

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB4327 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Wendi Stearman

Reading Clerk

1 STATE OF OKLAHOMA

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

3 FLOOR SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 4327

6 By: Stearman and Roberts (Sean)

7 FLOOR SUBSTITUTE

8 An Act relating to abortion; defining terms;
9 prohibiting performance of abortion except under
10 certain conditions; requiring certain test to meet
11 specified criteria; requiring physician to record
12 certain information; prohibiting performance of
13 abortion under certain conditions; clarifying allowed
14 conduct; specifying effect of certain provisions;
15 providing exception for medical emergency; requiring
16 physician to record certain information; providing
17 for and prohibiting certain enforcement; allowing
18 certain persons to bring certain civil action;
19 requiring and prohibiting certain civil relief;
20 establishing deadline for filing of civil action;
21 allowing and disallowing certain defenses;
22 prohibiting certain intervention in civil action;
23 prohibiting certain persons from bringing civil
24 action; limiting standing for defendants; allowing
for affirmative defense under certain conditions;
stipulating criteria for undue burden defense;
specifying venue for civil action; prohibiting
certain transfer of venue; specifying control of
certain provisions; granting specified entities
certain immunities; establishing liability for court
costs and attorney fees; defining term; establishing
statute of limitation for bringing certain actions;
prohibiting use of certain defenses; providing
certain construction; amending 12 O.S. 2021, Section
1439, which relates to the Oklahoma Citizens
Participation Act; creating exemption; amending 51
O.S. 2021, Section 255, which relates to religious
beliefs; creating exemption; providing for
codification; and declaring an emergency.

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

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

5 As used in this act:

6 1. "Abortion" means the act of using, prescribing,
7 administering, procuring, or selling of any instrument, medicine,
8 drug, or any other substance, device, or means with the purpose to
9 terminate the pregnancy of a woman, with knowledge that the
10 termination by any of those means will with reasonable likelihood
11 cause the death of an unborn child. It does not include the use,
12 prescription, administration, procuring, or selling of Plan B,
13 morning-after pills, or any other type of contraception or emergency
14 contraception. An act is not an abortion if the act is performed
15 with the purpose to:

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

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

20 c. remove an ectopic pregnancy;

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

23 3. "Medical emergency" means a condition in which an abortion
24 is necessary to preserve the life of a pregnant woman whose life is

1 endangered by a physical disorder, physical illness, or physical
2 injury, including a life-endangering physical condition caused by or
3 arising from the pregnancy itself;

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

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

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

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

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

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

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

22 The prohibition in Section 2 of this act does not apply to an
23 abortion performed at the behest of federal agencies, contractors,
24 or employees that are carrying out duties under federal law, if a

1 prohibition on that abortion would violate the doctrines of
2 preemption or intergovernmental immunity.

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

6 Notwithstanding any other law, the requirements of this act
7 shall be enforced exclusively through the private civil actions
8 described in Section 5 of this act. No direct or indirect
9 enforcement of this act may be taken or threatened by the state, a
10 political subdivision, a district attorney, or an executive or
11 administrative officer or employee of this state or a political
12 subdivision against any person or entity, in any manner whatsoever,
13 except as provided in Section 5 of this act, and no violation of
14 this act may be used to justify or trigger the enforcement of any
15 other law or any type of adverse consequence under any other law,
16 except as provided in Section 5 of this act; provided, that this
17 section does not preclude the enforcement of any other law or
18 regulation against conduct that is independently prohibited by such
19 other law or regulation, and that would remain prohibited by such
20 other law or regulation in the absence of this act.

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

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1 A. Any person, other than the state, its political
2 subdivisions, and any officer or employee of a state or local
3 governmental entity in this state, may bring a civil action against
4 any person who:

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

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

12 3. Intends to engage in the conduct described by paragraph 1 or
13 2 of this subsection.

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

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

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

24

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

4 4. Court costs and attorney fees.

