

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

2ND CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2661

By: Adair, Pettigrew, Adkins  
and McClain of the House

and

Hobson of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to civil procedure; providing for determination of attorney fees in class actions; establishing venue for certain civil actions; amending 12 O.S. 2001, Sections 683 and 684, which relate to dismissal of actions; providing exception to certain dismissal of action provisions; providing for dismissal of medical liability actions; amending 12 O.S. 2001, Section 727, which relates to interest on judgment; limiting application of statute to certain dates; providing for postjudgment and prejudgment interest beginning on a certain date; establishing rate of interest; providing that procedure and rate apply on and after a certain date; providing for indemnification of sellers in product liability actions; defining term; providing who is considered a seller; providing scope of duty to indemnify; providing for notice; providing for recovery of certain costs, expenses, fees and damages; limiting scope of application; amending 12 O.S. 2001, Section 990.4, which relates to stay of enforcement of judgment and appeal bonds; authorizing the court to lower the amount of appeal bond in certain circumstances; defining term; prohibiting lowering of appeal bond to the extent an insurance policy or third party is liable to satisfy part or all of judgment; requiring the court to enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment; prohibiting the court from issuing order that interferes with use of assets in the normal course of business; amending 12 O.S. 2001, Section 2011, which relates to pleadings; requiring monetary sanctions for certain violations; authorizing other sanctions; amending 12 O.S. 2001, Sections 2020 and 2021, which relate to joinder of parties; requiring the court to consider fair and convenient forum in determining whether to allow joinder and nonjoinder of parties; amending 12 O.S. 2001, Section 3226, as amended by Section 73, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 3226), which relates to discovery; modifying reasons for protective orders; providing for protective orders for abusive discovery; providing for award of certain expenses relating to motions for abusive discovery; authorizing the creation of a Judicial Panel on Multidistrict Litigation; authorizing composition; providing for

appointment; providing duties and powers of the Panel; providing for effect of rulings; authorizing transfer or stays in certain circumstances; providing for duration of transfers and stays; providing for authority of judge to whom an action is transferred; providing for promulgation of rules; amending 20 O.S. 2001, Section 91.2, which relates to dockets; providing for a business court docket; stating legislative findings; authorizing the Supreme Court to establish a business court division within certain district courts; providing for promulgation of rules; making joint tortfeasors severally liable; providing circumstances in which the liability of a defendant is joint and several; providing exclusions of applications; providing for application to civil actions filed on or after a certain date; amending 51 O.S. 2001, Section 152, as last amended by Section 1 of Enrolled House Bill No. 2263 of the 2nd Session of the 49th Oklahoma Legislature; modifying definition; amending Sections 1 and 6, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2003, Sections 1-1708.1A and 1-1708.1F), which relate to the Affordable Access to Health Care Act; modifying short title; extending date of applicability of limits on certain noneconomic damages; establishing limits on certain noneconomic damages under certain circumstances; providing for adjustment for inflation; defining term; providing circumstances under which limitation on damages does not apply; providing for an additional form of verdict and procedure for use; providing that limitation does not apply to actions for wrongful death; providing termination date for certain section of law; providing for application to civil actions filed on or after a certain date; providing that certain statements, affirmations, gestures or conduct are inadmissible in medical liability actions; defining terms; requiring the court to apply certain criteria in determining if an expert witness is qualified to offer expert testimony in medical liability actions; allowing defendant health care provider or employee to qualify as expert witness; amending 2 O.S. 2001, Section 16-71, which relates to property owners and liability for recreational activity; modifying and adding definitions; updating language; providing for applicability of section; amending 76 O.S. 2001, Sections 10, 11, 12, 13, 14, 15 and 15.1, which relate to liability of property owners related to recreational activity; creating the Oklahoma Limitation of Liability for Farming and Ranching Land Act; providing short title; providing purpose; providing for applicability of Oklahoma Limitation of Liability for Farming and Ranching Land Act; modifying and adding definitions; updating and clarifying contents; specifying when liability attaches; providing limits of liability; modifying when liability exists; prohibiting certain persons who have executed a written release of liability or a waiver to sue from maintaining an action or recovering damages; removing certain liability for charges for uses; providing that owners, lessees and occupants of real property or any structures or improvements thereto do not owe duty of care or duty

to give certain warning; providing for immunity from civil liability; limiting scope of immunity; creating the Volunteer Medical Professional Services Immunity Act; providing short title; providing immunity for volunteer medical professionals from civil liability in certain circumstances; limiting scope of immunity; defining term; providing immunity from civil liability for persons participating in a Medical Reserve Corps in certain circumstances; providing for application to civil actions filed on or after a certain date; creating the Registration of Out-of-State Attorneys Act; providing short title; providing for application of the Registration of Out-of-State Attorneys Act; providing for written application to appear as counsel if certain conditions are met; providing conditions for an out-of-state attorney to appear in an action or proceeding; providing registration procedure; requiring payment of an application fee; providing for application forms; requiring certain information; providing for action by the Oklahoma Bar Association; requiring registration with the Oklahoma Tax Commission; requiring annual disclosure of certain income; requiring withholding from certain income and remittance to the Oklahoma Tax Commission; requiring the Oklahoma Tax Commission to provide verification of registration; requiring the Oklahoma lawyer associated with the applicant to file motion to associate; requiring the motion to include certain exhibits and proposed order; requiring copies of the order granting or denying the motion to be served on the Oklahoma Bar Association and the Oklahoma Tax Commission; requiring Oklahoma attorney to appear as attorney of record and consent in writing to the association; prohibiting an applicant from appearing in a proceeding until an order granting the motion to associate is entered; making granting or denial of a motion to associate discretionary; authorizing revocation of authority to appear as counsel pursuant to the Registration of Out-of-State Attorneys Act; making repeated appearances under the Registration of Out-of-State Attorneys Act grounds for denial of the motion to associate; providing for certain presumptions; providing burden of proof; providing for extension of right to associate; providing for transfer of authority to associate if venue is transferred or if the action is appealed; authorizing court having jurisdiction over transferred case or appeal to revoke the authority of the out-of-state attorney to appear; providing for appearances in appellate courts; requiring annual certification and renewal fee; providing for suspension of out-of-state attorney for failure to file required affidavit and renewal fee; providing for notification; providing for withdrawal of association with Oklahoma counsel; authorizing reinstatement, subject to payment of a reinstatement fee; authorizing the Oklahoma Bar Association to waive fees if the applicant is providing pro bono services; requiring filing of an application for waiver; requiring the Oklahoma Bar Association to file an annual report; providing contents of report; requiring the report to be kept on file at the Bar Association and made available to

the public during normal business hours; requiring that a copy be provided to the Chief Justice of the Oklahoma Supreme Court; providing that out-of-state counsel is subject to the jurisdiction of the courts and disciplinary boards of this state; providing requirements for the Oklahoma attorney of record; amending 36 O.S. 2001, Section 312.1, as amended by Section 1, Chapter 315, O.S.L. 2003 (36 O.S. Supp. 2003, Section 312.1), which relates to report, disbursement and appropriation of taxes; directing disbursement and appropriation of certain taxes and fines; expressing legislative intent; amending 36 O.S. 2001, Sections 1509 and 1530, which relate to increase of inadequate reserves and exemptions from Risk-Based Capital for Insurers Act; providing for moratorium on application of certain requirements; requiring certain policy notice; creating the Oklahoma Medical Professionals Liability Trusts Act; providing short title; providing definitions; providing conditions, requirements, duties and limitations of authority to create certain trusts; providing for exemption from certain statutory requirements; requiring filing of certain items by certain trusts; requiring payment of certain taxes and fees; providing penalties; setting forth requirements for certain trust instruments; defining adequate reserves and surplus; prohibiting participation by trust in certain entities; providing for annual review of certain trust documents and activities; providing for report of annual review; allowing promulgation of emergency rules; providing for codification; providing for recodification; providing effective dates; and declaring an emergency.

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 7.1 of Title 5, unless there is created a duplication in numbering, reads as follows:

In class actions, in making an award of attorney fees, the court shall conduct an evidentiary hearing to determine a fair and reasonable fee for class counsel. In making such determination, the court shall act in a fiduciary capacity on behalf of the class.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 130 of Title 12, unless there is created a duplication in numbering, reads as follows:

The venue of civil actions for damages brought pursuant to the Affordable Access to Health Care Act, Section 1-1708.1A et seq. of

Title 63 of the Oklahoma Statutes, shall be in a county where the cause of action or any portion thereof arose, or in any county in which any of the defendants reside, or in the case of a corporation, in a county in which it is situated, or has its principal office or place of business, or in any county where a codefendant of such corporation may be sued. Upon a finding of lack of venue, the court shall transfer or dismiss the action; provided, however, that if the court finds lack of venue and that a dismissal would operate as a dismissal with prejudice, the court shall transfer the action.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 683, is amended to read as follows:

Section 683. ~~An~~ Except as provided in Section 5 of this act, an action may be dismissed, without prejudice to a future action:

~~First,~~ 1. By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court;

~~Second,~~ 2. By the court, where the plaintiff fails to appear on the trial;

~~Third,~~ 3. By the court, for the want of necessary parties;

~~Fourth,~~ 4. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence;

~~Fifth,~~ 5. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action; and

~~Sixth,~~ 6. In all other cases, upon the trial of the action, the decision must be upon the merits.

SECTION 4. AMENDATORY 12 O.S. 2001, Section 684, is amended to read as follows:

Section 684. ~~A plaintiff may,~~ A. Except as provided in Section 5 of this act, an action may be dismissed on the payment of costs and without an order of court, ~~dismiss any civil action brought by him~~ by the plaintiff at any time before a petition of intervention or answer praying for affirmative relief against ~~him~~ the plaintiff

is filed in the action. A plaintiff may, at any time before the trial is commenced, on payment of the costs and without any order of court, dismiss ~~his~~ the action after the filing of a petition of intervention or answer praying for affirmative relief, but such dismissal shall not prejudice the right of the intervenor or defendant to proceed with the action. Any defendant or intervenor may, in like manner, dismiss ~~his~~ an action against the plaintiff, without an order of court, at any time before the trial is begun, on payment of the costs made on the claim filed by ~~him~~ the defendant or intervenor. All parties to a civil action may at any time before trial, without an order of court, and on payment of costs, by agreement, dismiss the action.

