

1 ENGROSSED HOUSE
2 BILL NO. 4327

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

3 and

4 Dahm of the Senate
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7 An Act relating to abortion; defining terms;
8 prohibiting abortion; providing exceptions; providing
9 for exceptions based upon performance of duties
10 pursuant to federal law; providing for civil actions
11 as exclusive method of enforcement; providing
12 exceptions; prohibiting governmental entities from
13 enforcement activity; providing an exception;
14 prohibiting violations of act to be used in
15 designated manner; providing exceptions; providing
16 for civil actions; designating persons or entities
17 authorized to file civil action; providing for
18 authorized judicial remedies; authorizing damages;
19 authorizing injunctive relief; authorizing court
20 costs; authorizing attorney fees; providing
21 exceptions for award of damages; prescribing statute
22 of limitations; excluding certain defenses;
23 specifying affirmative defense; providing for
24 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;

1 providing for effect of certain federal judicial
2 determinations; amending 12 O.S. 2021, Section 1439,
3 which relates to the Oklahoma Citizens Participation
4 Act; modifying scope of act; amending 51 O.S. 2021,
5 Section 255, which relates to the Oklahoma Religious
6 Freedom Act; modifying scope of act; providing for
7 codification; and declaring an emergency.

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

9 SECTION 1. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-745.31 of Title 63, unless
11 there is created a duplication in numbering, reads as follows:

12 As used in this act:

13 1. "Abortion" means the act of using, prescribing,
14 administering, procuring, or selling of any instrument, medicine,
15 drug, or any other substance, device, or means with the purpose to
16 terminate the pregnancy of a woman, with knowledge that the
17 termination by any of those means will with reasonable likelihood
18 cause the death of an unborn child. It does not include the use,
19 prescription, administration, procuring, or selling of Plan B,
20 morning-after pills, or any other type of contraception or emergency
21 contraception. 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 caused by spontaneous
2 abortion, or

3 c. remove an ectopic pregnancy;

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

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

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

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

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

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

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

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

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

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

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

14 Notwithstanding any other law, the requirements of this act
15 shall be enforced exclusively through the private civil actions
16 described in Section 5 of this act. No direct or indirect
17 enforcement of this act may be taken or threatened by the state, a
18 political subdivision, a district attorney, or an executive or
19 administrative officer or employee of this state or a political
20 subdivision against any person or entity, in any manner whatsoever,
21 except as provided in Section 5 of this act, and no violation of
22 this act may be used to justify or trigger the enforcement of any
23 other law or any type of adverse consequence under any other law,
24 except as provided in Section 5 of this act; provided, that this

1 section does not preclude the enforcement of any other law or
2 regulation against conduct that is independently prohibited by such
3 other law or regulation, and that would remain prohibited by such
4 other law or regulation in the absence of this act.

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

8 A. Any person, other than the state, its political
9 subdivisions, and any officer or employee of a state or local
10 governmental entity in this state, may bring a civil action against
11 any person who:

- 12 1. Performs or induces an abortion in violation of this act;
- 13 2. Knowingly engages in conduct that aids or abets the
14 performance or inducement of an abortion, including paying for or
15 reimbursing the costs of an abortion through insurance or otherwise,
16 if the abortion is performed or induced in violation of this act,
17 regardless of whether the person knew or should have known that the
18 abortion would be performed or induced in violation of this act; or
- 19 3. Intends to engage in the conduct described by paragraph 1 or
20 2 of this subsection.

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

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

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

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

12 4. Court costs and attorney fees.

13 C. Notwithstanding subsection B of this section, a court shall
14 not award relief under paragraph 2 or 4 of subsection B of this
15 section in response to a violation of paragraph 1 or 2 of subsection
16 A of this section if the defendant demonstrates that a court has
17 already ordered the defendant to pay not less than Ten Thousand
18 Dollars (\$10,000.00) of statutory damages as provided in paragraph 2
19 of subsection B of this section in a previous action for that
20 particular abortion performed or induced in violation of this act,
21 or for the particular conduct that aided or abetted an abortion
22 performed or induced in violation of this act.

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

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

6 1. Ignorance or mistake of law;

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

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

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

16 5. Nonmutual issue preclusion or nonmutual claim preclusion;

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

18 7. Any claim that the enforcement of this act or the imposition
19 of civil liability against the defendant will violate the
20 constitutional rights of third parties, except as provided by
21 Section 6 of this act.

22 F. 1. It is an affirmative defense if a person sued under
23 paragraph 2 or 3 of subsection A of this section reasonably
24 believed, after conducting a reasonable investigation, that the

1 individuals and organizations involved with performing or
2 facilitating the abortion would comply with this act.

3 2. The defendant has the burden of proving an affirmative
4 defense under paragraph 1 of this subsection by a preponderance of
5 the evidence.

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

12 H. 1. Notwithstanding any other law, neither the state, nor
13 any of its political subdivisions, nor any district attorney, nor
14 any executive or administrative officer or employee of this state or
15 a political subdivision may:

- 16 a. act in concert or participation with anyone who brings
17 suit under this section,
- 18 b. establish or attempt to establish any type of agency
19 or fiduciary relationship with a plaintiff who brings
20 suit under this section,
- 21 c. make any attempt to control or influence a plaintiff's
22 decision to bring suit under this section or the
23 plaintiff's conduct of the litigation, or
- 24 d. intervene in an action brought under this section.