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

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

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

20 1. Ignorance or mistake of law;

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

23 3. A defendant's reliance on any court decision that has been
24 overruled on appeal or by a subsequent court, even if that court

1 decision had not been overruled when the defendant engaged in
2 conduct that violates this act;

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

6 5. Nonmutual issue preclusion or nonmutual claim preclusion;

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

8 7. Any claim that the enforcement of this act or the imposition
9 of civil liability against the defendant will violate the
10 constitutional rights of third parties, except as provided by
11 Section 6 of this act.

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

17 2. The defendant has the burden of proving an affirmative
18 defense under paragraph 1 of this subsection by a preponderance of
19 the evidence.

20 G. This section shall not be construed to impose liability on
21 any speech or conduct protected by the First Amendment of the United
22 States Constitution, as made applicable to the states through the
23 United States Supreme Court's interpretation of the Fourteenth
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1 Amendment of the United States Constitution, or by Section 3 or 22
2 of Article II of the Oklahoma Constitution.

3 H. 1. Notwithstanding any other law, neither the state, nor
4 any of its political subdivisions, nor any district attorney, nor
5 any executive or administrative officer or employee of this state or
6 a political subdivision may:

7 a. act in concert or participation with anyone who brings
8 suit under this section,

9 b. establish or attempt to establish any type of agency
10 or fiduciary relationship with a plaintiff who brings
11 suit under this section,

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

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

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

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

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1 J. Notwithstanding any other law, a civil action under this
2 section shall not be subject to any provision of the Oklahoma
3 Citizens Participation Act, Section 1430 et seq. of Title 12 of the
4 Oklahoma Statutes, and shall not be subject to any provision of the
5 Oklahoma Religious Freedom Act, Section 251 et seq. of Title 51 of
6 the Oklahoma Statutes.

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

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

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

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

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

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

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

7 a. the defendant has standing to assert the rights of
8 women seeking an abortion under the tests for third-
9 party standing established by the United States
10 Supreme Court, and

11 b. the imposition of civil liability on the defendant
12 will result in an undue burden on a woman or group of
13 women seeking an abortion.

14 2. The defendant shall bear the burden of proving the
15 affirmative defense in this subsection by a preponderance of the
16 evidence.

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

23 C. Nothing in this section or this act shall in any way limit
24 or preclude a defendant from asserting the defendant's personal

1 constitutional rights as a defense to liability under Section 5 of
2 this act, and a court shall not award relief under Section 5 of this
3 act if the conduct for which the defendant has been sued was an
4 exercise of state or federal constitutional rights that personally
5 belong to the defendant.

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

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

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

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

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

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

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

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

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

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

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

22 C. Notwithstanding any other law, no attorney representing this
23 state, a political subdivision, or any officer or employee of this
24 state or a political subdivision is authorized or permitted to waive

1 an immunity described in subsection A of this section or take any
2 action that would result in a waiver of that immunity.

3 D. Notwithstanding any other law, no court of this state shall
4 have jurisdiction to consider any action, claim, or counterclaim
5 that seeks declaratory or injunctive relief to prevent this state, a
6 political subdivision, any officer or employee of this state or a
7 political subdivision, or any person from enforcing any provision or
8 application of this act, or from filing a civil action under this
9 act.

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

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

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

1 B. If any application of any provision in this act to any
2 person, group of persons, or circumstances is found by a court to be
3 invalid, preempted, unconstitutional, or to impose an undue burden
4 on any woman or group of women seeking an abortion, then the
5 remaining applications of that provision to all other persons and
6 circumstances shall be severed and preserved, and shall remain in
7 effect. All constitutionally valid applications of the provisions
8 in this act, and every application of those provisions that can be
9 enforced without imposing an undue burden on women seeking
10 abortions, shall be severed from any applications that a court finds
11 to be invalid, preempted, unconstitutional, or to impose an undue
12 burden on women seeking abortions, and the valid applications shall
13 remain in force, because it is the Legislature's intent and priority
14 that every valid application be allowed to stand alone. Even if a
15 reviewing court finds a provision of this act to impose an undue
16 burden in a large or substantial fraction of relevant cases, the
17 applications that do not present an undue burden shall be severed
18 from the remaining applications and shall remain in force, and shall
19 be treated as if the Legislature had enacted a statute limited to
20 the persons, group of persons, or circumstances for which the
21 statute's application does not impose an undue burden.