B. Such dismissal shall be in writing and signed by the party or ~~his~~ the attorney for the party, and shall be filed with the clerk of the district court, ~~the judge or clerk of the county court, or the justice~~, where the action is pending, who shall note the fact on the proper record: Provided, such dismissal shall be held to be without prejudice, unless the words "with prejudice" be expressed therein.

C. When an action is dismissed after a jury in the action is empanelled and the case is subsequently refiled, the court, at the conclusion of the subsequent action, may assess costs and attorney fees incurred in the previous action by the defendants subsequent to the jury being empanelled.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. A medical liability action brought pursuant to the Affordable Access to Health Care Act shall only be dismissed, on the payment of costs and without an order of court:

1. By the plaintiff, before the later of the completion of discovery or the court's ruling on a motion for summary judgment;

2. By the plaintiff at any time before a petition for intervention or answer praying for affirmative relief against the plaintiff is filed in the action. The plaintiff may, at any time before the trial is commenced, on payment of the costs and without any order of the court, dismiss the action after the filing of a petition for intervention or answer praying for affirmative relief, but such dismissal shall not prejudice the right of the intervenor or defendant to proceed with the action. Any defendant or intervenor may, in like manner, dismiss an action against the plaintiff, without an order of the court, at any time before the trial has begun, on payment of costs made on the claim filed by the defendant or intervenor; or

3. By agreement of all parties to a civil action at any time before trial.

B. Such dismissal shall be in writing and signed by the party or the attorney for the party, and shall be filed with the clerk of the district court where the action is pending, who shall note the fact on the proper record. Provided, such dismissal shall be held to be without prejudice, unless the words "with prejudice" be expressed therein.

C. If the court finds that a party has acted in bad faith, vexatiously, wantonly or in an oppressive manner in dismissing an action under this section, the court, pursuant to subsection A of this section, may award reasonable costs against the party and condition the refiling of the case upon payment of the costs.

SECTION 6. AMENDATORY 12 O.S. 2001, Section 727, is amended to read as follows:

Section 727.

#### POSTJUDGMENT INTEREST

A. 1. Except as otherwise provided by this section, all judgments of courts of record, including costs and attorney fees

authorized by statute or otherwise and allowed by the court, shall bear interest at a rate prescribed pursuant to this section.

2. Costs and attorney fees allowed by the court shall bear interest from the earlier of the date the judgment or order is pronounced, if expressly stated in the written judgment or order awarding the costs and attorney fees, or the date the judgment or order is filed with the court clerk.

B. Judgments, including costs and attorney fees authorized by statute or otherwise and allowed by the court, against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, shall bear interest during the term of judgment at a rate prescribed pursuant to this section, but not to exceed ten percent (10%), from the date of rendition. No judgment against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, inclusive of postjudgment interest, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in which the judgment was rendered, or until the judgment is paid, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered



during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each succeeding calendar year, or part of a calendar year, during which a judgment remains unpaid, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. A separate computation using the interest rate in effect for judgments as provided by subsection I of this section shall be made for each calendar year, or part of a calendar year, during which the judgment remains unpaid in order to determine the total amount of interest for which the judgment debtor is liable. The postjudgment interest rate for each calendar year or part of a calendar year a judgment remains unpaid shall be multiplied by the original amount of the judgment, including any prejudgment interest, together with postjudgment interest previously accrued. Interest shall accrue on a judgment in the manner prescribed by this subsection until the judgment is satisfied or released.

D. If a rate of interest is specified in a contract, the rate specified shall apply and be stated in the journal entry of judgment. The rate of interest shall not exceed the lawful rate for that obligation. Postjudgment interest shall be calculated and accrued in the same manner as prescribed in subsection C of this section.

#### PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering

judgment shall add interest on the verdict at a rate prescribed pursuant to subsection I of this section from the date the suit resulting in the judgment was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is filed, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the rate prescribed pursuant to subsection I of this section, but not to exceed ten percent (10%) from the date the suit was commenced to the earlier of the date the verdict is accepted by the trial court as

expressly stated in the judgment or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date the judgment is rendered as expressly stated in the judgment, whichever first occurs. Beginning on the first day of January of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

G. If exemplary or punitive damages are awarded in an action for personal injury or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another, the interest on

that award shall begin to accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk.

H. If a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest at a rate prescribed pursuant to subsection I of this section from the date the lien is filed to the date of verdict.

I. For purposes of computing either postjudgment interest or prejudgment interest as authorized by this section, interest shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year, plus four percentage points.

J. For purposes of computing postjudgment interest, the provisions of this section, including the amendments prescribed by ~~this act~~ Chapter 320, O.S.L. 1997, shall be applicable to all judgments of the district courts rendered on or after January 1, 2000 but before January 1, 2005. ~~Effective January 1, 2000~~ Until January 1, 2005, the method for computing postjudgment interest prescribed by this section shall be applicable to all judgments remaining unpaid rendered prior to January 1, 2000.

K. For purposes of computing prejudgment interest, the provisions of this section, including the amendments prescribed by ~~this act~~ Chapter 320, O.S.L. 1997, shall be applicable to all actions which are filed in the district courts on or after January 1, 2000, but before January 1, 2005, for which an award of prejudgment interest is authorized by the provisions of this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 727.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

POSTJUDGMENT INTEREST

A. 1. Except as otherwise provided by this section, all judgments of courts of record, including costs and attorney fees authorized by statute or otherwise and allowed by the court, shall bear interest at a rate prescribed pursuant to this section.

2. Costs and attorney fees allowed by the court shall bear interest from the earlier of the date the judgment or order is pronounced, if expressly stated in the written judgment or order awarding the costs and attorney fees, or the date the judgment or order is filed with the court clerk.

B. Judgments, including costs and attorney fees authorized by statute or otherwise and allowed by the court, against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, shall bear interest during the term of judgment at a rate prescribed pursuant to this section from the date of rendition. No judgment against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, inclusive of postjudgment interest, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in

which the judgment was rendered, or until the judgment is paid, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each succeeding calendar year, or part of a calendar year, during which a judgment remains unpaid, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. A separate computation using the interest rate in effect for judgments as provided by subsection I of this section shall be made for each calendar year, or part of a calendar year, during which the judgment remains unpaid in order to determine the total amount of interest for which the judgment debtor is liable. The postjudgment interest rate for each calendar year or part of a calendar year a judgment remains unpaid shall be multiplied by the original amount of the judgment, including any prejudgment interest, together with postjudgment interest previously accrued. Interest shall accrue on a judgment in the manner prescribed by this subsection until the judgment is satisfied or released.

D. If a rate of interest is specified in a contract, the rate specified shall apply and be stated in the journal entry of judgment. The rate of interest shall not exceed the lawful rate for that obligation. Postjudgment interest shall be calculated and accrued in the same manner as prescribed in subsection C of this section.

#### PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section or Section 1-1708.1G of Title 63 of the Oklahoma Statutes, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering judgment shall add interest on the verdict at a rate prescribed pursuant to subsection I of this section from the date the suit resulting in the judgment was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is filed, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political

subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the rate prescribed pursuant to subsection I of this section from the date the suit was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date the judgment is rendered as expressly stated in the judgment, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to the Governmental Tort Claims Act.



G. If exemplary or punitive damages are awarded in an action for personal injury or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another, the interest on that award shall begin to accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk.

H. If a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest at a rate prescribed pursuant to subsection I of this section from the date the lien is filed to the date of verdict.

I. For purposes of computing either postjudgment interest or prejudgment interest as authorized by this section, interest shall be the prime rate, as listed in the first edition of the Wall Street Journal published for each calendar year and as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day following publication in January of each year, plus two percent (2%).

J. For purposes of computing postjudgment interest, the provisions of this section shall be applicable to all judgments of the district courts rendered on or after January 1, 2005. Effective January 1, 2005, the method for computing postjudgment interest prescribed by this section shall be applicable to all judgments remaining unpaid rendered prior to January 1, 2005.

K. For purposes of computing prejudgment interest, the provisions of this section shall be applicable to all actions which are filed in the district courts on or after January 1, 2005, for which an award of prejudgment interest is authorized by the provisions of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 832.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. A manufacturer shall indemnify and hold harmless a seller against loss arising out of a product liability action, except for any loss caused by the seller's negligence, intentional misconduct, or other act or omission, such as negligently modifying or altering the product, for which the seller is independently liable.

B. For purposes of this section, "loss" includes court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages.

C. Damages awarded by the trier of fact shall, on final judgment, be deemed reasonable for purposes of this section.

D. For purposes of this section, a wholesale distributor or retail seller who completely or partially assembles a product in accordance with the manufacturer's instructions shall be considered a seller.

E. The duty to indemnify under this section:

1. Applies without regard to the manner in which the action is concluded; and

2. Is in addition to any duty to indemnify established by law, contract, or otherwise.

F. A seller eligible for indemnification under this section shall give reasonable notice to the manufacturer of a product claimed in a petition or complaint to be defective, unless the manufacturer has been served as a party or otherwise has actual notice of the action.

G. A seller is entitled to recover from the manufacturer court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages incurred by the seller to enforce the seller's right to indemnification under this section.

H. Nothing contained in this section shall operate to permit or require dismissal of a party with a right of indemnification arising under this section and nothing in this section shall be used as a basis for dismissal of a plaintiff's claim against the seller.

SECTION 9. AMENDATORY 12 O.S. 2001, Section 990.4, is amended to read as follows:

Section 990.4 A. Except as provided in subsection C of this section, a party may obtain a stay of the enforcement of a judgment, decree or final order:

1. While a post-trial motion is pending;
2. During the time in which an appeal may be commenced; or
3. While an appeal is pending.

