An Act

ENROLLED HOUSE
BILL NO. 2381

By: Cockroft, Roberts (Sean), Ritze and Faught of the House

and

David, Brinkley and Newberry of the Senate

An Act relating to public health and safety; requiring physician who prescribes certain drug to be physically present when such drug is first provided to patient; providing for penalty; providing for damages; permitting certain individuals to maintain action for damages; providing for attorney fee; permitting certain individuals to maintain action for injunctive relief; providing certain fines for violation of terms of injunction; providing physician who violates certain act to have engaged in unprofessional conduct; requiring anonymity of woman bringing certain action unless consent is given; requiring court to issue orders, direct sealing of record, and exclude individuals from courtroom to safeguard identity; requiring certain individuals to bring action under a pseudonym; preventing certain individual from being subject to certain action; providing for interpretation; providing for severability; providing for codification; and providing an effective date.

SUBJECT: Procedure when certain drugs or chemicals are used for the purpose of performing or inducing an abortion

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-729.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

When RU-486 (mifepristone) or any other drug or chemical is used for the purpose of performing or inducing an abortion, the physician who is prescribing, dispensing, or otherwise providing the drug or chemical shall be physically present, in person, in the same room as the patient when the drug or chemical is first provided to the patient.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-729.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any person who knowingly or recklessly violates this act shall be guilty of a felony. No penalty may be assessed against the female upon whom the abortion is performed or induced or attempted to be performed or induced.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-729.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person who knowingly or recklessly violates a provision of this act shall be liable for damages as provided in this section and may be enjoined from such acts in accordance with this section in an appropriate court.

B. Any female upon whom an abortion has been performed or induced, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed or induced, or a maternal grandparent of the unborn child may maintain an action against the person who performed or induced the abortion in knowing or reckless violation of this act for actual and punitive damages. Any female upon whom an abortion has been attempted to be performed or induced in knowing or reckless violation of this act may maintain an action against the person who attempted to perform or induce the abortion for actual and punitive damages.

C. If a judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If a judgment is rendered in favor of the

defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

D. A cause of action for injunctive relief against any person who has knowingly or recklessly violated this act may be maintained by:

1. The female upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this act;

2. Any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of, the female upon whom an abortion has been performed or induced or attempted to be performed or induced in violation of this act;

3. A district attorney with appropriate jurisdiction; or

4. The Attorney General.

The injunction shall prevent the abortion provider from performing or inducing further abortions in violation of this act in the State of Oklahoma.

E. Any person who knowingly or recklessly violates the terms of an injunction issued in accordance with this act shall be subject to civil contempt, and shall be fined Ten Thousand Dollars ($10,000.00) for the first violation, Fifty Thousand Dollars ($50,000.00) for the second violation, One Hundred Thousand Dollars ($100,000.00) for the third violation and for each succeeding violation an amount in excess of One Hundred Thousand Dollars ($100,000.00) sufficient to deter future violations. The fines shall be the exclusive penalties for such contempt. Each performance or induction or attempted performance or induction of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. However, no fine may be assessed against the woman on whom an abortion was performed or induced or was attempted to be performed or induced.

F. A physician who performed or induced an abortion or attempted to perform or induce an abortion in violation of this act shall be considered to have engaged in unprofessional conduct for which his or her license to practice medicine in the State of Oklahoma may be suspended or revoked by the State Medical Board of

Licensure and Supervision or the State Board of Osteophathic Examiners.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-729.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

In every proceeding or action brought under this act, the anonymity of any woman upon whom an abortion is performed or induced or attempted to be performed or induced shall be preserved from public disclosure unless she gives her consent to such disclosure. The court, upon motion or sua sponte, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. In the absence of written consent of the woman upon whom an abortion has been performed or induced or has been attempted to be performed or induced, anyone who brings an action under Section 3 of this act shall do so under a pseudonym.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-729.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

No pregnant female who obtains or possesses RU-486 (mifepristone) or any other drug or chemical for the purpose of performing or inducing an abortion to terminate her own pregnancy shall be subject to any action brought under Section 3 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-729.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall be construed as creating or recognizing a right to abortion.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-729.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application hereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The

Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

SECTION 8. This act shall become effective November 1, 2012.

Passed the House of Representatives the 5th day of March, 2012.

Presiding Officer of the House of Representatives

Passed the Senate the 24th day of April, 2012.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 25th

day of April, **20** 12,

at 1:21 **o'clock** P **M.**

By: Jessica R Byers

Approved by the Governor of the State of Oklahoma the 1st **day of**

May, **20** 12, **at** 12:40 **o'clock** PM.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

1st **day of** May, **20** 12,

at 2:00 **o'clock** P **M.**

By: Michelle R Day