

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 495

By: Hamilton

4
5
6 AS INTRODUCED

7 An Act relating to abortion; stating purpose of act;
8 providing short title; amending 12 O.S. 2011, Section
9 1053, as amended by Section 2, Chapter 149, O.S.L.
10 2020 (12 O.S. Supp. 2020, Section 1053), which
11 relates to wrongful death; modifying statutory
12 reference; modifying applicability of section;
13 requiring Attorney General and district attorney to
14 ensure enforcement of certain laws; amending 21 O.S.
15 2011, Section 152, as amended by Section 16, Chapter
16 475, O.S.L. 2019 (21 O.S. Supp. 2020, Section 152),
17 which relates to crimes and punishments; amending 21
18 O.S. 2011, Sections 155, 156 and 172, which relate to
19 crimes and punishments; clarifying language; amending
20 21 O.S. 2011, Section 652, which relates to attempts
21 to kill; modifying statutory references; modifying
22 applicability of section; removing certain protection
23 from prosecution; construing section; amending 21
24 O.S. 2011, Section 691, which relates to the
definition of homicide; modifying and adding
definitions; modifying certain protection from
prosecution; providing certain testimonial and
evidentiary procedures; amending Section 4, Chapter
238, O.S.L. 2014, as last amended by Section 1,
Chapter 329, O.S.L. 2019 (25 O.S. Supp. 2020, Section
2004), which relates to medical consent for treatment
of minors; modifying applicability of section;
amending 56 O.S. 2011, Section 1005, which relates to
unlawful acts; modifying construction; amending 59
O.S. 2011, Section 519.11, as last amended by Section
5, Chapter 154, O.S.L. 2020 (59 O.S. Supp. 2020,
Section 519.11), which relates to construction of the
Physician Assistant Act; removing authority of
physicians to perform certain acts; amending 63 O.S.
2011, Section 1-568, which relates to counseling
concerning abortion; removing certain cause of

1 action; amending 63 O.S. 2011, Section 1-701, as
2 amended by Section 1, Chapter 150, O.S.L. 2020 (63
3 O.S. Supp. 2020, Section 1-701), which relates to
4 definitions; modifying certain definition; amending
5 63 O.S. 2011, Section 1-728c, which relates to
6 employer discrimination; removing certain
7 circumstance under which discrimination is
8 prohibited; amending 63 O.S. 2011, Section 2601,
9 which relates to definitions; modifying certain
10 definition; amending 74 O.S. 2011, Section 5054,
11 which relates to limits on use of funds; modifying
12 statutory references; repealing 21 O.S. 2011,
13 Sections 684, 714, 861 and 862, which relate to
14 crimes and punishments; repealing 63 O.S. 2011,
15 Sections 1-729a, as amended by Section 1, Chapter
16 121, O.S.L. 2014 (63 O.S. Supp. 2020, Section 1-
17 729a), 1-731, 1-731.2 through 1-737, 1-737.4, as
18 amended by Section 1, Chapter 123, O.S.L. 2017 (63
19 O.S. Supp. 2020, Section 1-737.4), 1-737.5, 1-737.6,
20 1-738i, 1-738j, 1-738k, as amended by Section 1,
21 Chapter 303, O.S.L. 2013 (63 O.S. Supp. 2020, Section
22 1-738k), 1-738l, 1-738m, as amended by Section 6,
23 Chapter 255, O.S.L. 2015 (63 O.S. Supp. 2020, Section
24 1-738m), 1-738n, as amended by Section 3, Chapter
303, O.S.L. 2013 (63 O.S. Supp. 2020, Section 1-
738n), 1-738o, 1-738p, 1-738.1A, 1-738.2 through 1-
738.3a, as amended by Sections 1 through 3, Chapter
255, O.S.L. 2015 (63 O.S. Supp. 2020, Sections 1-
738.2 through 1-738.3a), 1-738.3d, 1-738.3e, 1-734
and 1-738.5, 1-738.6, 1-738.7, 1-738.8, as amended by
Section 4, Chapter 255, O.S.L. 2015 (63 O.S. Supp.
2020, Section 1-738.8), 1-738.9 through 1-738.12, 1-
738.13, as amended by Section 5, Chapter 255, O.S.L.
2015 (63 O.S. Supp. 2020, Section 1-738.13), 1-738.14
through 1-740.1, 1-740.2, 1-740.3 and 1-740.4, as
amended by Sections 2, 3 and 4, Chapter 320, O.S.L.
2013 (63 O.S. Supp. 2020, Sections 1-740.2, 1-740.3
and 1-740.4), 1-740.4a, 1-740.4b, as amended by
Section 1, Chapter 387, O.S.L. 2015 (63 O.S. Supp.
2020, Section 1-740.4b), 1-740.5 through 1-740.11, 1-
740.12, as amended by Section 485, Chapter 304,
O.S.L. 2012 (63 O.S. Supp. 2020, Section 740.12), 1-
741 through 1-743, and 1-745.1 through 1-745.11,
which relate to abortion; repealing Sections 1
through 7, Chapter 170, O.S.L. 2012 (63 O.S. Supp.
2020, Sections 1-729.1 through 1-729.7), which relate
to the Freedom of Conscience Act; repealing Sections