Such stay may be obtained by filing with the court clerk a written undertaking and the posting of a supersedeas bond or other security as provided in this section. In the undertaking the appellant shall agree to satisfy the judgment, decree or final order, and pay the costs and interest on appeal, if it is affirmed. The undertaking and supersedeas bond or security may be given at any time. The stay is effective when the bond and the sufficiency of the sureties are approved by the trial court or the security is deposited with the court clerk. The enforcement of the judgment, decree or order shall no longer be stayed, and the judgment, decree or order may be enforced against any surety on the bond or other security:

1. If neither a post-trial motion nor a petition in error is filed, and the time for appeal has expired;
2. If a post-trial motion is no longer pending, no petition in error has been filed, and the time for appeal has expired; or
3. If an appeal is no longer pending.

B. The amount of the bond or other security shall be as follows:

1. When the judgment, decree or final order is for payment of money:

- a. ~~The~~ the bond shall be double the amount of the judgment, decree or final order, unless the bond is executed or guaranteed by a surety as hereinafter provided. The bond shall be for the amount of the judgment, decree or order including costs and interest on appeal where it is executed or guaranteed by an entity with suretyship powers as provided by the laws of Oklahoma. On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post bond in the amount required by this paragraph, the court shall balance the likely substantial economic harm to the judgment debtor with the ability of the judgment creditor to collect the judgment in the event the judgment is affirmed on appeal and may lower the bond accordingly. "Substantial economic harm" means insolvency or creating a significant risk of insolvency. The court shall not lower a bond as provided in this paragraph to the extent there is in effect an insurance policy, or agreement under which a third party is liable to satisfy part or all of the judgment entered and such party is required to post all or part of the bond. Upon lowering the bond as provided in this paragraph, the court shall enter an order enjoining a judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the court shall not make any order that interferes with the judgment debtor's use of assets in the normal course of business, and
- b. ~~Instead~~ instead of filing a supersedeas bond, the appellant may obtain a stay by depositing cash with the court clerk in the amount of the judgment or order

plus an amount that the court determines will cover costs and interest on appeal. The court shall have discretion to accept United States Treasury notes or general obligation bonds of the State of Oklahoma in lieu of cash. If the court accepts such notes or bonds, it shall make appropriate orders for their safekeeping and maintenance during the stay;

2. When the judgment, decree or final order directs execution of a conveyance or other instrument, the amount of the bond shall be determined by the court. Instead of posting a supersedeas bond or other security, the appellant may execute the conveyance or other instrument and deliver it to the clerk of the court for deposit with a public or private entity for safekeeping, as directed by the court in writing;

3. When the judgment, decree or final order directs the delivery of possession of real or personal property, the bond shall be in an amount, to be determined by the court, that will protect the interests of the parties. The court may consider the value of the use of the property, any waste that may be committed on or to the property during the pendency of the stay, the value of the property, and all costs. When the judgment, decree or final order is for the sale of mortgaged premises and the payment of a deficiency arising from the sale, the bond must also provide for the payment of the deficiency;

4. When the judgment or final order directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment or order was rendered, for deposit with a public or private entity for safekeeping during the pendency of the stay, as directed by the court in writing, or the bond shall be in such sum as may be prescribed by the court; or

5. In order to protect any monies payable to the Tobacco Settlement Fund as set forth in Section 50 of Title 62 of the

Oklahoma Statutes, the bond in any action or litigation involving a tobacco product manufacturer that is a party to the Master Settlement Agreement dated November 23, 1998, or a party to the Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of interest and costs, or Twenty-five Million Dollars (\$25,000,000.00), whichever is less. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited pursuant to this paragraph is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion, including, but not limited to, requiring that a bond be posted equal to the full amount of security required pursuant to this section. For purposes of this paragraph, "Master Settlement Agreement" and "tobacco product manufacturer" shall have the same meanings as those terms are defined in paragraphs 5 and 9 of Section 600.22 of Title 37 of the Oklahoma Statutes, and "Smokeless Tobacco Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and leading United States smokeless tobacco product manufacturers.

C. Subsections A and B of this section shall not apply in actions involving temporary or permanent injunctions, actions for divorce, separate maintenance, annulment, paternity, custody, adoption, or termination of parental rights, or in juvenile matters, post-decree matrimonial proceedings or habeas corpus proceedings. The trial or appellate court, in its discretion, may stay the enforcement of any provision in a judgment, decree or final order in any of the types of actions or proceedings listed in this subsection during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers

proper for the security of the rights of the parties. If a temporary or permanent injunction is denied or dissolved, the trial or appellate court, in its discretion, may restore or grant an injunction during the pendency of the appeal and while any post-trial motions are pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

D. In any action not provided for in subsections A, B or C, the court may stay the enforcement of any judgment, decree or final order during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

E. The trial court shall have continuing jurisdiction during the pendency of any post-trial motion and appeal to modify any order it has entered regarding security or other conditions in connection with a stay.

F. The execution of a supersedeas bond shall not be a condition for the granting of a stay of judgment, decree or final order of any judicial tribunal against any county, municipality, or other political subdivision of the State of Oklahoma.

G. Executors, administrators and guardians who have given bond in this state, with sureties, according to law, are not required to provide a supersedeas bond if they are granted a stay of enforcement of a judgment, decree or final order.

H. After an appeal has been decided, but before the mandate has issued, a party whose trial court judgment has been affirmed, may move the appellate court to order judgment on the bond or other security in the amount of the judgment plus interest, appeals costs and allowable appeal-related ~~attorney's~~ attorney fees. After mandate has issued, a party who has posted a bond or other security may move for exoneration of the bond or other security only in the trial court; and all motions concerning the bond or other security must be addressed to the trial court.

SECTION 10. AMENDATORY 12 O.S. 2001, Section 2011, is amended to read as follows:

Section 2011.

#### SIGNING OF PLEADINGS

A. SIGNATURE. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in his individual name, whose Oklahoma Bar Association identification number shall be stated, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the address of the signer and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless the omission of the signature is corrected promptly after being called to the attention of the attorney or party.

B. REPRESENTATIONS TO COURT. By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

1. It is not being presented for any improper or frivolous purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

2. The claims, defenses and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

3. The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and



4. The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

C. SANCTIONS. If, after notice and a reasonable opportunity to respond, the court determines that subsection B of this section has been violated, the court shall, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subsection B of this section or are responsible for the violation.

1. HOW INITIATED.

- a. By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subsection B of this section. It shall be served as provided in Section 2005 of this title, but shall not be filed with or presented to the court unless, within twenty-one (21) days after service of the motion or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorneys fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.
- b. On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subsection B of this section and directing an attorney, law firm, or party

to show cause why it has not violated subsection B of this section with respect thereto.

2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for violation of this ~~rule~~ section shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs a ~~and~~, b and c of this paragraph, the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys fees and other expenses incurred as a direct result of the violation.

- a. Monetary sanctions shall not be awarded against a represented party for a violation of paragraph 2 of subsection B of this section.
- b. Monetary sanctions shall not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.
- c. Monetary sanctions shall be awarded for any violations of paragraph 1 of subsection B of this section. The sanctions shall consist of an order directing payment of reasonable costs, including attorney fees, incurred by the movant with respect to the conduct for which the sanctions are imposed. In addition, the court may impose any other sanctions authorized by this paragraph.

3. ORDER. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

D. INAPPLICABILITY TO DISCOVERY. This section does not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Sections 3226 through 3237 of this title.

E. DEFINITION. As used in this section, "frivolous" means the action or pleading was knowingly asserted in bad faith, was unsupported by any credible evidence, was not grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law.

SECTION 11. AMENDATORY 12 O.S. 2001, Section 2020, is amended to read as follows:

Section 2020.

PERMISSIVE JOINDER OF PARTIES

A. PERMISSIVE JOINDER.

1. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative:

- a. in respect of or arising out of the same transaction or occurrence, or
- b. if the claims arise out of a series of transactions or occurrences and any question of law or fact common to all these persons will arise in the action, or
- c. if the claims are connected with the subject matter of the action.

2. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative:

- a. any right to relief in respect of or arising out of the same transaction or occurrence, or

- b. if the claims arise out of a series of transactions or occurrences and any question of law or fact common to all defendants will arise in the action, or
- c. if the claims are connected with the subject matter of the action.

3. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

B. ACTIONS INVOLVING PROPERTY. In actions to quiet title or actions to enforce mortgages or other liens, persons who assert an interest in the property that is the subject of the action may be joined although their interest does not arise from the same transaction or occurrence. The court may order separate trials to prevent delay or prejudice.

C. SEPARATE TRIALS. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice. In determining whether to allow joinder under this section or to order separate trials, the court shall consider if in the interest of justice such action provides a fair and convenient forum for all parties.

SECTION 12. AMENDATORY 12 O.S. 2001, Section 2021, is amended to read as follows:

Section 2021.

#### MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed

and proceeded with separately. In determining whether to add or drop parties under this section, the court shall consider if in the interest of justice such action provides a fair and convenient forum for all parties.

SECTION 13. AMENDATORY 12 O.S. 2001, Section 3226, as amended by Section 73, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 3226), is amended to read as follows:

Section 3226. A. DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under this section, the frequency of use of these methods is not limited.

B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with the Oklahoma Discovery Code, the scope of discovery is as follows:

1. IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

2. TRIAL PREPARATION: MATERIALS. Subject to the provisions of paragraph 3 of this subsection, discovery may be obtained of documents and tangible things otherwise discoverable under paragraph

1 of this subsection and prepared in anticipation of litigation or for trial by or for another party or by or for the representative of that other party, including his attorney, consultant, surety, indemnitor, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable, without undue hardship, to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain, without the required showing provided for in this paragraph, a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

- a. A written statement signed or otherwise adopted or approved by the person making it, or
- b. A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which substantially recites an oral statement by the person making it and contemporaneously recorded.

