

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2561

By: Wesselhoft

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6 AS INTRODUCED

7 An Act relating to public health and safety;  
8 permitting certain individuals to commence civil  
9 actions against abortion provider for certain  
10 violations; providing for attorney fees; requiring  
11 court to rule whether anonymity of certain individual  
12 be preserved if consent not given; requiring court to  
13 issue orders, direct sealing of record, and exclude  
14 individuals from courtroom if determination is made  
15 that anonymity should be preserved; requiring order  
16 to be accompanied by specific written findings;  
17 requiring certain individuals to bring certain action  
18 under a pseudonym; providing for interpretation;  
19 providing for severability; providing for  
20 codification; and providing an effective date.

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

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

A woman upon whom an abortion has been performed in violation of  
Section 1-738.2, 1-738.3, 1-738.3d or 1-738.8 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

1 Title 63 of the Oklahoma Statutes, may commence a civil action  
2 against the abortion provider for any violation of Section 1-738.2,  
3 1-738.3, 1-738.3d or 1-738.8 of Title 63 of the Oklahoma Statutes  
4 for actual and punitive damages. The measure of damages shall be  
5 the same as if the woman were bringing an action for the wrongful  
6 death of the child whose life was aborted in violation of Section 1-  
7 738.2, 1-738.3, 1-738.3d or 1-738.8 of Title 63 of the Oklahoma  
8 Statutes. Whether the abortion provider committed an abortion in  
9 violation of Section 1-738.2, 1-738.3, 1-738.3d or 1-738.8 of Title  
10 63 of the Oklahoma Statutes shall be determined by the trier of fact  
11 in the civil action.

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

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

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1           SECTION 3.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-738.h of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

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

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1 SECTION 4. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-738.i of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

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

6 SECTION 5. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1-738.j of Title 63, unless  
8 there is created a duplication in numbering, reads as follows:

9 If any one or more provision, section, subsection, sentence,  
10 clause, phrase or word of this act or the application thereof to any  
11 person or circumstance is found to be unconstitutional, the same is  
12 hereby declared to be severable and the balance of this act shall  
13 remain effective notwithstanding such unconstitutionality. The  
14 Legislature hereby declares that it would have passed this act and  
15 each provision, section, subsection, sentence, clause, phrase or  
16 word thereof, irrespective of the fact that any one or more  
17 provision, section, subsection, sentence, clause, phrase, or word be  
18 declared unconstitutional.

19 SECTION 6. This act shall become effective November 1, 2012.

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