An Act

ENROLLED HOUSE
BILL NO. 2561

By: Wesselhoft, Faught, Kern, Ritze, Peterson, Coody, Moore, Hamilton and Johnson of the House

and

Jolley and Shortey of the Senate

An Act relating to public health and safety; permitting certain individuals to commence civil actions against certain individuals or entities for certain violations; providing for certain damages; requiring certain evidentiary standard by trier of fact; providing for costs and attorney fees; requiring court to rule whether anonymity of certain individual be preserved if consent not given; requiring court to issue orders, direct sealing of record, and exclude individuals from courtroom if determination is made that anonymity should be preserved; requiring order to be accompanied by specific written findings; requiring certain individuals to bring certain action under a pseudonym; providing for statute of limitation to file certain actions; providing for interpretation; providing for severability; providing for codification; and providing an effective date.

SUBJECT: Civil action against abortion providers

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 1-738.3f of Title 63, unless there is created a duplication in numbering, reads as follows:

A woman upon whom an abortion has been performed in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil action against the abortion provider, against the prescriber of any drug or chemical intended to induce abortion, and against any person or entity which referred the woman to the abortion provider or prescriber and which knew or reasonably should have known that the abortion provider or prescriber had acted in violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes for actual damages and, in cases of gross negligence, for punitive damages. The measure of damages shall include damages for the mental anguish and emotional distress of the plaintiff, in addition to all damages available for the wrongful death of the child whose life was aborted in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, notwithstanding any exception for abortion provided in Section 1053 of Title 12 of the Oklahoma Statutes. Whether the individual or entity committed an abortion in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes shall be determined by the trier of fact in the civil action by the greater weight of the evidence. Unless the defendant can prove to the trier of fact by the greater weight of the evidence that the abortion was performed on a child who was already dead from natural causes before the abortion, and that the defendant informed the plaintiff that the child was already dead at the time of the abortion, it shall be a rebuttable presumption that if an abortion was performed, that the child whose life was aborted was alive until the abortion was performed, and was capable eventually of living a normal human lifespan had the abortion not occurred.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3g of Title 63, unless there is created a duplication in numbering, reads as follows:

If judgment is rendered in favor of the plaintiff in any action pursuant to Section 1 of this act, the court shall also render judgment for costs including reasonable expert witness fees and for a reasonable attorney fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous, unreasonable or without foundation, the court shall also render judgment for costs including reasonable expert witness fees and for

a reasonable attorney fee in favor of the defendant against the plaintiff.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3h of Title 63, unless there is created a duplication in numbering, reads as follows:

In every action brought under this act, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, 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. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3i of Title 63, unless there is created a duplication in numbering, reads as follows:

An action pursuant to this act shall be brought within two (2) years of the date the woman upon whom an abortion has been performed in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, knew or reasonably should have known of any information not provided by the defendant in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes. If any defendant disputes whether the action was brought within the time specified in this section, the question of whether the action was brought within the time specified in this section shall be determined by the trier of fact by the greater weight of the evidence.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3j of Title 63, unless there is created a duplication in numbering, reads as follows:

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

B. Nothing in this act shall apply to a hospital as defined in Section 1-701 of Title 63 of the Oklahoma Statutes which has a dedicated emergency department as defined in 42 CFR 489.24b.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3k 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 thereof 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 7. This act shall become effective September 1, 2012.

Passed the House of Representatives the 2nd day of May, 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 3rd

day of May, **20** 12,

at 1:40 **o'clock** PM.

By: Jessica R. Byers

Approved by the Governor of the State of Oklahoma the 8th **day of** May, **20** 12, **at** 11:28 **o'clock** A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 8th **day of** May, **20** 12,

at 1:33 **o'clock** P **M.**

By: Michelle R Day