1 through 9, Chapter 159, O.S.L. 2012 (63 O.S. Supp. 2020, Sections 1-745.12 through 1-745.19), which relate to the Heartbeat Informed Consent Act; repealing Section 4, Chapter 303, O.S.L. 2013 (63 O.S. Supp. 2020, Section 1-738q), which relates to the Statistical Reporting of Abortion Act; repealing Sections 1 through 6, Chapter 198, O.S.L. 2012 (63 O.S. Supp. 2020, Sections 1-738.3f through 1-738.3k), which relate to voluntary and informed consent; repealing Sections 2, 4 and 5, Chapter 268, O.S.L. 2013 (63 O.S. Supp. 2020, Sections 1-740.2A, 1-740.13 and 1-740.14), which relate to abortion performed upon minors; repealing Sections 1 and 5 through 10, Chapter 320, O.S.L. 2013 (63 O.S. Supp. 2020, Sections 1-744 and 1-744.1 through 1-744.6), which relate to the Parental Notification for Abortion Act; repealing Sections 1, 3 through 5 and 7 through 10, Chapter 175, O.S.L. 2014 (63 O.S. Supp. 2020, Sections 1-746.1, 1-746.3 through 1-746.5 and 1-746.7 through 1-746.10), which relate to abortions; repealing Sections 2 and 6, Chapter 175, O.S.L. 2014, as amended by Sections 7 and 8, Chapter 255, O.S.L. 2015 (63 O.S. Supp. 2020, Sections 1-746.2 and 1-746.6), which relate to abortions; repealing Section 1, Chapter 370, O.S.L. 2014 (63 O.S. Supp. 2020, Section 1-748), which relates to abortion facilities; repealing Sections 1 through 10, Chapter 59, O.S.L. 2015 (63 O.S. Supp. 2020, Sections 1-737.7 through 1-737.16), which relate to the Oklahoma Unborn Child Protection from Dismemberment Act; repealing Section 9, Chapter 255, O.S.L. 2015 (63 O.S. Supp. 2020, Section 1-738.5a), which relates to performing or attempting an abortion in violation of act; repealing Sections 2 through 4, Chapter 387, O.S.L. 2015 (63 O.S. Supp. 2020, Sections 1-749 through 1-750), which relate to abortion procedure compliance requirements; repealing Sections 1 and 3 through 5, Chapter 353, O.S.L. 2016 (63 O.S. Supp. 2020, Sections 1-751 and 1-753 through 1-755), which relate to the Humanity of the Unborn Child Act; repealing Section 2, Chapter 353, O.S.L. 2016, as amended by Section 2, Chapter 123, O.S.L. 2017 (63 O.S. Supp. 2020, Section 1-752), which relates to the Humanity of the Unborn Child Act; repealing Sections 1 through 5, Chapter 308, O.S.L. 2017 (63 O.S. Supp. 2020, Sections 1-740.15 through 1-740.19), which relate to the Choosing Childbirth Act; stating that act is prospective;

1 defining term; voiding conflicting provisions of law;
2 allowing the state and political subdivisions to
3 nullify certain court decisions; construing act;
4 declaring act inseverable; providing for
5 codification; providing for noncodification; and
6 declaring an emergency.

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

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

10 This act shall be known and may be cited as the "Equal
11 Protection and Equal Justice Act".

12 SECTION 2. NEW LAW A new section of law not to be
13 codified in the Oklahoma Statutes reads as follows:

14 A. Acting upon the Section 1 of Article I of the Oklahoma
15 Constitution, which provides that the Constitution of the United
16 States is the supreme law of the land; and acknowledging the
17 sanctity of innocent human life, created in the image of God, which
18 should be equally protected from fertilization to natural death; the
19 purpose of this act is:

20 1. To ensure the right to life and equal protection of the laws
21 to all unborn children from the moment of fertilization;

22 2. To establish that a living human unborn child, from the
23 moment of fertilization and at every stage of development, is
24 entitled to the same rights, powers and privileges as are secured or
25 granted by the laws of this state to any other human person;

1 3. To rescind all licenses to kill unborn children by repealing
2 discriminatory provisions and making all alleged offenders equally
3 subject to the law, including its defenses and justifications such
4 as duress, necessity and mistake of fact and immunities;

5 4. To recognize that the Constitution of the United States and
6 the laws of the United States which shall be made in pursuance
7 thereof, are the supreme law of the land; and to fulfill our oaths
8 to such Constitution, so help us God, by refusing to assent to the
9 legal fiction that such Constitution prohibits this state from
10 exercising its reserved police powers to outlaw homicide and from
11 exercising its constitutional and God-given duties to provide equal
12 protection to all persons within its jurisdiction. As Supreme Court
13 Justice Clarence Thomas recently stated, "The Constitution does not
14 constrain the States' ability to regulate or even prohibit
15 abortion." *June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2149
16 (2020) (Thomas, J., dissenting); and

17 5. To treat as void and of no effect any and all federal
18 statutes, regulations, treaties, orders and court rulings which
19 would deprive an unborn child of the right to life or prohibit the
20 equal protection of such right.

21 B. Nothing in this act shall be construed as an intent by this
22 state to withdraw from the United States of America. To the
23 contrary, this act is in accordance with and in furtherance of the
24 Constitution of the United States and the principles which made

1 America great. This state urges the federal government to honor the
2 same by supporting this act which equally secures the right to life
3 to all preborn people within this state.

4 SECTION 3. AMENDATORY 12 O.S. 2011, Section 1053, as
5 amended by Section 2, Chapter 149, O.S.L. 2020 (12 O.S. Supp. 2020,
6 Section 1053), is amended to read as follows:

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

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

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

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

1 3. The mental pain and anguish suffered by the decedent, which
2 shall be distributed to the surviving spouse and children, if any,
3 or next of kin in the same proportion as personal property of the
4 decedent. For the purposes of actions maintained pursuant to
5 subsection F of this section, "next of kin" as used in this
6 paragraph shall mean the parent or grandparent who maintained the
7 action as provided for in paragraph 3 of subsection F of this
8 section;

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

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

23 C. In proper cases, as provided by Section 9.1 of Title 23 of
24 the Oklahoma Statutes, punitive or exemplary damages may also be

1 recovered against the person proximately causing the wrongful death
2 or the person's representative if such person is deceased. Such
3 damages, if recovered, shall be distributed to the surviving spouse
4 and children, if any, or next of kin in the same proportion as
5 personal property of the decedent. For the purposes of actions
6 maintained pursuant to subsection F of this section, "next of kin"
7 as used in this paragraph shall mean the parent or grandparent who
8 maintained the action as provided for in paragraph 3 of subsection F
9 of this section.

