

1 ENGROSSED HOUSE  
2 BILL NO. 2561

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

3  
4 and

Jolley of the Senate

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8 An Act relating to public health and safety;  
9 permitting certain individuals to commence civil  
10 actions against certain individuals or entities for  
11 certain violations; providing for certain damages;  
12 requiring certain evidentiary standard by trier of  
13 fact; providing for costs and attorney fees;  
14 requiring court to rule whether anonymity of certain  
15 individual be preserved if consent not given;  
16 requiring court to issue orders, direct sealing of  
17 record, and exclude individuals from courtroom if  
18 determination is made that anonymity should be  
19 preserved; requiring order to be accompanied by  
20 specific written findings; requiring certain  
21 individuals to bring certain action under a  
22 pseudonym; providing for statute of limitation to  
23 file certain actions; providing for interpretation;  
24 providing for severability; providing for  
codification; 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 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:

1 A woman upon whom an abortion has been performed in negligent  
2 violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b  
3 of Title 63 of the Oklahoma Statutes, or the parent or legal  
4 guardian of the woman if she is an unemancipated minor, as defined  
5 in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may  
6 commence a civil action against the abortion provider, against the  
7 prescriber of any medicine intended to induce abortion, and against  
8 any person or entity which referred the woman to the abortion  
9 provider and who is or employs a licensed medical provider, for any  
10 negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2  
11 or 1-740.4b of Title 63 of the Oklahoma Statutes for actual and  
12 punitive damages. The measure of damages shall include damages for  
13 the mental anguish and emotional distress of the plaintiff, in  
14 addition to all damages available for the wrongful death of the  
15 child whose life was aborted in negligent violation of Section 1-  
16 738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the  
17 Oklahoma Statutes, notwithstanding any exception for abortion  
18 provided in Section 1053 of Title 12 of the Oklahoma Statutes.  
19 Whether the individual or entity committed an abortion in negligent  
20 violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b  
21 of Title 63 of the Oklahoma Statutes shall be determined by the  
22 trier of fact in the civil action by the greater weight of the  
23 evidence. Unless the defendant can prove to the trier of fact by  
24 the greater weight of the evidence that the abortion was performed

1 on a child who was already dead from natural causes before the  
2 abortion, and that the defendant informed the plaintiff that the  
3 child was already dead at the time of the abortion, it shall be a  
4 rebuttable presumption that if an abortion was performed, that the  
5 child whose life was aborted was alive until the abortion was  
6 performed, and was capable eventually of living a normal human  
7 lifespan had the abortion not occurred.

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

11 If judgment is rendered in favor of the plaintiff in any action  
12 pursuant to Section 1 of this act, the court shall also render  
13 judgment for costs including reasonable expert witness fees and for  
14 a reasonable attorney fee in favor of the plaintiff against the  
15 defendant. If judgment is rendered in favor of the defendant and  
16 the court finds that the plaintiff's suit was frivolous and brought  
17 in bad faith in violation of Section 2011 of Title 12 of the  
18 Oklahoma Statutes, the court shall also render judgment for costs  
19 including reasonable expert witness fees and for a reasonable  
20 attorney fee in favor of the defendant against the plaintiff.

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

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1 In every action brought under this act, the court shall rule  
2 whether the anonymity of any female upon whom an abortion has been  
3 performed or attempted shall be preserved from public disclosure if  
4 she does not give her consent to such disclosure. The court, upon  
5 motion or sua sponte, shall make such a ruling and, upon determining  
6 that her anonymity should be preserved, shall issue orders to the  
7 parties, witnesses, and counsel and shall direct the sealing of the  
8 record and exclusion of individuals from courtrooms or hearing rooms  
9 to the extent necessary to safeguard her identity from public  
10 disclosure. Each such order shall be accompanied by specific  
11 written findings explaining why the anonymity of the female should  
12 be preserved from public disclosure, why the order is essential to  
13 that end, how the order is narrowly tailored to serve that interest,  
14 and why no reasonable less restrictive alternative exists. In the  
15 absence of written consent of the female upon whom an abortion has  
16 been performed or attempted, anyone, other than a public official,  
17 who brings an action under this act shall do so under a pseudonym.  
18 This section may not be construed to conceal the identity of the  
19 plaintiff or of witnesses from the defendant.

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

23 An action pursuant to this act shall be brought within two (2)  
24 years of the date the woman upon whom an abortion has been performed

1 in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-  
2 740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, or the  
3 parent or legal guardian of the woman if she is an unemancipated  
4 minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma  
5 Statutes, knew or reasonably should have known of any information  
6 not provided by the defendant in negligent violation of Section 1-  
7 738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the  
8 Oklahoma Statutes. If any defendant disputes whether the action was  
9 brought within the time specified in this section, the question of  
10 whether the action was brought within the time specified in this  
11 section shall be determined by the trier of fact by the greater  
12 weight of the evidence.

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

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

18 SECTION 6. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 1-738.3k of Title 63, unless  
20 there is created a duplication in numbering, reads as follows:

21 If any one or more provision, section, subsection, sentence,  
22 clause, phrase or word of this act or the application thereof to any  
23 person or circumstance is found to be unconstitutional, the same is  
24 hereby declared to be severable and the balance of this act shall

1 remain effective notwithstanding such unconstitutionality. The  
2 Legislature hereby declares that it would have passed this act and  
3 each provision, section, subsection, sentence, clause, phrase or  
4 word thereof, irrespective of the fact that any one or more  
5 provision, section, subsection, sentence, clause, phrase, or word be  
6 declared unconstitutional.

7 SECTION 7. This act shall become effective September 1, 2012.

8 Passed the House of Representatives the 15th day of March, 2012.

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Presiding Officer of the House of  
Representatives

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13 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2012.

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Presiding Officer of the Senate

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