3. TRIAL PREPARATION: EXPERTS.

- a. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph 1 of this subsection and acquired or

developed in anticipation of litigation or for trial, may be obtained only as follows:

- (1) A party may, through interrogatories, require any other party to identify each person whom that other party expects to call as an expert witness at trial and give the address at which that expert witness may be located.
- (2) After disclosure of the names and addresses of the expert witnesses, the other party expects to call as witnesses, the party, who has requested disclosure, may depose any such expert witnesses subject to scope of this section. Prior to taking the deposition the party must give notice as required in subsections A and C of Section 3230 of this title. If any documents are provided to such disclosed expert witnesses, the documents shall not be protected from disclosure by privilege or work product protection and they may be obtained through discovery.
- (3) In addition to taking the depositions of expert witnesses the party may, through interrogatories, require the party who expects to call the expert witnesses to state the subject matter on which each expert witness is expected to testify; the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; the qualifications of each expert witness, including a list of all publications authored by the expert witness within the preceding ten (10) years; the compensation to be paid to the expert witness for the testimony and preparation for the testimony;

and a listing of any other cases in which the expert witness has testified as an expert at trial or by deposition within the preceding four (4) years. An interrogatory seeking the information specified above shall be treated as a single interrogatory for purposes of the limitation on the number of interrogatories in Section 3233 of this title.

b. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon motion, when the court may order discovery as provided in Section 3235 of this title or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by any other means.

c. Unless manifest injustice would result:

(1) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under division (2) of subparagraph a of this paragraph and subparagraph b of this paragraph.

(2) The court shall require that the party seeking discovery with respect to discovery obtained under subparagraph b of this paragraph, pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

#### 4. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION

MATERIALS. When a party withholds information otherwise



discoverable under the Oklahoma Discovery Code by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

C. PROTECTIVE ORDERS.

1. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or on matters relating to a deposition, the district court in the county where the deposition is to be taken may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense, including one or more of the following:

- a. that the discovery not be had,
- b. that the discovery may be had only on specified terms and conditions, including a designation of the time or place,
- c. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery,
- d. that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters,
- e. that discovery be conducted with no one present except persons designated by the court,

- f. that a deposition after being sealed be opened only by order of the court,
- g. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way, and
- h. that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

2. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion. Any protective order of the court which has the effect of removing any material obtained by discovery from the public record shall contain the following:

- a. a statement that the court has determined it is necessary in the interests of justice to remove the material from the public record,
- b. specific identification of the material which is to be removed or withdrawn from the public record, or which is to be filed but not placed in the public record, and
- c. a requirement that any party obtaining a protective order place the protected material in a sealed manila envelope clearly marked with the caption and case number and is clearly marked with the word "CONFIDENTIAL", and stating the date the order was entered and the name of the judge entering the order;

3. No protective order entered after the filing and microfilming of documents of any kind shall be construed to require the microfilm record of such filing to be amended in any fashion;

4. The party or counsel which has received the protective order shall be responsible for promptly presenting the order to appropriate court clerk personnel for appropriate action;

5. All documents produced or testimony given under a protective order shall be retained in the office of counsel until required by the court to be filed in the case;

6. Counsel for the respective parties shall be responsible for informing witnesses, as necessary, of the contents of the protective order; and

7. When a case is filed in which a party intends to seek a protective order removing material from the public record, the plaintiff(s) and defendant(s) shall be initially designated on the petition under pseudonym such as "John or Jane Doe", or "Roe", and the petition shall clearly indicate that the party designations are fictitious. The party seeking confidentiality or other order removing the case, in whole or in part, from the public record, shall immediately present application to the court, seeking instructions for the conduct of the case, including confidentiality of the records.

D. SEQUENCE AND TIMING OF DISCOVERY. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence. The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay discovery by any other party.

E. SUPPLEMENTATION OF RESPONSES. A party who has responded to a request for discovery with a response that was complete when it was made is under no duty to supplement the response to include information thereafter acquired, except as follows:

1. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

- a. the identity and location of persons having knowledge of discoverable matters, and
- b. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the testimony of the person.

2. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party obtains information upon the basis of which:

- a. (i) the party knows that the response was incorrect in some material respect when made, or  
(ii) the party knows that the response, which was correct when made, is no longer true in some material respect; and
- b. the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

3. A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

F. DISCOVERY CONFERENCE. At any time after commencement of an action, the court may direct the attorneys for the parties to appear for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

1. A statement of the issues as they then appear;
2. A proposed plan and schedule of discovery;
3. Any limitations proposed to be placed on discovery;
4. Any other proposed orders with respect to discovery; and
5. A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than ten (10) days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. In preparing the plan for discovery the court shall protect the parties from excessive or abusive use of discovery. An order shall be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference.

G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS.

Every request for discovery, response or objection thereto made by a party represented by an attorney shall be signed by at least one of his attorneys of record in his individual name whose address shall be stated. A party who is not represented by an attorney shall sign the request, response or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response or objection, and that it is:

1. To the best of his knowledge, information and belief formed after a reasonable inquiry consistent with the Oklahoma Discovery Code and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

2. Interposed in good faith and not primarily to cause delay or for any other improper purpose; and

3. Not unreasonable or unduly burdensome or expensive, given the nature and complexity of the case, the discovery already had in the case, the amount in controversy, and other values at stake in the litigation. If a request, response or objection is not signed, it shall be deemed ineffective.

If a certification is made in violation of the provisions of this subsection, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response or objection is made, or both, an appropriate sanction, which may include an order to pay to the amount of the reasonable expenses occasioned thereby, including a reasonable attorney fee.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3226.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. ABUSIVE DISCOVERY. In addition to the protective orders that a court may issue pursuant to paragraph 1 of subsection C of Section 3226 of Title 12 of the Oklahoma Statutes, a protective order may be issued by the court authorizing or denying discovery in the court in which the action is pending. A protective order may also be authorized on matters relating to a deposition. The order may be issued upon a motion by a party or the person from whom discovery is sought. The motion shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action. Upon receipt by the court of the motion and certification, the court may enter the protective order authorizing or denying the discovery upon a finding that justice requires a party or person be

protected from annoyance, harassment, embarrassment, oppression or undue delay, burden, or expense.

B. AWARD OF EXPENSES OF MOTION. If the motion is granted, the court may, after opportunity for hearing, require the party or person whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court may, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 81 of Title 20, unless there is created a duplication in numbering, reads as follows:

A. At the discretion of the Supreme Court, the Court may create a Judicial Panel on Multidistrict Litigation. The panel may consist of five (5) active judges selected by the Chief Justice of the Supreme Court. The judges may be either judges of the district court or appellate judges. The members of the panel shall serve at the pleasure of the Chief Justice.

B. If there exist a sufficient number of cases to justify consolidation and if the cases are at a comparable stage in the litigation, the Judicial Panel on Multidistrict Litigation may

transfer civil actions involving one or more common questions of fact pending in the same or different district courts to any district court for consolidated or coordinated proceedings, giving due weight, consideration and preference to the district court wherein the first civil action was filed.

C. If the Judicial Panel on Multidistrict Litigation finds that the civil actions are not at comparable stages in the litigation, the Panel may stay one or more of the actions pending resolution of the common questions of fact in one of the other actions, giving due weight, consideration and preference to the first civil action filed and the action which has reached the furthest stage of litigation.

D. Nothing in this section shall expand the existing law as to the binding effect of a court's rulings in one of the actions to the other actions prior to the date of consolidation or as to any case that is stayed by the Panel.

E. A transfer or stay may be made by the Judicial Panel on Multidistrict Litigation if the panel determines that the transfer or stay shall:

1. Be for the convenience of the parties and witnesses; and
2. Promote the just and efficient conduct of actions giving due weight and consideration to binding or nonbinding effects of prior and future court rulings on the parties to the cases to be consolidated or stayed.

F. A transfer or stay may be for the remainder of an action or for any particular stage of an action.

G. A judge who is qualified and authorized by law to preside in the court to which an action is transferred pursuant to this section may preside over the transferred action as if the transferred action were originally filed in that court.

H. The Supreme Court shall promulgate rules for the implementation of this section.



SECTION 16. AMENDATORY 20 O.S. 2001, Section 91.2, is amended to read as follows:

Section 91.2 A. To facilitate the trial and disposition of cases, actions filed in the district court shall be assigned to various dockets by the clerk of the court pursuant to the direction and supervision of the presiding judge of the district. Until changed by order of the Supreme Court, only the following dockets are established: a civil docket, a criminal docket, a traffic docket, a probate docket, a juvenile and family relations docket, ~~and a small claims docket,~~ and a business docket for business court divisions of the court created pursuant to Section 17 of this act.

B. Whenever a district court establishes a drug court program pursuant to the provisions of Sections ~~± 471~~ through ~~± 471.11~~ of ~~this act~~ Title 22 of the Oklahoma Statutes, the judge having authority over the program shall cause to be established a drug court docket. In those cases assigned to the drug court docket, the judge shall determine what information or pleadings are to be maintained in a confidential case file which shall be closed to public inspection. The originating criminal case file shall remain open to public inspection. Nothing in this section shall prohibit the district attorney, defense attorney, or the victim-witness coordinator from advising any victim or other person regarding the assignment or disposition of a drug court case.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 91.7 of Title 20, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Legislature finds that, due to the complex nature of litigation involving highly technical commercial issues, there is a need for a court in Oklahoma's most populated counties with specific jurisdiction over actions involving such commercial issues.

B. The Supreme Court is authorized to create a business court division within the district court of any judicial district containing a municipality with a population in excess of three hundred thousand (300,000), according to the latest Federal Decennial Census.

C. The Supreme Court shall promulgate rules for the establishment and jurisdiction of the business court divisions.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 15 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsections B and C of this section, in any civil action based on fault and not arising out of contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor.

B. A defendant shall be jointly and severally liable for the damages recoverable by the plaintiff if the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than fifty percent (50%).

C. If at the time the incident which gave rise to the cause of action occurred, any joint tortfeasors acted with willful and wanton conduct or with reckless disregard of the consequences of the conduct and such conduct proximately caused the damages legally recoverable by the plaintiff, the liability for damages shall be joint and several.

D. This section shall not apply to actions brought by the state or a political subdivision of the state or any action in which no comparative negligence is found to be attributable to the plaintiff.

E. The provisions of this section shall apply to all civil actions based on fault and not arising out of contract that accrue on or after November 1, 2004.