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

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

15 F. 1. The provisions of this section shall also be available
16 for the death of an unborn person as defined in Section ~~1-730~~ 691 of
17 Title ~~63~~ 21 of the Oklahoma Statutes.

18 2. The provisions of this subsection ~~shall apply to acts which~~
19 ~~cause the death of an unborn person in utero if:~~

20 ~~a. the physician who performed the abortion or the~~
21 ~~referring physician fails to obtain and document the~~
22 ~~voluntary and informed consent of the pregnant woman~~
23 ~~pursuant to Section 1-738.2 of Title 63 of the~~
24 ~~Oklahoma Statutes,~~

- 1 ~~b. the pregnant woman withdraws her consent to the~~
2 ~~abortion prior to performance of the abortion,~~
- 3 ~~c. the pregnant woman undergoes the abortion due to~~
4 ~~coercion from a third party,~~
- 5 ~~d. the physician fails to obtain and document proof of~~
6 ~~age demonstrating that the pregnant woman is not a~~
7 ~~minor, or, in the case of a minor, fails to obtain:~~
8 ~~(1) parental consent to the abortion pursuant to~~
9 ~~Section 1-740.2 of Title 63 of the Oklahoma~~
10 ~~Statutes,~~
11 ~~(2) proof that the pregnant woman, although a minor,~~
12 ~~is emancipated, or~~
13 ~~(3) judicial authorization of the abortion without~~
14 ~~parental notification pursuant to Section 1-740.3~~
15 ~~of Title 63 of the Oklahoma Statutes,~~
- 16 ~~e. the physician who performed the abortion causes the~~
17 ~~woman physical or psychological harm, the possibility~~
18 ~~of which she did not foresee or was not informed of at~~
19 ~~the time of her consent,~~
- 20 ~~f. the physician who performed the abortion fails to~~
21 ~~screen the pregnant woman and document such screening~~
22 ~~for risk factors associated with a heightened risk of~~
23 ~~adverse consequences from abortion which a reasonably~~
24 ~~prudent physician would screen for,~~

- 1 ~~g. the physician fails to screen the pregnant woman and~~
2 ~~document such screening for physical or psychological~~
3 ~~impairment of judgment due to factors including, but~~
4 ~~not limited to, drugs, alcohol, illness or fatigue,~~
5 ~~h. the physician fraudulently induces the pregnant woman~~
6 ~~to obtain the abortion or gives misleading or false~~
7 ~~information in response to a pregnant woman's inquiry,~~
8 ~~or~~
9 ~~i. there exist any other circumstances which violate~~
10 ~~state law.~~

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

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

22 4. Liability for wrongful death by the physician under this
23 section shall not be waived by the pregnant woman prior to
24 performance of the abortion. A physician shall not request, orally,

1 on a written form or in any other manner, that the pregnant woman
2 waive the liability of the physician for wrongful death related to
3 the abortion as a condition of performing an abortion.

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

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 18h of Title 74, unless there is
10 created a duplication in numbering, reads as follows:

11 The Attorney General shall monitor this state's enforcement of
12 Chapter 24 of Title 21 of the Oklahoma Statutes in relation to
13 abortion. The Attorney General shall direct state agencies to
14 enforce those laws regardless of any contrary or conflicting federal
15 statute, regulation, treaty, executive order or court ruling.

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 215.41 of Title 19, unless there
18 is created a duplication in numbering, reads as follows:

19 The district attorney shall ensure the enforcement of Chapter 24
20 of Title 21 of the Oklahoma Statutes in relation to abortion
21 regardless of any contrary or conflicting federal statute,
22 regulation, treaty, executive order or court rulings.

1 SECTION 6. AMENDATORY 21 O.S. 2011, Section 152, as
2 amended by Section 16, Chapter 475, O.S.L. 2019 (21 O.S. Supp. 2020,
3 Section 152), is amended to read as follows:

4 Section 152. All persons are capable of committing crimes,
5 except ~~these~~ persons belonging to the following classes:

6 1. Children under the age of seven (7) years;

7 2. Children over the age of seven (7) years, but under the age
8 of fourteen (14) years, in the absence of proof that at the time of
9 committing the act or neglect charged against them, they knew its
10 wrongfulness;

11 3. Persons who are impaired by reason of an intellectual
12 disability upon proof that at the time of committing the act charged
13 against them they were incapable of knowing its wrongfulness;

14 4. Mentally ill persons, and all persons of unsound mind,
15 including persons temporarily or partially deprived of reason, upon
16 proof that at the time of committing the act charged against them
17 they were incapable of knowing its wrongfulness;

18 5. Persons who committed the act, or made the omission charged,
19 under an ignorance or mistake of fact which disproves any criminal
20 intent. But ignorance of the law does not excuse from punishment
21 for its violation;

22 6. Persons who committed the act charged without being conscious
23 thereof; and
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1 7. Persons who committed the act, or make the omission charged,
2 while under involuntary subjection to the power of superiors.

3 SECTION 7. AMENDATORY 21 O.S. 2011, Section 155, is
4 amended to read as follows:

5 Section 155. The involuntary subjection to the power of a
6 superior which exonerates a person charged with a criminal act or
7 omission from punishment therefor, arises from the defense of
8 duress.

9 SECTION 8. AMENDATORY 21 O.S. 2011, Section 156, is
10 amended to read as follows:

11 Section 156. A person is entitled to assert duress as a defense
12 if that person committed a prohibited act or omission because of a
13 reasonable belief that there was imminent danger of death or great
14 bodily harm from another upon oneself, ~~ones~~ one's spouse, or ~~ones~~
15 one's child.

