

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 SENATE BILL 1816

By: Dahm

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5
6 AS INTRODUCED

7 An Act relating to abortion; amending 12 O.S. 2021,
8 Section 1053, which relates to wrongful death;
9 broadening conditions for liability in certain
10 actions; specifying wrongful acts for purpose of
11 certain actions; removing obsolete language;
12 directing certain entitlement and apportionment of
13 damages; adding and modifying certain exceptions; and
14 providing an effective date.

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

16 SECTION 1. AMENDATORY 12 O.S. 2021, Section 1053, is
17 amended to read as follows:

18 Section 1053. A. When the death of one is caused by the
19 wrongful act or omission of another, the personal representative of
20 the former may maintain an action therefor against the latter, or
21 his or her personal representative if he or she is also deceased, if
22 the former might have maintained an action, had he or she lived,
23 against the latter, or his or her representative, for an injury for
24 the same act or omission. The action must be commenced within two
25 (2) years.

1 B. The damages recoverable in actions for wrongful death as
2 provided in this section shall include the following:

3 1. Medical and burial expenses, which shall be distributed to
4 the person or governmental agency as defined in Section 5051.1 of
5 Title 63 of the Oklahoma Statutes who paid these expenses, or to the
6 decedent's estate if paid by the estate. The provisions of this
7 paragraph shall not apply to the cost of an abortion in actions
8 maintained pursuant to subsection F of this section;

9 2. The loss of consortium and the grief of the surviving
10 spouse, which shall be distributed to the surviving spouse;

11 3. The mental pain and anguish suffered by the decedent, which
12 shall be distributed to the surviving spouse and children, if any,
13 or next of kin in the same proportion as personal property of the
14 decedent. For the purposes of actions maintained pursuant to
15 subsection F of this section, "next of kin" as used in this
16 paragraph shall mean the parent or grandparent who maintained the
17 action as provided for in paragraph 3 of subsection F of this
18 section;

19 4. The pecuniary loss to the survivors based upon properly
20 admissible evidence with regard thereto including, but not limited
21 to, the age, occupation, earning capacity, health habits, and
22 probable duration of the decedent's life, which must inure to the
23 exclusive benefit of the surviving spouse and children, if any, or
24 next of kin, and shall be distributed to them according to their

1 pecuniary loss. For the purposes of actions maintained pursuant to
2 subsection F of this section, "next of kin" as used in this
3 paragraph shall mean the parent or grandparent who maintained the
4 action as provided for in paragraph 3 of subsection F of this
5 section; and

6 5. The grief and loss of companionship of the children and
7 parents of the decedent, which shall be distributed to them
8 according to their grief and loss of companionship.

9 C. In proper cases, as provided by Section 9.1 of Title 23 of
10 the Oklahoma Statutes, punitive or exemplary damages may also be
11 recovered against the person proximately causing the wrongful death
12 or the person's representative if such person is deceased. Such
13 damages, if recovered, shall be distributed to the surviving spouse
14 and children, if any, or next of kin in the same proportion as
15 personal property of the decedent. For the purposes of actions
16 maintained pursuant to subsection F of this section, "next of kin"
17 as used in this paragraph shall mean the parent or grandparent who
18 maintained the action as provided for in paragraph 3 of subsection F
19 of this section.

20 D. Where the recovery is to be distributed according to a
21 person's pecuniary loss or loss of companionship, the judge shall
22 determine the proper division.

23 E. The above-mentioned distributions shall be made after the
24 payment of legal expenses and costs of the action.

1 F. 1. ~~The provisions of~~ A person is liable under subsection A
2 of this section shall also be available for damages arising from an
3 injury that causes the death of an unborn person as defined in
4 Section 1-730 of Title 63 of the Oklahoma Statutes if the injury was
5 caused by a wrongful act of the person as specified in paragraph 2
6 of this subsection.

7 2. ~~The provisions~~ A wrongful act for the purposes of this
8 subsection shall apply to acts which cause the death of an unborn
9 person in utero if:

10 a. ~~the physician who performed the abortion or the~~
11 ~~referring physician fails to obtain and document the~~
12 ~~voluntary and informed consent of the pregnant woman~~
13 ~~pursuant to Section 1-738.2 of Title 63 of the~~
14 ~~Oklahoma Statutes,~~

15 b. ~~the pregnant woman withdraws her consent to the~~
16 ~~abortion prior to performance of the abortion,~~

17 c. ~~the pregnant woman undergoes the abortion due to~~
18 ~~coercion from a third party,~~

19 d. ~~the physician fails to obtain and document proof of~~
20 ~~age demonstrating that the pregnant woman is not a~~
21 ~~minor, or, in the case of a minor, fails to obtain:~~

22 ~~(1) parental consent to the abortion pursuant to~~
23 ~~Section 1-740.2 of Title 63 of the Oklahoma~~
24 ~~Statutes,~~