SECTION 19. AMENDATORY 51 O.S. 2001, Section 152, as last amended by Section 1 of Enrolled House Bill No. 2263 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 152. As used in The Governmental Tort Claims Act:

1. "Action" means a proceeding in a court of competent jurisdiction by which one party brings a suit against another;
2. "Agency" means any board, commission, committee, department or other instrumentality or entity designated to act in behalf of the state or a political subdivision;
3. "Claim" means any written demand presented by a claimant or the claimant's authorized representative in accordance with this act to recover money from the state or political subdivision as compensation for an act or omission of a political subdivision or the state or an employee;
4. "Claimant" means the person or the person's authorized representative who files notice of a claim in accordance with The Governmental Tort Claims Act. Only the following persons and no others may be claimants:
  - a. any person holding an interest in real or personal property which suffers a loss, provided that the claim of the person shall be aggregated with claims of all other persons holding an interest in the property and the claims of all other persons which are derivative of the loss, and that multiple claimants shall be considered a single claimant,
  - b. the individual actually involved in the accident or occurrence who suffers a loss, provided that the individual shall aggregate in the claim the losses of all other persons which are derivative of the loss, or
  - c. in the case of death, an administrator, special administrator or a personal representative who shall

aggregate in the claim all losses of all persons which are derivative of the death;

5. "Employee" means any person who is authorized to act in behalf of a political subdivision or the state whether that person is acting on a permanent or temporary basis, with or without being compensated or on a full-time or part-time basis.

a. Employee also includes:

- (1) all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor, ~~and~~
- (2) from September 1, 1991, through June 30, 1996, licensed physicians, licensed osteopathic physicians and certified nurse-midwives providing prenatal, delivery or infant care services to State Department of Health clients pursuant to a contract entered into with the State Department of Health in accordance with paragraph 3 of subsection B of Section 1-106 of Title 63 of the Oklahoma Statutes but only insofar as services authorized by and in conformity with the terms of the contract and the requirements of Section 1-233 of Title 63 of the Oklahoma Statutes, and
- (3) any volunteer, full-time or part-time firefighter when performing duties for a fire department provided for in subparagraph j of paragraph 8 of this section.

b. For the purpose of The Governmental Tort Claims Act, the following are employees of this state, regardless

of the place in this state where duties as employees are performed:

- (1) physicians acting in an administrative capacity,
- (2) resident physicians and resident interns participating in a graduate medical education program of the University of Oklahoma Health Sciences Center or the College of Osteopathic Medicine of Oklahoma State University,
- (3) faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University, while engaged in teaching duties,
- (4) physicians who practice medicine or act in an administrative capacity as an employee of an agency of the State of Oklahoma, and
- (5) physicians who provide medical care to inmates pursuant to a contract with the Department of Corrections.

Physician faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University not acting in an administrative capacity or engaged in teaching duties are not employees or agents of the state.

- c. Except as provided in subparagraph (b) of paragraph 5 of this section, in no event shall the state be held liable for the tortious conduct of any physician, resident physician or intern while practicing medicine or providing medical treatment to patients;

6. "Loss" means death or injury to the body or rights of a person or damage to real or personal property or rights therein;

7. "Municipality" means any incorporated city or town, and all institutions, agencies or instrumentalities of a municipality;

8. "Political subdivision" means:

- a. a municipality,
- b. a school district,
- c. a county,
- d. a public trust where the sole beneficiary or beneficiaries are a city, town, school district or county. For purposes of The Governmental Tort Claims Act, a public trust shall include a municipal hospital created pursuant to Section 30-101 et seq. of Title 11 of the Oklahoma Statutes, a county hospital created pursuant to Section 781 et seq. of Title 19 of the Oklahoma Statutes, or is created pursuant to a joint agreement between such governing authorities, that is operated for the public benefit by a public trust created pursuant to Section 176 et seq. of Title 60 of the Oklahoma Statutes and managed by a governing board appointed or elected by the municipality, county, or both, who exercises control of the hospital, subject to the approval of the governing body of the municipality, county, or both,
- e. for the purposes of The Governmental Tort Claims Act only, a housing authority created pursuant to the provisions of the Oklahoma Housing Authority Act,
- f. for the purposes of The Governmental Tort Claims Act only, corporations organized not for profit pursuant to the provisions of the Oklahoma General Corporation Act for the primary purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents,

- g. for the purposes of The Governmental Tort Claims Act only, districts formed pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act,
- h. for the purposes of The Governmental Tort Claims Act only, master conservancy districts formed pursuant to the Conservancy Act of Oklahoma,
- i. for the purposes of The Governmental Tort Claims Act only, a fire protection district created pursuant to the provisions of Section 901.1 et seq. of Title 19 of the Oklahoma Statutes,
- j. for the purposes of The Governmental Tort Claims Act only, a benevolent or charitable corporate volunteer or full-time fire department for an unincorporated area created pursuant to the provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,
- k. for purposes of The Governmental Tort Claims Act only, an Emergency Services Provider rendering services within the boundaries of a Supplemental Emergency Services District pursuant to an existing contract between the Emergency Services Provider and the Oklahoma State Department of Health. Provided, however, that the acquisition of commercial liability insurance covering the activities of such Emergency Services Provider performed within the State of Oklahoma shall not operate as a waiver of any of the limitations, immunities or defenses provided for political subdivisions pursuant to the terms of The Governmental Tort Claims Act,
- l. for purposes of The Governmental Tort Claims Act only, a conservation district created pursuant to the provisions of the Conservation District Act,

- m. for purposes of The Governmental Tort Claims Act, districts formed pursuant to the Oklahoma Irrigation District Act,
- n. for purposes of The Governmental Tort Claims Act only, any community action agency established pursuant to Sections 5035 through 5040 of Title 74 of the Oklahoma Statutes, and
- o. for purposes of The Governmental Tort Claims Act only, any organization that is designated as a youth services agency, pursuant to Section 7302-3.6a of Title 10 of the Oklahoma Statutes,

and all their institutions, instrumentalities or agencies;

9. "Scope of employment" means performance by an employee acting in good faith within the duties of the employee's office or employment or of tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee, but shall not include corruption or fraud;

10. "State" means the State of Oklahoma or any office, department, agency, authority, commission, board, institution, hospital, college, university, public trust created pursuant to Title 60 of the Oklahoma Statutes of which the State of Oklahoma is the beneficiary, or other instrumentality thereof; and

11. "Tort" means a legal wrong, independent of contract, involving violation of a duty imposed by general law or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment.

SECTION 20. AMENDATORY Section 1, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1708.1A), is amended to read as follows:



Section 1-1708.1A Sections ~~±~~ 1-1708.1A through ~~7~~ 1-1708.1G of this title and Sections 22, 23 and 24 of this act shall be known and may be cited as the "Affordable Access to Health Care Act".

SECTION 21. AMENDATORY Section 6, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1708.1F), is amended to read as follows:

Section 1-1708.1F A. Except as provided in subsection B of this section, in any medical liability action in which the health care services at issue were provided for:

1. Pregnancy or labor and delivery, including the immediate post-partum period; or

2. Emergency care in the emergency room of a hospital or as follow-up to the emergency care services provided in the emergency room;

the amount of noneconomic damages awarded shall not exceed Three Hundred Thousand Dollars (\$300,000.00), regardless of the number of parties against whom the action is brought or the number of actions brought with respect to the personal injury.

B. Where the judge finds by clear and convincing evidence that the defendant committed negligence in one of the types of cases enumerated in subsection A of this section, the court shall articulate its findings into the record out of the presence of the jury and shall lift the noneconomic damage cap.

C. Nothing in this section shall apply to any nursing facility or nursing home licensed pursuant to Section 1-1903 of ~~Title 63 of the Oklahoma Statutes~~ this title or the owners, operators, officers, agents or employees of such entities.

D. Nothing in this section shall apply to a medical liability action brought for wrongful death.

E. This section of law shall terminate on ~~July 1, 2008~~ November 1, 2010.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1F-1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B or D of this section, in any medical liability action not provided for in Section 1-1708.1F of Title 63 of the Oklahoma Statutes, the amount of noneconomic damages awarded shall not exceed the hard cap amount of Three Hundred Thousand Dollars (\$300,000.00), regardless of the number of actions brought with respect to the personal injury, provided:

1. The defendant has made an offer of judgment pursuant to Section 1101.1 of Title 12 of the Oklahoma Statutes; and

2. The amount of the verdict awarded to the plaintiff is less than one and one-half (1 1/2) times the amount of the final offer of judgment.

B. The dollar amount prescribed by subsection A of this section shall be adjusted annually based upon any positive increase in the Consumer Price Index that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone (CPI-W) for the preceding calendar year. The adjustment required by this subsection shall be made on April 1 of each year or not later than thirty (30) days after the date upon which the Bureau of Labor Statistics releases the CPI-W inflationary data for the preceding calendar year, whichever date first occurs. No adjustment to the dollar amount prescribed by this section shall be made for any year in which there is a decline in the Consumer Price Index.

C. As used in this section, "noneconomic damages" means only mental pain and suffering, inconvenience, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation; provided, however, noneconomic damages do not include exemplary damages, as provided for in Section 9.1 of Title 23 of the Oklahoma Statutes.

D. If nine or more members of the jury find by clear and convincing evidence that the defendant committed negligence or if nine or more members of the jury find by a preponderance of the evidence that the conduct of the defendant was willful or wanton, the limits on noneconomic damages provided for in subsection A of this section shall not apply; provided, however, the judge must, before submitting such determination to the jury, make a threshold determination that there is evidence from which the jury could reasonably make the findings set forth in the case.

E. If the jury returns a verdict that is greater than Three Hundred Thousand Dollars (\$300,000.00) and is less than one and one-half (1 1/2) times the amount of the final offer of judgment, the court shall submit to the jury an additional form of verdict. The additional form of verdict shall be substantially as follows:

"1. Do you find by a preponderance of the evidence that the conduct of the defendant was willful or wanton? If nine or more of you answer in the affirmative, then return this verdict form in open court. If less than nine of you answer in the affirmative, then answer the following question.