16 SECTION 9. AMENDATORY 21 O.S. 2011, Section 172, is
17 amended to read as follows:

18 Section 172. All persons concerned in the commission of crime,
19 whether it be felony or misdemeanor, and whether ~~they~~ the persons
20 directly commit the act constituting the offense, or aid and abet in
21 its commission, though not present, are principals.

22 SECTION 10. AMENDATORY 21 O.S. 2011, Section 652, is
23 amended to read as follows:

1 Section 652. A. Every person who intentionally and wrongfully
2 shoots another with or discharges any kind of firearm, with intent
3 to kill any person, including an unborn child as defined in Section
4 ~~1-730~~ 691 of ~~Title 63 of the Oklahoma Statutes~~ this title, shall
5 upon conviction be guilty of a felony punishable by imprisonment in
6 the State Penitentiary not exceeding life.

7 B. Every person who uses any vehicle to facilitate the
8 intentional discharge of any kind of firearm, crossbow or other
9 weapon in conscious disregard for the safety of any other person or
10 persons, including an unborn child as defined in Section ~~1-730~~ 691
11 of ~~Title 63 of the Oklahoma Statutes~~ this title, shall upon
12 conviction be guilty of a felony punishable by imprisonment in the
13 custody of the Department of Corrections for a term not less than
14 two (2) years nor exceeding life.

15 C. Any person who commits any assault and battery upon another,
16 including an unborn child as defined in Section ~~1-730~~ 691 of ~~Title~~
17 ~~63 of the Oklahoma Statutes~~ this title, by means of any deadly
18 weapon, or by such other means or force as is likely to produce
19 death, or in any manner attempts to kill another, including an
20 unborn child as defined in Section ~~1-730~~ 691 of ~~Title 63 of the~~
21 ~~Oklahoma Statutes~~ this title, or in resisting the execution of any
22 legal process, shall upon conviction be guilty of a felony
23 punishable by imprisonment in the ~~State Penitentiary~~ Department of
24 Corrections not exceeding life.

1 D. ~~The provisions of this section shall not apply to:~~

2 1. ~~Acts which cause the death of an unborn child if those acts~~
3 ~~were committed during a legal abortion to which the pregnant woman~~
4 ~~consented; or~~

5 2. ~~Acts which are committed pursuant to usual and customary~~
6 ~~standards of medical practice during diagnostic testing or~~
7 ~~therapeutic treatment.~~

8 E. ~~Under no circumstances shall the mother of the unborn child~~
9 ~~be prosecuted for causing the death of the unborn child unless the~~
10 ~~mother has committed a crime that caused the death of the unborn~~
11 ~~child.~~

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

16 SECTION 11. AMENDATORY 21 O.S. 2011, Section 691, is
17 amended to read as follows:

18 Section 691. A. Homicide is the killing of one human being by
19 another.

20 B. As used in this section, "human being":

21 1. "Human being" includes an unborn child, as defined in
22 Section 1-730 of Title 63 of the Oklahoma Statutes this section;

23 2. "Abortion" means the act of using or prescribing an
24 instrument, a drug, a medicine or any other substance, device or

1 means with the intent to cause the death of an unborn child, which
2 shall not include instances in which an unborn child dies by natural
3 causes.

4 3. "Unborn child" or "unborn person" means the unborn offspring
5 of human beings from the moment of fertilization, through pregnancy
6 and until live birth including the developmental stages of human
7 conceptus, zygote, morula, blastocyst, embryo and fetus.

8 4. "Fertilization" means the fusion of a human spermatozoon
9 with a human ovum.

10 C. Homicide shall ~~not~~ include:

11 ~~1. Acts, but not be limited to, acts which cause the death of~~
12 ~~an unborn child if those acts were committed during a legal an~~
13 ~~abortion to which the pregnant woman consented; or~~

14 ~~2. Acts which are committed pursuant to the usual and customary~~
15 ~~standards of medical practice during diagnostic testing or~~
16 ~~therapeutic treatment.~~

17 ~~D. Under no circumstances shall the mother of the unborn child~~
18 ~~be prosecuted for causing the death of the unborn child unless the~~
19 ~~mother has committed a crime that caused the death of the unborn~~
20 ~~child.~~

21 SECTION 12. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 696 of Title 21, unless there is
23 created a duplication in numbering, reads as follows:
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1 No person shall be excused from giving any testimony or evidence
2 upon any investigation or prosecution for violation of this chapter,
3 upon the ground that such testimony would tend to convict the person
4 of a crime, but such testimony or evidence shall not be received
5 against the person upon any criminal investigation or prosecution,
6 except in a prosecution against the person for perjury committed in
7 giving such testimony.

8 SECTION 13. AMENDATORY Section 4, Chapter 238, O.S.L.
9 2014, as last amended by Section 1, Chapter 329, O.S.L. 2019 (25
10 O.S. Supp. 2020, Section 2004) is amended to read as follows:

11 Section 2004. A. Except as otherwise provided by law, no
12 person, corporation, association, organization, state-supported
13 institution, or individual employed by any of these entities may
14 procure, solicit to perform, arrange for the performance of, perform
15 surgical procedures, or perform a physical examination upon a minor
16 or prescribe any prescription drugs to a minor without first
17 obtaining a written consent of a parent or legal guardian of the
18 minor. Provided, however, that if written consent is provided to a
19 school district for assessment or treatment, such consent shall be
20 effective for the school year for which it is granted and shall be
21 renewed each subsequent school year. If an assessment or treatment
22 is performed through telemedicine at a school site and if consent
23 has been provided by the parent and is currently effective, the
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1 health professional shall not be required to verify that the parent
2 is at the site.

3 B. Except as otherwise provided by law, no hospital as defined
4 in Section 1-701 of Title 63 of the Oklahoma Statutes may permit
5 surgical procedures to be performed upon a minor in its facilities
6 without first having received a written consent from a parent or
7 legal guardian of the minor.