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

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

9 J. Notwithstanding any other law, a civil action under this
10 section shall not be subject to any provision of the Oklahoma
11 Citizens Participation Act, Section 1430 et seq. of Title 12 of the
12 Oklahoma Statutes, and shall not be subject to any provision of the
13 Oklahoma Religious Freedom Act, Section 251 et seq. of Title 51 of
14 the Oklahoma Statutes.

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

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

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

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

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

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

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

15 a. the defendant has standing to assert the rights of
16 women seeking an abortion under the tests for third-
17 party standing established by the United States
18 Supreme Court, and

19 b. the imposition of civil liability on the defendant
20 will result in an undue burden on a woman or group of
21 women seeking an abortion.

22 2. The defendant shall bear the burden of proving the
23 affirmative defense in this subsection by a preponderance of the
24 evidence.

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

7 C. Nothing in this section or this act shall in any way limit
8 or preclude a defendant from asserting the defendant's personal
9 constitutional rights as a defense to liability under Section 5 of
10 this act, and a court shall not award relief under Section 5 of this
11 act if the conduct for which the defendant has been sued was an
12 exercise of state or federal constitutional rights that personally
13 belong to the defendant.

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

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

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

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

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

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

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

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

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

14 A. Notwithstanding any other law, this state has sovereign
15 immunity, a political subdivision has governmental immunity, and
16 each officer and employee of this state or a political subdivision
17 has official immunity in any action, claim, counterclaim, or any
18 type of legal or equitable action that challenges the validity of
19 any provision or application of this act, on constitutional grounds
20 or otherwise, or that seeks to prevent or enjoin the state, its
21 political subdivisions, or any officer or employee of this state or
22 a political subdivision from enforcing any provision or application
23 of this act, unless that immunity has been abrogated or preempted by
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1 federal law in a manner consistent with the Constitution of the
2 United States.

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

7 C. Notwithstanding any other law, no attorney representing this
8 state, a political subdivision, or any officer or employee of this
9 state or a political subdivision is authorized or permitted to waive
10 an immunity described in subsection A of this section or take any
11 action that would result in a waiver of that immunity.

12 D. Notwithstanding any other law, no court of this state shall
13 have jurisdiction to consider any action, claim, or counterclaim
14 that seeks declaratory or injunctive relief to prevent this state, a
15 political subdivision, any officer or employee of this state or a
16 political subdivision, or any person from enforcing any provision or
17 application of this act, or from filing a civil action under this
18 act.

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

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

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

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

1 that every valid application be allowed to stand alone. Even if a
2 reviewing court finds a provision of this act to impose an undue
3 burden in a large or substantial fraction of relevant cases, the
4 applications that do not present an undue burden shall be severed
5 from the remaining applications and shall remain in force, and shall
6 be treated as if the Legislature had enacted a statute limited to
7 the persons, group of persons, or circumstances for which the
8 statute's application does not impose an undue burden.

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

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

21 E. No court may decline to enforce the severability
22 requirements of subsections A, B, C, and D of this section on the
23 ground that severance would "rewrite" the statute or involve the
24 court in legislative or lawmaking activity. A court that declines

1 to enforce or enjoins a state official from enforcing a statutory
2 provision does not rewrite a statute, as the statute continues to
3 contain the same words as before the court's decision. A judicial
4 injunction or declaration of unconstitutionality:

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

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

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

13 F. If any state or federal court disregards the severability
14 requirements of subsections A, B, C, D, and E of this section, and
15 declares or finds any provision of this act facially
16 unconstitutional, when there are discrete applications of that
17 provision that can be enforced against a person, group of persons,
18 or circumstances without violating federal law, the federal or state
19 constitutions, or imposing an undue burden on women seeking
20 abortions, then that provision shall be interpreted, as a matter of
21 state law, as if the Legislature had enacted a provision limited to
22 the persons, group of persons, or circumstances for which the
23 provision's application will not violate federal law, the federal or
24 state constitutions, or impose an undue burden on women seeking

1 abortions, and every court shall adopt this saving construction of
2 that provision until the court ruling that pronounced the provision
3 facially unconstitutional is vacated or overruled.

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

6 Section 1439. The Oklahoma Citizens Participation Act shall not
7 apply to:

- 8 1. An enforcement action that is brought in the name of this
9 state or a political subdivision of this state by the Attorney
10 General or a district attorney;
- 11 2. A legal action brought against a person primarily engaged in
12 the business of selling or leasing goods or services, if the
13 statement or conduct the action is based upon arises out of the sale
14 or lease of goods, services, or an insurance product, insurance
15 services, or a commercial transaction in which the intended audience
16 is an actual or potential buyer or customer;
- 17 3. A legal action seeking recovery for bodily injury, wrongful
18 death or survival or to statements made regarding that legal action;
19 ~~or~~
- 20 4. A legal action brought under the Oklahoma Insurance Code or
21 arising out of an insurance contract; or
- 22 5. A civil action brought under Section 5 of this act.

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

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

2 1. Authorize any government entity to substantially burden any
3 religious belief;

4 2. Authorize same-sex marriages, unions, or the equivalent
5 thereof; or

6 3. Affect, interpret, or in any way address those portions of
7 Article I, Section 27 and Article II, Section 57 of the
8 Constitution of the State of Oklahoma, the Oklahoma Religious
9 Freedom Act, or the First Amendment to the Constitution of the
10 United States that prohibit laws respecting the establishment of
11 religion.

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

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

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

1 Passed the House of Representatives the 22nd day of March, 2022.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2022.

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9 Presiding Officer of the Senate