2. Do you find by clear and convincing evidence that the defendant was negligent? If this question is answered affirmatively, then return this verdict form in open court. If less than nine of you find negligence by clear and convincing evidence, then answer the following question.

3. Of the amount returned in the verdict, what amount of your verdict is for economic damages and what amount is for noneconomic damages?"

F. Nothing in this section shall apply to an action brought for wrongful death.

G. The provisions of this section shall apply only to actions that accrue on or after November 1, 2004.

H. This section of law shall terminate on November 1, 2010.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1H of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In any medical liability action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the plaintiff, a relative of the plaintiff, or a representative of the plaintiff and which relate solely to discomfort, pain, suffering, injury, or death as the result of the unanticipated outcome of the medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

B. For purposes of this section, unless context otherwise requires, "relative" means a spouse, parent, grandparent, stepfather, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents. The term includes said relationships that are created as a result of adoption. "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a durable power of attorney or health care proxy, or any person recognized in law or custom as an agent for the plaintiff.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1I of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The court shall apply the criteria specified in subsection B of this section in determining whether an expert is qualified to offer expert testimony on the issue of whether the defendant health care provider departed from accepted standards of health care but may depart from those criteria if, under the circumstances, the court determines that there is good reason to admit the expert's

testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

B. In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness:

1. Is licensed to practice medicine or has other substantial training or experience, in any area of health care relevant to the claim; and

2. Is actively practicing or retired from practicing health care in any area of health care services relevant to the claim.

C. This section shall not prevent a health care provider who is a defendant, or an employee of the defendant health care provider, from qualifying as an expert.

SECTION 25. AMENDATORY 2 O.S. 2001, Section 16-71, is amended to read as follows:

Section 16-71. A. 1. The purpose of this section is to encourage landowners ~~and lessees~~ to make ~~available~~ land, ~~water areas, park areas and lake reservations~~ available to the public for outdoor recreational purposes by limiting their liability to persons ~~going~~ entering upon and using such land and to third persons who may be damaged by the acts or omissions of persons going upon these lands.

2. As used in this section, ~~the term "area" includes any water area and any park area. As used in this section, the term "land" includes but is not limited to lake reservations:~~

- a. "land" means real property, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty. The term "land" shall not include any land that is used primarily for farming or ranching activities or to any roads, water, watercourses, private ways, buildings,

structures, and machinery or equipment when attached to realty which is used primarily for farming or ranching activities,

- b. "outdoor recreational purposes" includes any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, jogging, cycling, other sporting events and activities, nature study, water skiing, jet skiing, winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites,
- c. "owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the land, and
- d. "charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land. The term "charge" shall not include a license or permit fee imposed by a governmental entity for the purpose of regulating the use of land, a water or park area, or lake reservation and shall not include hunting, fishing, boating, and other license and permit fees.

B. 1. ~~An owner or lessee who provides the public with land, a water or park area, or lake reservation for outdoor recreational purposes owes no duty of care to keep the land or area safe for entry or use by others, or to give warning to persons entering or going on using the land or area of any hazardous conditions, structures, or activities. An~~

C. 1. Except as otherwise provided by this section, an owner or lessee who provides the public with land or area for outdoor recreational purposes shall not:

- a. be presumed to extend any assurance that the land ~~or area~~ is safe for any purpose,
- b. incur any duty of care toward a person who ~~goes on~~ enters or uses the land ~~or area~~, or
- c. ~~become liable~~ assume any liability or ~~responsible~~ responsibility for any injury to persons or property caused by the act or omission of a person who ~~goes on~~ enters or uses the land ~~or area~~.

2. This subsection applies whether the person ~~going on~~ entering or using the land ~~or area~~ is an invitee, licensee, trespasser, or otherwise, ~~notwithstanding any other section of law.~~

~~C.~~ D. This section shall not apply if ~~there is any:~~

1. Any charge is made or is usually made for entering or using any part of the land ~~or area~~, ; or ~~if any~~

2. Any commercial or other activity for profit directly related to the use is conducted on any part of the land ~~or area~~. ~~As used in this subsection, the term "charge" shall mean the admission price or fee asked in return for invitation or permission to enter or go upon the land or area. As used in this subsection, the term "charge" shall not include a license or permit fee imposed by a governmental entity for the purpose of regulating the use of land, a water or park area, or lake reservation and shall not include hunting, fishing, boating, and other license and permit fees.~~

~~D.~~ E. 1. An owner of land, ~~a water or park area, or lake reservation~~ leased to the state or to other public entity for outdoor recreational purposes owes no duty of care to keep the land ~~or area~~ safe for entry or use by others, or to give warning to persons entering or ~~going on~~ using the land ~~or area~~ of any hazardous conditions, structures, or activities. Any owner ~~or lessee~~ who leases or subleases land, ~~a water or park area, or lake reservation~~ to the state or other public entity for outdoor recreational purposes shall not:

- a. be presumed to extend any assurance that the land ~~or~~ area is safe for any purpose,
- b. incur any duty of care toward a person who ~~goes on~~ enters or uses the leased land ~~or area~~, or
- c. become liable or responsible for any injury to persons or property caused by the act or omission of a person who ~~goes on~~ enters or uses the leased land ~~or area~~.

2. This subsection applies whether the person ~~going on~~ entering or using the leased land ~~or area~~ is an invitee, licensee, trespasser, or otherwise, notwithstanding any other section of law.

~~E.~~ F. 1. Except as provided in this section, no person is relieved of liability which would exist for want of ordinary care or for deliberate, willful, or malicious injury to persons or property. The provisions shall not create or increase the liability of any person.

2. This section shall not relieve any owner ~~or lessee~~ of any liability for the operation and maintenance of structures affixed to real property by the owner ~~or lessee~~ for use by the general public.

~~F.~~ ~~The term "outdoor recreational purposes" as used in this section includes, but is not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, jogging, cycling, other sporting events and activities, nature study, water skiing, jet skiing, and visiting historical, archaeological, scenic, or scientific sites.~~

G. By entering or using land, ~~a water or park area, or lake reservation~~ no person shall be deemed to be acting as an employee or agent of the owner ~~or lessee~~ whether the entry or use is with or without the knowledge or consent of the owner ~~or lessee~~.

H. The provisions of this section shall not apply to any land that is used primarily for farming or ranching activities or to roads, water, watercourses, private ways, buildings, structures, and



machinery or equipment when attached to realty which is used primarily for farming or ranching activities.

Sections 26 through 32 of this act shall govern such land.

SECTION 26. AMENDATORY 76 O.S. 2001, Section 10, is amended to read as follows:

Section 10. A. Sections 26 through 32 of this act shall be known and may be cited as the "Oklahoma Limitation of Liability for Farming and Ranching Land Act".

B. 1. The purpose of the Oklahoma Limitation of Liability for Farming and Ranching Land Act is to encourage owners of farming and ranching lands to make such land available for recreational purposes by limiting their liability to persons entering or using the farm and ranch land and to third persons who may be damaged by the acts or omissions of persons entering upon or using these lands.

2. The Oklahoma Limitation of Liability for Farming and Ranching Land Act applies only to an owner of land who does not charge more than Ten Dollars (\$10.00) per acre per year for that land used for recreational purposes.

C. As used in ~~this act~~ the Oklahoma Limitation of Liability for Farming and Ranching Land Act:

~~(a)~~ 1. "Land" means land which is used primarily for farming or, ranching activities and recreational purposes, as defined in this section, including, but not limited to, roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment when attached to realty which is used primarily for farming or ranching activities;

~~(b)~~ 2. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises; but shall not include a tenant, lessee, occupant or person in control of the premises who is engaging in any recreational purpose described in paragraph 3 of this subsection;

~~(c)~~ 3. "Recreational purpose" includes, ~~but is not limited to,~~ any of the following, or any combination thereof: hunting, fishing, wildlife and ecological viewing or photography, recreational farming and ranching activities swimming, boating, camping, picnicking, hiking, pleasure driving, jogging, cycling, other similar events and activities, nature study, water skiing, winter sports, jet skiing, and viewing or enjoying historical, archaeological, scenic, or scientific sites; and

~~(d)~~ 4. "Charge" means the admission price or fee asked in return for invitation or permission to enter or ~~go upon~~ use the land.

D. The Oklahoma Limitation of Liability for Farming and Ranching Land Act shall not apply to any land that is used for purposes other than farming and ranching. Such land shall be governed by Section 25 of this act.

SECTION 27. AMENDATORY 76 O.S. 2001, Section 11, is amended to read as follows:

Section 11. Except as specifically recognized by or provided in Section ~~5~~ 30 of this act, an owner ~~of~~ who provides the public with land for recreational purposes which is used primarily for farming or ranching activities owes no duty of care to keep the ~~premises~~ land safe for entry or use by others for recreational purposes, or to give any warning of a dangerous or hazardous condition, use, structure, or activity on such ~~premises~~ land to persons entering or using the land for such purposes.

SECTION 28. AMENDATORY 76 O.S. 2001, Section 12, is amended to read as follows:

Section 12. A. Except as specifically recognized by or provided in Section ~~5~~ 30 of this act, an owner of land which is used primarily for farming or ranching activities, who either directly or indirectly invites or permits ~~without charge,~~ under the circumstance described in subsection B of Section 26 of this act, any person to

enter or use such property land for recreational purposes, does not thereby:

~~(a) 1. Extend any assurance that the premises are safe for any purpose;~~

~~(b) Confer upon such person the legal status of an invitee or licensee.~~ 2. Incur any duty of care toward a person who enters or uses the land; or

~~(c) 3. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.~~

B. This section applies whether the person entering, or using the land is an invitee, licensee, or otherwise.

C. This section does not affect the liability of an insurer or insurance plan in an action under the Insurance Code, or an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.