8 C. The provisions of this section shall not apply when it has
9 been determined by a physician that an emergency exists and that it
10 is necessary to perform such surgical procedures for the treatment
11 of an injury, illness or drug abuse, or to save the life of the
12 patient, or when such parent or other adult authorized by law to
13 consent on behalf of a minor cannot be located or contacted after a
14 reasonably diligent effort.

15 ~~D. The provisions of this section shall not apply to an~~
16 ~~abortion, which shall be governed by the provisions of Sections 1-~~
17 ~~740 through 1-740.6 and Sections 1-744 through 1-744.6 of Title 63~~
18 ~~of the Oklahoma Statutes or any successor statute.~~

19 ~~E.~~ A person who violates a provision of this section is guilty
20 of a misdemeanor, punishable by a fine of not more than One Thousand
21 Dollars (\$1,000.00) or imprisonment of not more than one (1) year in
22 the county jail, or by both such fine and imprisonment.

23 SECTION 14. AMENDATORY 56 O.S. 2011, Section 1005, is
24 amended to read as follows:

1 Section 1005. A. It shall be unlawful for any person to
2 willfully and knowingly:

3 1. Make or cause to be made a claim, knowing the claim to be
4 false, in whole or in part, by commission or omission;

5 2. Make or cause to be made a statement or representation for
6 use in obtaining or seeking to obtain authorization to provide a
7 good or a service knowing the statement or representation to be
8 false, in whole or in part, by commission or omission;

9 3. Make or cause to be made a statement or representation for
10 use by another in obtaining a good or a service under the Oklahoma
11 Medicaid Program, knowing the statement or representation to be
12 false, in whole or in part, by commission or omission;

13 4. Make or cause to be made a statement or representation for
14 use in qualifying as a provider of a good or a service under the
15 Oklahoma Medicaid Program, knowing the statement or representation
16 to be false, in whole or in part, by commission or omission;

17 5. Charge any recipient or person acting on behalf of a
18 recipient, money or other consideration in addition to or in excess
19 of rates of remuneration established under the Oklahoma Medicaid
20 Program;

21 6. Solicit or accept a benefit, pecuniary benefit, or kickback
22 in connection with goods or services paid or claimed by a provider
23 to be payable by the Oklahoma Medicaid Program; or
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1 7. Having submitted a claim for or received payment for a good
2 or a service under the Oklahoma Medicaid Program, fail to maintain
3 or destroy such records as required by law or the rules of the
4 Oklahoma Health Care Authority for a period of at least six (6)
5 years following the date on which payment was received.

6 B. For the purposes of this section, a person shall be deemed
7 to have made or caused to be made a claim, statement, or
8 representation if the person:

9 1. Had the authority or responsibility to make the claim,
10 statement, or representation, to supervise those who made the claim,
11 statement, or representation, or to authorize the making of the
12 claim, statement, or representation, whether by operation of law,
13 business or professional practice, or office procedure; and

14 2. Exercised such authority or responsibility or failed to
15 exercise such authority or responsibility and as a direct or
16 indirect result, the false statement was made.

17 C. The provisions of this section shall not be construed to
18 prohibit any payment, business arrangement or payment practice not
19 prohibited by 42 U.S.C., Section 1320a-7b(b) or any regulations
20 promulgated pursuant thereto ~~or to prohibit any payment, business~~
21 ~~arrangement or payment practice not prohibited by Section 1-742 of~~
22 ~~Title 63 of the Oklahoma Statutes.~~

23 D. For the purposes of this section, a person shall be deemed
24 to have known that a claim, statement, or representation was false

1 if the person knew, or by virtue of the person's position, authority
2 or responsibility, had reason to know, of the falsity of the claim,
3 statement or representation.

4 E. Any employee of the State Department of Health, the
5 Department of Human Services or the Oklahoma Health Care Authority
6 who knowingly or willfully fails to promptly report a violation of
7 the Oklahoma Medicaid Program, subject to the provisions of this
8 section, to the chief administrative officer of such agency or the
9 State Attorney General shall, upon conviction thereof, be guilty of
10 a misdemeanor.

11 SECTION 15. AMENDATORY 59 O.S. 2011, Section 519.11, as
12 last amended by Section 5, Chapter 154, O.S.L. 2020 (59 O.S. Supp.
13 2020, Section 519.11), is amended to read as follows:

14 Section 519.11. A. Nothing in the Physician Assistant Act
15 shall be construed to prevent or restrict the practice, services or
16 activities of any persons of other licensed professions or personnel
17 supervised by licensed professions in this state from performing
18 work incidental to the practice of their profession or occupation,
19 if that person does not represent himself as a physician assistant.

20 B. Nothing stated in the Physician Assistant Act shall prevent
21 any hospital from requiring the physician assistant or the
22 delegating physician to meet and maintain certain staff appointment
23 and credentialing qualifications for the privilege of practicing as,
24 or utilizing, a physician assistant in the hospital.

1 C. Nothing in the Physician Assistant Act shall be construed to
2 permit a physician assistant to practice medicine or prescribe drugs
3 and medical supplies in this state except when such actions are
4 performed under the supervision and at the direction of a physician
5 or physicians approved by the State Board of Medical Licensure and
6 Supervision.

7 D. Nothing herein shall be construed to require licensure under
8 the Physician Assistant Act of a physician assistant student
9 enrolled in a physician assistant educational program accredited by
10 the Accreditation Review Commission on Education for the Physician
11 Assistant.

12 ~~E. Notwithstanding any other provision of law, no one who is~~
13 ~~not a physician licensed to practice medicine in this state may~~
14 ~~perform acts restricted to such physicians pursuant to the~~
15 ~~provisions of Section 1-731 of Title 63 of the Oklahoma Statutes.~~
16 ~~This paragraph is inseverable.~~

17 SECTION 16. AMENDATORY 63 O.S. 2011, Section 1-568, is
18 amended to read as follows:

19 Section 1-568. A. Nothing in the Genetic Counseling Licensure
20 Act may be construed to require any genetic counselor or other
21 person to mention, discuss, suggest, propose, recommend, or refer
22 for, abortion, or to agree or indicate a willingness to do so, nor
23 shall licensing of any genetic counselor be contingent upon
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1 acceptance of abortion as a treatment option for any genetic or
2 other prenatal disease, anomaly, or disability.

