HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

ENGROSSED SENATE
BILL NO. 1728

By: Bullard, Boggs, Dahm, Scott, Rader, Daniels, Howard and Pederson of the Senate

and

Gann and Olsen of the House

An Act relating to abortion; creating the Unborn Person Wrongful Death Act; providing short title; amending 12 O.S. 2011, Section 1053, which relates to wrongful death actions; modifying requirements for award of certain damages; defining term; modifying persons with standing to bring certain actions; construing provisions; providing exceptions; prohibiting certain waiver of liability; modifying statutory language; amending 63 O.S. 2011, Section 1-730, which relates to definitions; modifying definitions; providing for certain enforcement under certain circumstances; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Unborn Person Wrongful Death Act".

SECTION 2. AMENDATORY 12 O.S. 2011, Section 1053, is amended to read as follows:

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

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

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

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

3. The mental pain and anguish suffered by the decedent, which shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent. For the purposes of actions maintained pursuant to

subsection F of this section, "next of kin" as used in this paragraph shall mean the parent or grandparent who maintained the action as provided for in paragraph 3 of subsection F of this section;

4. The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, which must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss. For the purposes of actions maintained pursuant to subsection F of this section, "next of kin" as used in this paragraph shall mean the parent or grandparent who maintained the action as provided for in paragraph 3 of subsection F of this section; and

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

C. In proper cases, as provided by Section 9.1 of Title 23 of the Oklahoma Statutes, punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or the person's representative if such person is deceased. Such damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as

personal property of the decedent. For the purposes of actions maintained pursuant to subsection F of this section, "next of kin" as used in this paragraph shall mean the parent or grandparent who maintained the action as provided for in paragraph 3 of subsection F of this section.

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

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

F. 1. The provisions of this section shall also be available for the death of an unborn ~~child~~ person as defined in Section 1-730 of Title 63 of the Oklahoma Statutes.

2. The provisions of this subsection shall ~~not~~ apply to~~:~~

~~a.~~ acts which cause the death of an unborn ~~child if those acts were committed during a legal abortion to which the pregnant woman consented, or~~

~~b. acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment~~

person in utero if:

a. the physician who performed the abortion or the referring physician fails to obtain and document the voluntary and informed consent of the pregnant woman

pursuant to Section 1-738.2 of Title 63 of the Oklahoma Statutes,

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

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

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

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

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

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

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

f. the physician who performed the abortion fails to screen the pregnant woman and document such screening for risk factors associated with a heightened risk of

adverse consequences from abortion which a reasonably prudent physician would screen for,

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

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

i. there exist any other circumstances which violate state law.

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

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

4. Liability for wrongful death by the physician under this section shall not be waived by the pregnant woman prior to performance of the abortion. A physician shall not request, orally, on a written form or in any other manner, that the pregnant woman waive the liability of the physician for wrongful death related to the abortion as a condition of performing an abortion.

5. Under no circumstances shall the mother of the unborn ~~child~~ person be found liable for causing the death of the unborn ~~child~~ person unless the mother has committed a crime that caused the death of the unborn ~~child~~ person.

SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-730, is amended to read as follows:

Section 1-730. A. As used in this article:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

2. "Attempt to perform an abortion" means an act, or an omission of a statutorily required act, that under the circumstances as the actor believes them to be constitutes a substantial step in a

course of conduct planned to culminate in the performance of an abortion;

3. "Certified technician" means a Registered Diagnostic Medical Sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography (ARDMS) or a Nurse Midwife or Advance Practice Nurse Practitioner in Obstetrics with certification in obstetrical ultrasonography;

4. "Unborn child" or "unborn person" means the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus;

5. "Unemancipated minor" means any person less than eighteen (18) years of age who is not or has not been married or who is under the care, custody, and control of the person's parent or parents, guardian, or juvenile court of competent jurisdiction;

6. "Viable" means potentially able to live outside of the womb of the mother upon premature birth, whether resulting from natural causes or an abortion;

7. "Conception" means the fertilization of the ovum of a female individual by the sperm of a male individual;

8. "Health" means physical or mental health;

9. "Department" means the State Department of Health; and

10. "Inducing an abortion" means the administration by any person, including the pregnant woman, of any substance designed or

intended to cause an expulsion of the unborn child, effecting an abortion as defined above.

B. Nothing contained herein shall be construed in any manner to include any ~~birth control~~ contraceptive device or medication or sterilization procedure.

SECTION 4. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

If some or all of the provisions of Section 2 or 3 of this act are ever temporarily or permanently restrained or enjoined by court order, the remaining provisions of such section shall be enforced as though the restrained or enjoined provisions had not been adopted; provided, however, if such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 5. This act shall become effective November 1, 2020.

DIRECT TO CALENDAR.