22 C. The Legislature further declares that it would have enacted
23 this act, and each provision, section, subsection, sentence, clause,
24 phrase, or word, and all constitutional applications of the

1 provisions of this act, irrespective of the fact that any provision,
2 section, subsection, sentence, clause, phrase, or word, or
3 applications of this act were to be declared invalid, preempted,
4 unconstitutional, or to impose an undue burden.

5 D. If any provision of this act is found by any court to be
6 unconstitutionally vague, then the applications of that provision
7 that do not present constitutional vagueness problems shall be
8 severed and remain in force, consistent with the severability
9 requirements of subsections A, B, and C.

10 E. No court may decline to enforce the severability
11 requirements of subsections A, B, C, and D on the ground that
12 severance would "rewrite" the statute or involve the court in
13 legislative or lawmaking activity. A court that declines to enforce
14 or enjoins a state official from enforcing a statutory provision
15 does not rewrite a statute, as the statute continues to contain the
16 same words as before the court's decision. A judicial injunction or
17 declaration of unconstitutionality:

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

22 2. Is not a formal amendment of the language in a statute; and
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1 3. Does no more rewrites of a statute than a decision by the
2 executive not to enforce a duly enacted statute in a limited and
3 defined set of circumstances.

4 F. If any state or federal court disregards the severability
5 requirements of subsections A, B, C, D, and E, and declares or finds
6 any provision of this act facially unconstitutional, when there are
7 discrete applications of that provision that can be enforced against
8 a person, group of persons, or circumstances without violating
9 federal law, the federal or state constitutions, or imposing an
10 undue burden on women seeking abortions, then that provision shall
11 be interpreted, as a matter of state law, as if the Legislature had
12 enacted a provision limited to the persons, group of persons, or
13 circumstances for which the provision's application will not violate
14 federal law, the federal or state constitutions, or impose an undue
15 burden on women seeking abortions, and every court shall adopt this
16 saving construction of that provision until the court ruling that
17 pronounced the provision facially unconstitutional is vacated or
18 overruled.

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

21 Section 1439. The Oklahoma Citizens Participation Act shall not
22 apply to:
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1 1. An enforcement action that is brought in the name of this
2 state or a political subdivision of this state by the Attorney
3 General or a district attorney;

4 2. A legal action brought against a person primarily engaged in
5 the business of selling or leasing goods or services, if the
6 statement or conduct the action is based upon arises out of the sale
7 or lease of goods, services, or an insurance product, insurance
8 services, or a commercial transaction in which the intended audience
9 is an actual or potential buyer or customer;

10 3. A legal action seeking recovery for bodily injury, wrongful
11 death or survival or to statements made regarding that legal action;
12 ~~or~~

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

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

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

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

19 1. Authorize any government entity to substantially burden any
20 religious belief;

21 2. Authorize same-sex marriages, unions, or the equivalent
22 thereof; or

23 3. Affect, interpret, or in any way address those portions of
24 Article ~~1~~ I, Section 2~~7~~ and Article ~~2~~ II, Section 5~~7~~ of the

1 Constitution of the State of Oklahoma, the Oklahoma Religious
2 Freedom Act, or the First Amendment to the Constitution of the
3 United States that prohibit laws respecting the establishment of
4 religion.

5 B. Granting governmental funds, benefits, or exemptions to the
6 extent permissible under paragraph 3 of subsection A of this section
7 shall not constitute a violation of this section. As used in this
8 subsection, "granting government funds, benefits, or exemptions"
9 shall not include the denial of government funding, benefits, or
10 exemptions. This provision does not in and of itself require
11 vouchers.

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

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

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19 58-2-11082 KN 03/16/22

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