3 B. If the State Board of Health determines that accreditation
4 of genetic counseling training programs by the American Board of
5 Genetic Counseling or of medical genetics training programs by the
6 American Board of Medical Genetics is dependent on criteria, or
7 applied in a manner, incompatible with the provisions of subsection
8 A of this section, it shall establish or recognize and apply
9 criteria for accreditation of alternative genetic counseling
10 training programs or medical genetics training programs compatible
11 with the provisions of subsection A of this section and any genetic
12 counseling training programs or medical genetics training programs
13 accredited thereunder shall be deemed accredited for the purposes of
14 paragraph 3 of subsection A of Section 4 1-564 of this ~~act~~ title.

15 C. If the State Board of Health determines that the examination
16 required for certification as a genetic counselor by the American
17 Board of Genetic Counseling or the American Board of Medical
18 Genetics or as a medical geneticist by the American Board of Medical
19 Genetics is incompatible with the provisions of subsection A of this
20 section, it shall establish or recognize an alternative examination
21 compatible with the provisions of that subsection and an individual
22 who passes such an examination shall be deemed to meet the relevant
23 requirements of paragraph 4 of subsection A of Section 4 1-564 of
24 this ~~act~~ title.

1 D. The State Board of Health shall by rule waive such other
2 provisions of the Genetic Counseling Licensure Act and provide for
3 appropriate substitute requirements as it determines necessary to
4 ensure compliance with subsection A of this section.

5 E. There shall be no cause of action against any person for
6 failure to mention, discuss, suggest, propose, recommend, or refer
7 for, abortion, ~~unless the abortion is necessary to prevent the death~~
8 ~~of the mother.~~

9 F. This section shall not be severable from the Genetic
10 Counseling Licensure Act.

11 SECTION 17. AMENDATORY 63 O.S. 2011, Section 1-701, as
12 amended by Section 1, Chapter 150, O.S.L. 2020 (63 O.S. Supp. 2020,
13 Section 1-701), is amended to read as follows:

14 Section 1-701. For the purposes of Section 1-701 et seq. of
15 this title:

16 1. "Hospital" means any institution, place, building or agency,
17 public or private, whether organized for profit or not, primarily
18 engaged in the maintenance and operation of facilities for the
19 diagnosis, treatment or care of patients admitted for overnight stay
20 or longer in order to obtain medical care, surgical care,
21 obstetrical care, or nursing care for illness, disease, injury,
22 infirmity, or deformity. Except as otherwise provided by paragraph
23 5 of this subsection, places where pregnant females are admitted and
24 receive care incident to pregnancy, ~~abortion~~ or delivery shall be

1 considered to be a "hospital" within the meaning of this article,
2 regardless of the number of patients received or the duration of
3 their stay. The term "hospital" includes general medical surgical
4 hospitals, specialized hospitals, critical access and emergency
5 hospitals, and birthing centers;

6 2. "General medical surgical hospital" means a hospital
7 maintained for the purpose of providing hospital care in a broad
8 category of illness and injury;

9 3. "Specialized hospital" means a hospital maintained for the
10 purpose of providing hospital care in a certain category, or
11 categories, of illness and injury;

12 4. "Critical access hospital" means a hospital determined by
13 the State Department of Health to be a necessary provider of health
14 care services to residents of a rural community;

15 5. "Emergency hospital" means a hospital that provides
16 emergency treatment and stabilization services on a twenty-four-hour
17 basis that has the ability to admit and treat patients for short
18 periods of time;

19 6. "Birthing center" means any facility, place or institution,
20 which is maintained or established primarily for the purpose of
21 providing services of a certified midwife or licensed medical doctor
22 to assist or attend a woman in delivery and birth, and where a woman
23 is scheduled in advance to give birth following a normal,
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1 uncomplicated, low-risk pregnancy. Provided, however, licensure for
2 a birthing center shall not be compulsory;

3 7. "Day treatment program" means nonresidential, partial
4 hospitalization programs, day treatment programs, and day hospital
5 programs as defined by subsection A of Section 175.20 of Title 10 of
6 the Oklahoma Statutes; and

7 8. a. "Primarily engaged" means a hospital shall be
8 primarily engaged, defined by this section and as
9 determined by the State Department of Health, in
10 providing to inpatients the following care by or under
11 the supervision of physicians:

12 (1) diagnostic services and therapeutic services for
13 medical diagnosis, treatment and care of injured,
14 disabled or sick persons, or

15 (2) rehabilitation services for the rehabilitation of
16 injured, disabled or sick persons.

17 b. In reaching a determination as to whether an entity is
18 primarily engaged in providing inpatient hospital
19 services to inpatients of a hospital, the Department
20 shall evaluate the total facility operations and
21 consider multiple factors as provided in subparagraphs
22 c and d of this subsection.

23 c. In evaluating the total facility operations, the
24 Department shall review the actual provision of care
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1 and services to two or more inpatients, and the
2 effects of that care, to assess whether the care
3 provided meets the needs of individual patients by way
4 of patient outcomes.

