woman that prevented
23 compliance with ~~this act~~ the Oklahoma Heartbeat Act.

24

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

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

7 Sections 1-745.33 and 1-745.34 of Title 63 of the Oklahoma
8 Statutes shall not apply if the pregnancy is the result of:

9 1. Rape or sexual assault that has been reported to law
10 enforcement; or

11 2. Incest of a minor that has been reported to law enforcement.

12 SECTION 15. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-745.36a of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

15 Any abortion performed or induced under an exception provided by
16 Section 1-745.35 or 1-745.36 of this title or Section 14 of this
17 act, performed or induced to remove an ectopic pregnancy, or
18 performed or induced in compliance with Sections 1-745.33 and 1-
19 745.34 of Title 63 of the Oklahoma Statutes shall be reported by the
20 abortion provider to the State Department of Health in accordance
21 with Section 18 of this act.

22 SECTION 16. AMENDATORY Section 1, Chapter 321, O.S.L.
23 2022 (63 O.S. Supp. 2022, Section 1-745.51), is amended to read as
24 follows:

1 Section 1-745.51. As used in ~~this act~~ Section 1-745.51 et seq.
2 of this title:

3 1. "Abortion" means the act of using, prescribing,
4 administering, procuring, or selling of any instrument, medicine,
5 drug, or any other substance, device, or means with the purpose to
6 terminate the pregnancy of a woman, with knowledge that the
7 termination by any of those means will with reasonable likelihood
8 cause the death of an unborn child. It does not include the use,
9 prescription, administration, procuring, or selling of ~~Plan B,~~
10 ~~morning-after pills, or any other type of contraception or emergency~~
11 ~~contraception~~ if the contraception is administered before the time
12 when a pregnancy could be determined through conventional medical
13 testing. It does not include any act related to in vitro
14 fertilization or otherwise related to the diagnosis or treatment of
15 infertility or the preservation of fertility by a licensed
16 healthcare provider acting lawfully and within the scope of his or
17 her practice. An act is not an abortion if the act is performed
18 with the purpose to:

- 19 a. save the life or preserve the health of the unborn
20 child,
21 b. remove a dead unborn child whose death was caused by
22 miscarriage or spontaneous abortion, or
23 c. remove an ectopic pregnancy;

24

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

3 3. "Medical emergency" means a condition ~~in which an abortion~~
4 ~~is necessary to preserve the life of a pregnant woman whose life is~~
5 ~~endangered by a physical disorder, physical illness, or physical~~
6 ~~injury, including a life-endangering physical condition caused by or~~
7 ~~arising from the pregnancy itself~~ that, in reasonable medical
8 judgment:

9 a. cannot be remedied by delivery of the child, and

10 b. so complicates the medical condition of the pregnant
11 woman as to necessitate the immediate abortion of her
12 pregnancy to avert her death or for which a delay will
13 create serious risk of substantial and irreversible
14 physical impairment of a major bodily function, not
15 including psychological or emotional conditions. A
16 condition is not a medical emergency if it is based on
17 a claim, diagnosis, or determination that the woman
18 may engage in conduct which she intends to result in
19 her death or in the substantial and irreversible
20 physical impairment of a major bodily function;

21 4. "Reasonable medical judgment" means a medical judgment that
22 would be made by a reasonably prudent physician who is knowledgeable
23 about the case and the treatment possibilities with respect to the
24 medical conditions involved;

1 4. 5. "Unborn child" means a human fetus or embryo in any stage
2 of gestation from fertilization until birth; and

3 5. 6. "Woman" and "women" include any person whose biological
4 sex is female, including any person with XX chromosomes and any
5 person with a uterus, regardless of any gender identity that the
6 person attempts to assert or claim.

7 SECTION 17. AMENDATORY Section 2, Chapter 321, O.S.L.
8 2022 (63 O.S. Supp. 2022, Section 1-745.52), is amended to read as
9 follows:

10 Section 1-745.52. A. Except as provided by ~~Section 3 of this~~
11 ~~act~~ Section 1-745.53 of this title, a person shall not knowingly
12 perform ~~or~~, induce, or attempt to perform or induce an abortion
13 unless:

14 1. The abortion is necessary ~~to save the life of a pregnant~~
15 ~~woman in~~ due to a medical emergency as defined in Section 1-745.51
16 of this title; or

17 2. The pregnancy is the result of:

18 a. rape, or sexual assault that has been reported to law
19 enforcement, or

20 b. incest of a minor that has been reported to law
21 enforcement.

22 B. Any abortion performed or induced under an exception
23 provided by subsection A of this section or Section 1-745.53 of this
24 title or performed or induced to remove an ectopic pregnancy shall

1 be reported by the abortion provider to the State Department of
2 Health in accordance with Section 18 of this act.

3 SECTION 18. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-738r of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any abortion performed or induced under an exception
7 provided by Section 861 of Title 21 of the Oklahoma Statutes,
8 Section 509 or 637 of Title 59 of the Oklahoma Statutes, Section 1-
9 731.3, 1-731.4, or Section 1-732 of Title 63 of the Oklahoma
10 Statutes, Section 1-745.1 et seq. of Title 63 of the Oklahoma
11 Statutes, Section 1-745.31 et seq. of Title 63 of the Oklahoma
12 Statutes, or Section 1-745.51 of Title 63 of the Oklahoma Statutes
13 shall be reported by the abortion provider to the State Department
14 of Health on a form prescribed by the State Commissioner of Health.
15 The form shall not request the name of the woman who obtained the
16 abortion or any other potentially identifying information that could
17 lead to the identification of the woman.

18 B. The abortion provider shall state on the form the specific
19 exception under which the abortion was performed and shall provide a
20 detailed explanation of the justification for performing such
21 abortion including any relevant supporting documentation. The
22 completed form shall include all other information as may be
23 required by the Commissioner.

24

1 C. The Department shall compile the information received under
2 this section into an annual statistical report which shall be
3 published on the Department's Internet website and submitted to the
4 President Pro Tempore of the Senate and the Speaker of the House of
5 Representatives each year.

6 D. The Commissioner shall promulgate rules to implement this
7 section. Such rules shall include, but not be limited to:

- 8 1. The manner of reporting;
- 9 2. Information to be reported; and
- 10 3. Patient privacy protections that ensure the anonymity of
11 women who obtain an abortion under an exception provided by Section
12 861 of Title 21 of the Oklahoma Statutes, Section 731.4 of Title 63
13 of the Oklahoma Statutes, Section 1-745.31 et seq. of Title 63 of
14 the Oklahoma Statutes, or Section 1-745.51 of Title 63 of the
15 Oklahoma Statutes.

16 SECTION 19. REPEALER 63 O.S. 2021, Sections 1-733 and 1-
17 745.6, are hereby repealed.

18 SECTION 20. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

22 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
23 February 9, 2023 - DO PASS AS AMENDED BY CS
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