D. This section shall not apply to the state or other governmental unit.

SECTION 29. AMENDATORY 76 O.S. 2001, Section 13, is amended to read as follows:

Section 13. Unless otherwise agreed in writing, the provisions of Sections ~~11~~ 27 and ~~12~~ 28 of this ~~title act~~ shall be deemed applicable to the duties and liability of an owner of land which is used ~~by the owner~~ primarily for farming or ranching activities, is on or adjoins land entered upon the National Register of Historic Places and for which an easement has been granted to the Oklahoma Historical Society, or is leased to the state or any subdivision thereof for recreational purposes.

SECTION 30. AMENDATORY 76 O.S. 2001, Section 14, is amended to read as follows:

Section 14. A. Nothing in ~~this act~~ the Oklahoma Limitation of Liability for Farming and Ranching Land Act limits in any way any liability which otherwise exists:

~~(a) For~~ for want of ordinary care or for deliberate, willful, or malicious injury or failure to guard or warn against a dangerous or hazardous condition, use, structure, or activity.

~~(b) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in B.~~ In the case of land leased to the state or subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

SECTION 31. AMENDATORY 76 O.S. 2001, Section 15, is amended to read as follows:

Section 15. A. Nothing in ~~this act~~ the Oklahoma Limitation of Liability for Farming and Ranching Land Act shall be construed to:

~~(a) 1.~~ 1. Create a duty of care or ground of liability for injury to persons or property; or

~~(b) 2.~~ 2. Relieve any person entering or using the land of another for recreational purposes from any obligation which ~~he~~ such person may have in the absence of ~~this act~~ the Oklahoma Limitation of Liability for Farming and Ranching Land Act to exercise care in ~~his~~ the use of such land and in ~~his~~ the activities thereon, or from the legal consequences of failure to employ such care.

B. 1. No person who has executed a written release of liability or a waiver to sue may maintain an action against or recover damages from a land owner in contravention of the release or waiver for any personal injury or injury to property. The terms of the executed release or waiver shall be binding upon the person signing the document. The provisions of this subsection shall apply regardless of the amount charged per acre for a recreational activity.

2. A release or waiver executed pursuant to this subsection shall not limit the liability of a land owner for willful or wanton acts of negligence or gross negligence.

SECTION 32. AMENDATORY 76 O.S. 2001, Section 15.1, is amended to read as follows:

Section 15.1 A. An owner, lessee, or other occupant of agricultural land:

1. Does not owe a duty of care to a trespasser on the land; and
2. Is not liable for any injury to a trespasser, except for willful or wanton acts of negligence or gross negligence by the owner, lessee, or other occupant of the land.

B. Agricultural land is defined as any real property that is used in production of plants, fruits, wood, or farm or ranch animals to be sold off the premises.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16.1 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. An owner, lessee or occupant of real property or any structures or improvements thereto owes no duty of care to keep the premises safe for entry or use by others or to give any warning of a dangerous condition, use, structure or activity if the entry or use by another person is unauthorized or is for the purpose of committing a criminal act.

B. The provisions of subsection A of this section provide immunity from civil liability for simple negligence but do not provide immunity for willful, wanton or malicious acts of negligence or for gross negligence.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 32 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. This section shall be known and may be cited as the "Volunteer Medical Professional Services Immunity Act".

B. Any volunteer medical professional shall be immune from liability in a civil action on the basis of any act or omission of the volunteer medical professional resulting in damage or injury if:

1. The volunteer medical professional services were provided at a free clinic where neither the professional nor the clinic receives any kind of compensation for any treatment provided at the clinic;

2. The volunteer medical professional was acting in good faith and, if licensed, the services provided were within the scope of the license of the volunteer medical professional;

3. The volunteer medical professional commits the act or omission in the course of providing professional services;

4. The damage or injury was not caused by gross negligence or willful and wanton misconduct by the volunteer medical professional; and

5. Before the volunteer medical professional provides professional medical services, the volunteer medical professional and the person receiving the services or, if that person is a minor or otherwise legally incapacitated, the person's parent, conservator, legal guardian, or other person with legal responsibility for the care of the person signs a written statement that acknowledges:

a. that the volunteer medical professional providing professional medical services has no expectation of and will receive no compensation of any kind for providing the professional medical services, and

b. an understanding of the limitations on the recovery of damages from the volunteer medical professional in exchange for receiving free professional medical services.

C. In the event the volunteer medical professional refers the patient covered by this section to another volunteer medical professional for additional treatment, the referred volunteer

medical professional shall be subject to the provisions of this section if:

1. The referred volunteer medical professional provides services without receiving any compensation for the treatment;

2. The referred volunteer medical professional was acting in good faith and, if licensed, the services provided were within the scope of the license of the referred volunteer medical professional;

3. The referred volunteer medical professional commits the act or omission in the course of providing professional services;

4. The damage or injury was not caused by gross negligence or willful and wanton misconduct by the referred volunteer medical professional; and

5. Before the referred volunteer medical professional provides professional services, the referred volunteer medical professional and the person receiving the services or, if that person is a minor or otherwise legally incapacitated, the person's parent, conservator, legal guardian, or other person with legal responsibility for the care of the person signs a written statement that acknowledges:

- a. that the referred volunteer medical professional providing professional medical services has no expectation of and will receive no compensation of any kind for providing the professional medical services, and
- b. an understanding of the limitations on the recovery of damages from the volunteer medical professional in exchange for receiving free professional medical services.

D. The provisions of this section shall not affect the liability that any person may have which arises from the operation of a motor vehicle, watercraft, or aircraft in rendering the

service, care, assistance, advice or other benefit as a volunteer medical professional.

E. The immunity from civil liability provided by this section shall extend only to the actions taken by a person rendering the service, care, assistance, advice or other benefit as a volunteer medical professional, and does not confer any immunity to any person for actions taken by the volunteer medical professional prior to or after the rendering of the service, care, assistance, advice or other benefit as a volunteer medical professional.

F. For the purpose of this section, the term "volunteer medical professional" and "referred volunteer medical professional" means a person who voluntarily provides professional medical services without compensation or expectation compensation of any kind. A volunteer medical professional or a referred volunteer medical professional shall include the following licensed professionals:

1. Physician;
2. Physician's assistant;
3. Registered nurse;
4. Advanced nurse practitioner or vocational nurse;
5. Pharmacist;
6. Podiatrist;
7. Dentist or dental hygienist; or
8. Optometrist.

A volunteer medical professional shall be engaged in the active practice of a medical professional or retired from a medical profession, if still eligible to provide medical professional services within this state.

G. Any person participating in a Medical Reserve Corps and assisting with emergency management, emergency operations, or hazard mitigation in response to any emergency, man-made disaster, or natural disaster, or participating in public health initiatives endorsed by a city, county or state health department in the State



of Oklahoma, shall not be liable for civil damages on the basis of any act or omission, if:

1. The person was acting in good faith and within the scope of the official duties and functions of the Medical Reserve Corps; and

2. The acts or omissions were not caused from gross, willful, or wanton acts of negligence.

H. This section shall apply to all civil actions filed on or after November 1, 2004.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.1 of Title 5, unless there is created a duplication in numbering, reads as follows:

Sections 35 through 53 of this act shall be known and may be cited as the "Registration of Out-of-State Attorneys Act".

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.2 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. The Registration of Out-of-State Attorneys Act applies to:

1. All actions or proceedings pending before a court in this state;

2. All actions or proceedings pending before an administrative agency or governmental body in this state, unless that agency or governmental body provides otherwise;

3. All arbitration, mediation, or alternative dispute resolution procedures in this state that are court annexed or court ordered, or that are mandated by statute or administrative rule; and

4. All services incident to any of these proceedings including, but not limited to, discovery and settlement negotiations.

B. The Registration of Out-of-State Attorneys Act does not apply to arbitration, mediation, or alternative dispute resolution procedures in which the parties engage voluntarily or by private agreement.

C. The requirements and restrictions contained in the Registration of Out-of-State Attorneys Act are in addition to, and supplement, the requirements and restrictions set forth in Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes.

D. The Registration of Out-of-State Attorneys Act applies to all actions described in subsection A of this section existing as of the November 1, 2004, and all such action filed after November 1, 2004. As for attorneys previously admitted in existing actions as of November 1, 2004, pursuant to Chapter 1, Appendix II, Section 5 of Title 5 of the Oklahoma Statutes, if the attorney desires to continue appearance in the action, the attorney shall comply with the Registration of Out-of-State Attorneys Act within sixty (60) days after November 1, 2004. The court, arbitrator or mediator shall revoke the privileges to practice of any attorney who was admitted pursuant to Chapter 1, Appendix II, Section 5 of Title 5 of the Oklahoma Statutes who does not comply with the Registration of Out-of-State Attorneys Act within sixty (60) days after November 1, 2004.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.3 of Title 5, unless there is created a duplication in numbering, reads as follows:

A lawyer who has been retained to represent a client in this state in an action or proceeding set forth in subsection A of Section 36 of this act may file a written application to appear as counsel in that action or proceeding if the following conditions are met:

1. The lawyer is not a member of the Oklahoma Bar Association;
2. The lawyer is not a resident of the State of Oklahoma;
3. The lawyer is not regularly employed in the State of Oklahoma;

4. The lawyer is not engaged in substantial business, professional, or other activities in the State of Oklahoma;

5. The lawyer is a member in good standing and eligible to practice before the bar of any jurisdiction of the United States; and

6. The lawyer associates with an active member in good standing of the Oklahoma Bar Association as counsel of record in the action or proceeding.

A lawyer who meets the criteria set forth in this section shall be referred to in the Registration of Out-of-State Attorneys Act as an "out-of-state attorney" or "out-of-state counsel".

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.4 of Title 5, unless there is created a duplication in numbering, reads as follows:

An out-of-state attorney may appear in an action or proceeding subject to the Registration of Out-of-State Attorneys Act only upon:

1. Registering with the Oklahoma Bar Association as set forth in Section 39 of this act;

2. Registering with the Oklahoma Tax Commission as set forth in Section 40 of this act; and

3. The approval of the court, arbitrator, mediator, or administrative or governmental hearing officer where the action or proceeding is pending.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.5 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. The procedure provided for in this section shall be used by an out-of-state attorney to register with the Oklahoma Bar Association.