5 d. The factors that the Department shall consider for
6 determination of whether an entity meets the
7 definition of primarily engaged include, but are not
8 limited to:

- 9 (1) a minimum of four inpatient beds,
 - 10 (2) the entity's average daily census (ADC),
 - 11 (3) the average length of stay (ALOS),
 - 12 (4) the number of off-site campus outpatient
13 locations,
 - 14 (5) the number of provider-based emergency
15 departments for the entity,
 - 16 (6) the number of inpatient beds related to the size
17 of the entity and the scope of the services
18 offered,
 - 19 (7) the volume of outpatient surgical procedures
20 compared to the inpatient surgical procedures, if
21 surgical services are provided,
 - 22 (8) staffing patterns, and
 - 23 (9) patterns of ADC by day of the week.
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1 e. Notwithstanding any other provision of this section,
2 an entity shall be considered primarily engaged in
3 providing inpatient hospital services to inpatients if
4 the hospital has had an ADC of at least two (2) and an
5 ALOS of at least two (2) midnights over the past
6 twelve (12) months. A critical access hospital shall
7 be exempt from the ADC and ALOS determination. ADC
8 shall be calculated by adding the midnight daily
9 census for each day of the twelve-month period and
10 then dividing the total number by days in the year. A
11 facility that has been operating for less than (12)
12 months at the time of the survey shall calculate its
13 ADC based on the number of months the facility has
14 been operational, but not less than three (3) months.
15 If a first survey finds noncompliance with the ADC and
16 ALOS, a second survey may be required by the
17 Department to demonstrate compliance with state
18 licensure.

19 SECTION 18. AMENDATORY 63 O.S. 2011, Section 1-728c, is
20 amended to read as follows:

21 Section 1-728c. An employer shall not discriminate against an
22 employee or prospective employee by refusing to reasonably
23 accommodate the religious observance or practice of the employee or
24 prospective employee, ~~unless the employer can demonstrate that the~~

1 ~~accommodation would pose an undue hardship on the program,~~
2 ~~enterprise, or business of the employer,~~ in the following
3 circumstances:

4 1. ~~An abortion as defined in Section 1-730 of Title 63 of the~~
5 ~~Oklahoma Statutes. The provisions of this section shall not apply if~~
6 ~~the pregnant woman suffers from a physical disorder, physical~~
7 ~~injury, or physical illness which, as certified by a physician,~~
8 ~~causes the woman to be in imminent danger of death unless an~~
9 ~~abortion is immediately performed or induced and there are no other~~
10 ~~competent personnel available to attend to the woman. As used in~~
11 ~~this act, the term "abortion" shall not include the prescription of~~
12 ~~contraceptives;~~

13 2. An experiment or medical procedure that destroys an in vitro
14 human embryo or uses cells or tissue derived from the destruction of
15 an in vitro human embryo;

16 ~~3.~~ 2. An experiment or medical procedure on an in vitro human
17 embryo that is not related to the beneficial treatment of the in
18 vitro human embryo;

19 ~~4.~~ 3. An experiment or medical procedure on a developing child
20 in an artificial womb, at any stage of development, that is not
21 related to the beneficial treatment of the developing child;

22 ~~5.~~ 4. A procedure, including a transplant procedure, that uses
23 fetal tissue or organs that come from a source other than a
24 stillbirth or miscarriage; or

1 ~~6.~~ 5. An act that intentionally causes or assists in causing
2 the death of an individual by assisted suicide, euthanasia~~7~~ or mercy
3 killing.

4 SECTION 19. AMENDATORY 63 O.S. 2011, Section 2601, is
5 amended to read as follows:

6 Section 2601. For the purposes of ~~this act~~ Section 2601 et seq.
7 of this title, the following words and phrases mean:

8 ~~(a)~~ 1. "Minor" means any person under the age of eighteen (18)
9 years of age, except such person who is on active duty with or has
10 served in any branch of the Armed Services of the United States
11 shall be considered an adult~~;~~;

12 ~~(b)~~ 2. "Health professional" means for the purposes of this act
13 any licensed physician, psychologist, dentist, osteopathic
14 physician, podiatrist, chiropractor, registered or licensed
15 practical nurse or physician's assistant~~;~~; and

16 ~~(c)~~ 3. "Health services" means services delivered by any health
17 professional including examination, preventive and curative
18 treatment, surgical, hospitalization~~7~~ and psychological services,
19 except ~~abortion or sterilization. Should the health services~~
20 ~~include counseling concerning abortion, all alternatives will be~~
21 ~~fully presented to the minor. Services in this act~~ Section 2601 et
22 seq. of this title shall not include research or experimentation
23 with minors except where used in an attempt to preserve the life of
24

1 that minor, or research as approved by an appropriate review board
2 involved in the management of reportable diseases.

3 SECTION 20. AMENDATORY 74 O.S. 2011, Section 5054, is
4 amended to read as follows:

5 Section 5054. A. None of the funds provided in the Oklahoma
6 Health Research Act shall be used to conduct or support any research
7 or experimentation on a human subject unless the research or
8 experimentation has been reviewed and approved by an institutional
9 review board.

10 B. None of the funds provided in the Oklahoma Health Research
11 Act shall be used to undertake any research which has abortion, as
12 defined by Section ~~1-730~~ 691 of Title ~~63~~ 21 of the Oklahoma
13 Statutes, as its purpose.

14 SECTION 21. REPEALER 21 O.S. 2011, Sections 684, 714,
15 861 and 862, are hereby repealed.

16 SECTION 22. REPEALER 63 O.S. 2011, Sections 1-729a, as
17 amended by Section 1, Chapter 121, O.S.L. 2014, 1-731, 1-731.2
18 through 1-737, 1-737.4, as amended by Section 1, Chapter 123, O.S.L.
19 2017, 1-737.5 and 1-737.6, 1-738i and 1-738j, 1-738k, as amended by
20 Section 1, Chapter 303, O.S.L. 2013, 1-738l, 1-738m, as amended by
21 Section 6, Chapter 255, O.S.L. 2015, 1-738n, as amended by Section
22 3, Chapter 303, O.S.L. 2013, 1-738o and 1-738p, 1-738.1A, 1-738.2
23 through 1-738.3a, as amended by Sections 1 through 3, Chapter 255,
24 O.S.L. 2015, 1-738.3d, 1-738.3e, 1-738.4, 1-738.5, 1-738.6 and 1-