1 ~~(2) proof that the pregnant woman, although a minor,~~
2 ~~is emancipated, or~~

3 ~~(3) judicial authorization of the abortion without~~
4 ~~parental notification pursuant to Section 1-740.3~~
5 ~~of Title 63 of the Oklahoma Statutes,~~

6 ~~e. the physician who performed the abortion causes the~~
7 ~~woman physical or psychological harm, the possibility~~
8 ~~of which she did not foresee or was not informed of at~~
9 ~~the time of her consent,~~

10 ~~f. the physician who performed the abortion fails to~~
11 ~~screen the pregnant woman and document such screening~~
12 ~~for risk factors associated with a heightened risk of~~
13 ~~adverse consequences from abortion which a reasonably~~
14 ~~prudent physician would screen for,~~

15 ~~g. the physician fails to screen the pregnant woman and~~
16 ~~document such screening for physical or psychological~~
17 ~~impairment of judgment due to factors including, but~~
18 ~~not limited to, drugs, alcohol, illness or fatigue,~~

19 ~~h. the physician fraudulently induces the pregnant woman~~
20 ~~to obtain the abortion or gives misleading or false~~
21 ~~information in response to a pregnant woman's inquiry,~~
22 ~~or~~

23 ~~i. there exist any other circumstances which violate~~
24 ~~state law.~~

1 ~~The provisions of this paragraph shall not be construed to apply~~
2 ~~to cases in which a physician licensed to practice medicine in this~~
3 ~~state attempts, in a reasonably prudent manner, to prevent the death~~
4 ~~of an unborn person or a pregnant woman~~

5 include:

6 a. the violation of any state or federal law, including
7 18 U.S.C., Sections 1461 and 1462,

8 b. the manufacture, marketing, mailing, distribution,
9 transportation, delivery, provision, or possession of
10 mifepristone, and

11 c. the marketing, mailing, distribution, transportation,
12 delivery, provision, or possession of misoprostol with
13 the intent of facilitating an unlawful abortion.

14 3. A parent or grandparent of the deceased unborn person is
15 entitled to maintain an action against the ~~physician~~ person who
16 caused the death of ~~an~~ the unborn person under the conditions
17 provided by ~~subparagraphs a through i~~ of paragraph 2 of this
18 subsection; provided, however, the parent or grandparent may not
19 maintain such action if the parent or grandparent coerced the mother
20 of the unborn person to abort the unborn person.

21 4. ~~Liability for wrongful death by the physician under this~~
22 ~~section shall not be waived by the pregnant woman prior to~~
23 ~~performance of the abortion. A physician shall not request, orally,~~
24 ~~on a written form or in any other manner, that the pregnant woman~~

1 ~~waive the liability of the physician for wrongful death related to~~
2 ~~the abortion as a condition of performing an abortion~~

3 a. When the death is caused by an unlawful abortion, the
4 plaintiff shall be entitled to recover punitive
5 damages not less than Five Million Dollars
6 (\$5,000,000.00) from each defendant that acted with
7 the intent of causing or facilitating the death of an
8 unborn person.

9 b. When the death is caused by an unlawful abortion in
10 which mifepristone was used, and the plaintiff is
11 unable to identify the manufacturer of the
12 mifepristone that was used, liability shall be
13 apportioned among all manufacturers of mifepristone in
14 proportion to each manufacturer's share of the market
15 for mifepristone, in accordance with Sindell v. Abbott
16 Laboratories, 607 P.2d 924 (Cal. 1980).

17 5. ~~Under no circumstances shall~~ This subsection shall not apply
18 to a claim that is brought:

19 a. against the mother of the unborn person ~~be found~~
20 ~~liable for causing the death of the unborn person,~~
21 unless the mother has committed a crime that caused
22 the death of the unborn person,

23 b. against a physician or other health care provider
24 licensed in this state who attempts, in a reasonably

1 prudent manner, to prevent the death of an unborn
2 person or a pregnant woman,

3 c. against any person that acted at the behest of federal
4 agencies, contractors, or employees that are carrying
5 out duties under federal law, if the imposition of
6 liability would violate the doctrines of preemption or
7 intergovernmental immunity,

8 d. against a provider or user of an interactive computer
9 service if such a lawsuit would be preempted by 47
10 U.S.C., Section 230(c),

11 e. by any person who impregnated the mother of the
12 aborted unborn person through an act of rape, sexual
13 assault, or incest, or by anyone who acts in concert
14 or participation with such a person, or

15 f. against a manufacturer, marketer, mailer, distributor,
16 transporter, deliverer, provider, or possessor of
17 misoprostol, if the person did not act with the intent
18 of facilitating an unlawful abortion.

19 SECTION 2. This act shall become effective November 1, 2024.
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