1 738.7, 1-738.8, as amended by Section 4, Chapter 255, O.S.L. 2015,
2 1-738.9 through 1-738.12, 1-738.13, as amended by Section 5, Chapter
3 255, O.S.L. 2015, 1-738.14 through 1-740.1, 1-740.2, 1-740.3 and 1-
4 740.4, as amended by Sections 2, 3 and 4, Chapter 320, O.S.L. 2013,
5 1-740.4a, 1-740.4b, as amended by Section 1, Chapter 387, O.S.L.
6 2015, 1-740.5 through 1-740.11, 1-740.12, as amended by Section 485,
7 Chapter 304, O.S.L. 2012, 1-741 through 1-743 and 1-745.1 through 1-
8 745.11 (63 O.S. Supp. 2020, Sections 1-729a, 1-737.4, 1-738k, 1-
9 738m, 1-738n, 1-738.2 through 1-738.3a, 1-738.8, 1-738.13, 1-740.2,
10 1-740.3, 1-740.4, 1-740b and 1-740.12), are hereby repealed.

11 SECTION 23. REPEALER Sections 1 through 7, Chapter 170,
12 O.S.L. 2012 (63 O.S. Supp. 2020, Sections 1-729.1 through 1-729.7),
13 are hereby repealed.

14 SECTION 24. REPEALER Sections 1 through 9, Chapter 159,
15 O.S.L. 2012 (63 O.S. Supp. 2020, Sections 1-745.12 through 1-
16 745.19), are hereby repealed.

17 SECTION 25. REPEALER Section 4, Chapter 303, O.S.L. 2013
18 (63 O.S. Supp. 2020, Section 1-738q), is hereby repealed.

19 SECTION 26. REPEALER Sections 2, 4, and 5, Chapter 268,
20 O.S.L. 2013 (63 O.S. Supp. 2020, Sections 1-740.2A, 1-740.13 and 1-
21 740.14), are hereby repealed.

22 SECTION 27. REPEALER Sections 1 and 5 through 10,
23 Chapter 320, O.S.L. 2013 (63 O.S. Supp. 2020, Sections 1-744 and 1-
24 744.1 through 1-744.6), are hereby repealed.

1 SECTION 28. REPEALER Sections 1, 3, 4, 5, 7, 8, 9, and
2 10, Chapter 175, O.S.L. 2014 (63 O.S. Supp. 2020, Sections 1-746.1,
3 1-746.3, 1-746.4, 1-746.5, 1-746.7, 1-746.8, 1-746.9 and 1-746.10),
4 are hereby repealed.

5 SECTION 29. REPEALER Section 2, Chapter 175, O.S.L.
6 2014, as amended by Section 7, Chapter 255, O.S.L. 2015 (63 O.S.
7 Supp. 2020, Section 1-746.2), is hereby repealed.

8 SECTION 30. REPEALER Section 6, Chapter 175, O.S.L.
9 2014, as amended by Section 8, Chapter 255, O.S.L. 2015 (63 O.S.
10 Supp. 2020, Section 1-746.6), is hereby repealed.

11 SECTION 31. REPEALER Section 1, Chapter 370, O.S.L. 2014
12 (63 O.S. Supp. 2020, Section 1-748), is hereby repealed.

13 SECTION 32. REPEALER Sections 1 through 10, Chapter 59,
14 O.S.L. 2015 (63 O.S. Supp. 2020, Sections 1-737.7 through 1-737.16),
15 are hereby repealed.

16 SECTION 33. REPEALER Section 9, Chapter 255, O.S.L. 2015
17 (63 O.S. Supp. 2020, Section 1-738.5a), is hereby repealed.

18 SECTION 34. REPEALER Sections 2 through 4, Chapter 387,
19 O.S.L. 2015 (63 O.S. Supp. 2020, Sections 1-749 through 1-750), are
20 hereby repealed.

21 SECTION 35. REPEALER Sections 1 and 3 through 5, Chapter
22 353, O.S.L. 2016 (63 O.S. Supp. 2020, Sections 1-751 and 1-753
23 through 1-755), are hereby repealed.

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1 SECTION 36. REPEALER Section 2, Chapter 353, O.S.L. 2016
2 as amended by Section 2, Chapter 123, O.S.L. 2017, (63 O.S. Supp.
3 2020, Section 1-752), is hereby repealed.

4 SECTION 37. REPEALER Sections 1 through 5, Chapter 308,
5 O.S.L. 2017 (63 O.S. Supp. 2020, Sections 1-740.15 through 1-
6 740.19), are hereby repealed.

7 SECTION 38. REPEALER Sections 1 through 6, Chapter 198,
8 O.S.L. 2012 (63 O.S. Supp. 2020, Sections 1-738.3f through 1-
9 738.3k), is hereby repealed.

10 SECTION 39. NEW LAW A new section of law not to be
11 codified in the Oklahoma Statutes reads as follows:

12 This act is prospective only and shall not apply to crimes
13 committed prior to the effective date of this act. For purposes of
14 this section, a crime is committed before the effective date of this
15 act if any element of the crime occurs before the effective date.

16 SECTION 40. NEW LAW A new section of law not to be
17 codified in the Oklahoma Statutes reads as follows:

18 A. Any federal statute, regulation, treaty, executive order or
19 court ruling which purports to supersede, stay or overrule this act
20 is in violation of the Constitution of the State of Oklahoma and the
21 Constitution of the United States of America and is therefore void.

22 B. This state, a political subdivision of this state and any
23 agents of this state or a political subdivision of this state may
24

1 disregard any part or the whole of any court decision which purports
2 to enjoin or void any provision of this act.

3 SECTION 41. NEW LAW A new section of law not to be
4 codified in the Oklahoma Statutes reads as follows:

5 The provisions, words, phrases and clauses of this act are
6 declared to be inseverable.

7 SECTION 42. It being immediately necessary for the preservation
8 of the public peace, health, and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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