B. The lawyer shall file with the Oklahoma Bar Association:

1. An original and two copies of a verified application as provided in subsection C of this section;

2. A certificate from the state bar or from the clerk of the Supreme Court or highest admitting court of each state, territory, or insular possession of the United States in which the applicant has been admitted to practice law certifying the applicant's membership therein; and

3. A nonrefundable application fee of Three Hundred Fifty Dollars (\$350.00), payable to the Oklahoma Bar Association, or an application for waiver of fees as provided in Section 50 of this act.

C. The verified application required by this section shall be on a form approved by the Oklahoma Bar Association. The approved application forms shall be available at the court clerk's office of the court, arbitrator, mediator, or administrative or governmental agency where the action is pending.

D. The application shall state:

1. The applicant's residence and office address;

2. The court or courts to which the applicant has been admitted to practice and the date of such admission;

3. That the applicant is a member in good standing of such court or courts;

4. That the applicant is not currently suspended or disbarred in any court;

5. Whether the applicant is currently subject to any disciplinary proceedings by any organization with authority to discipline attorneys at law;

6. Whether the applicant has ever received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law;

7. The title of the court and cause, including arbitrations, mediations, or matters before an administrative agency or governmental body, in which the applicant or any member of the firm of attorneys with which the applicant is associated has filed an

application to appear as counsel under the Registration of Out-of-State Attorneys Act in the preceding three (3) years, the date of each application, and whether it was granted;

8. The name, address, and telephone number of the active member of the Oklahoma association who is the attorney of record;

9. The name of each party and the name and address of counsel of record who appeared for that party;

10. That the applicant certifies that the applicant shall be subject to the jurisdiction of the courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the Oklahoma Bar Association;

11. That the applicant understands and shall comply with the standards of professional conduct required of members of the Oklahoma Bar Association; and

12. That the applicant has disclosed in writing to the client that the applicant is not admitted to practice in this jurisdiction and that the client has consented to such representation.

E. Upon receipt of the verified application, certificate or certificates of good standing, and fee or application for waiver of fees, the Oklahoma Bar Association shall:

1. Serve upon the applicant and Oklahoma counsel associated with the applicant, a statement which provides:

- a. a statement as to whether the applicant or other attorney members of the firm with which the applicant is associated has previously made any application or motion under the Registration of Out-of-State Attorneys Act within the preceding three (3) years,
- b. the date of any such application or motion,
- c. whether the application was granted or denied, and
- d. exhibits attached to the statement as follows:

- (1) a copy of the verified application,

- (2) a copy of the certificate or certificates of good standing,
- (3) a form for the applicant to register with the Oklahoma Tax Commission,
- (4) a form motion to associate counsel, and
- (5) a form order granting or denying such motion; and

2. Retain the original verified application and certificate or certificates of good standing for three (3) years.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.6 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. Upon the application being granted by the Oklahoma Bar Association, all out-of-state attorneys shall register with the Oklahoma Tax Commission, upon such form as the Oklahoma Tax Commission may establish, and provide the Oklahoma Tax Commission with a copy of the Oklahoma Bar Association statement received pursuant to subsection E of Section 39 of this act, as an out-of-state provider of legal services in Oklahoma.

B. Out-of-state attorneys shall report annually all income derived from legal services performed in connection with any proceedings under subsection A of Section 36 of this act to the Oklahoma Tax Commission on such forms and in accordance with such regulations as the Oklahoma Tax Commission may establish.

C. The client, common fund or any other person or entity paying for the services of the out-of-state attorney, shall withhold five percent (5%) of all income derived from legal services performed in connection with any proceedings under subsection A of Section 36 of this act and remit the withheld amount to the Oklahoma Tax Commission pursuant to procedures established by the Oklahoma Tax Commission. The out-of-state attorney shall be required to notify the client, common fund or any other person or entity paying for the

services of this requirement and provide any other information as may be required by the Oklahoma Tax Commission.

D. Upon registration of the out-of-state attorney, the Oklahoma Tax Commission shall provide the out-of-state attorney, and the Oklahoma lawyer associated with the out-of-state attorney, with a statement verifying the registration.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.7 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma lawyer associated with the applicant shall file the motion to associate with the court, arbitrator, mediator, or administrative or governmental hearing officer where the proceeding is pending. The motion shall include proof of service of a copy of the motion on all parties in accordance with the Code of Civil Procedure of the State of Oklahoma.

B. The motion to associate shall include the following exhibits:

1. The original verified application;
2. The original certificate or certificates of good standing;
3. The statement from the Oklahoma Bar Association reflecting registration issued pursuant to subsection E of Section 39 of this act; and
4. The statement from the Oklahoma Tax Commission reflecting registration issued pursuant to subsection D of Section 40 of this act.

C. The motion to associate shall be accompanied by a proposed order granting or denying the motion to associate.

D. Oklahoma counsel of record associated with the applicant shall serve a copy of any order granting or denying a motion to associate on the Oklahoma Bar Association and the Oklahoma Tax Commission.

E. Before a motion to associate counsel is granted, the active member of the Oklahoma Bar Association who will be associated with the applicant shall appear as attorney of record in the particular cause and consent in writing to the association.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.8 of Title 5, unless there is created a duplication in numbering, reads as follows:

An applicant shall not appear in a proceeding subject to the Registration of Out-of-State Attorneys Act until the court, arbitrator, mediator, or administrative or governmental agency where the action is pending enters an order granting the motion to associate.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.9 of Title 5, unless there is created a duplication in numbering, reads as follows:

The granting or denial of a motion to associate counsel under the Registration of Out-of-State Attorneys Act is discretionary. The court, arbitrator, mediator, or administrative or governmental hearing officer may revoke the authority of the person permitted to appear as counsel under the Registration of Out-of-State Attorneys Act to make continued appearances under the Registration of Out-of-State Attorneys Act. Absent special circumstances, repeated appearances by any person or firm of attorneys under the Registration of Out-of-State Attorneys Act shall be cause for denial of the motion to associate such person.

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.10 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. It shall be presumed, absent special circumstances, and only upon a showing of good cause, that any attorney or firm of attorneys, is engaged in substantial business, professional, or other activities in the State of Oklahoma, if the attorney or firm



of attorneys seeks permission to associate pursuant to the Registration of Out-of-State Attorneys Act in more than five actions or matters in any consecutive three-year period.

B. It shall be presumed, absent special circumstances, and only upon a showing of good cause, that any attorney or firm of attorneys is engaged in substantial business, professional, or other activities in the State of Oklahoma, if the attorney or firm of attorneys is allowed to associate in one or more actions or matters pursuant to the Registration of Out-of-State Attorneys Act for a period of five (5) consecutive years or five (5) out of the last seven (7) years.

C. The applicant shall have the burden to establish special circumstances and good cause for a determination that the attorney or firm of attorneys is not engaged in substantial business, professional, or other activities in the State of Oklahoma pursuant to subsection A or B of this section. The applicant shall set forth the special circumstances and good cause in an affidavit attached to the original verified application.

D. If the Oklahoma Bar Association finds that an attorney or firm of attorneys is engaged in substantial business, professional, or other activities in this state pursuant to subsection A or B of this section, the attorney or firm may be granted a six-month extension of the right to associate while the attorney or firm of attorneys becomes licensed to practice law in this state.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.11 of Title 5, unless there is created a duplication in numbering, reads as follows:

Once a motion to associate under the Registration of Out-of-State Attorneys Act has been granted, the attorney shall be deemed admitted in the event venue in the action is transferred to another district court or in the event such action is appealed; provided,

however, that the court having jurisdiction over such transferred or appealed cause may revoke the attorney's authority to appear.

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.12 of Title 5, unless there is created a duplication in numbering, reads as follows:

No new application to associate is required to appear before the appellate courts of this state if the motion to associate was approved by the court in the underlying action or matter.

Appearance before the appellate courts of this state in the first instance shall be by motion as provided in Section 38 of this act. An appellate court may consider the matter based upon the filings before it without a hearing.

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.13 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. On or before the anniversary date of the filing of the verified application with the Oklahoma Bar Association, the Oklahoma counsel of record shall certify to the Oklahoma Bar Association that:

1. The out-of-state counsel continues to act as counsel in the cause; or

2. The cause has been finally adjudicated.

B. In the event that out-of-state counsel continues to act as counsel in the cause, out-of-state counsel shall provide to the Oklahoma Bar Association a sworn affidavit that the attorney or firm of attorneys has filed all necessary filings with the Oklahoma Tax Commission, including appropriate income tax returns for the preceding calendar year and shall remit to the Oklahoma Bar Association an annual renewal fee of Three Hundred Fifty Dollars (\$350.00). The affidavit and payment shall be provided to the Oklahoma Bar Association no later than thirty (30) days after the original application anniversary date.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.14 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. Any out-of-state counsel who continues to act as counsel in a proceeding subject to the Registration of Out-of-State Attorneys Act and fails to file the required affidavit and pay the renewal fee set forth in Section 47 of this act shall be suspended from appearing in any proceeding subject to the Registration of Out-of-State Attorneys Act upon expiration of a period of thirty (30) days after the original application anniversary date.

B. The Oklahoma Bar Association shall notify the out-of-state counsel and the Oklahoma counsel of record of the suspension and shall file a certified copy of the notice with the court, arbitrator, mediator, or administrative agency or governmental body where the proceeding is filed. The court, arbitrator, mediator or administrative agency or other governmental body shall immediately withdraw the out-of-state counsel's association with the Oklahoma counsel.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.15 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. The out-of-state counsel may be reinstated upon compliance with Section 47 of this act and the payment of a reinstatement fee of One Hundred Dollars (\$100.00).

B. Upon payment of all accrued fees and the reinstatement fee, the Oklahoma Bar Association may reinstate the out-of-state counsel, and shall thereupon certify such reinstatement to the court, arbitrator, mediator, or administrative agency or governmental body where the proceeding is filed.

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.16 of Title 5, unless there is created a duplication in numbering, reads as follows:

Upon a showing that the applicant is providing pro bono services in a death penalty habeas corpus case or in other similar circumstances providing for pro bono representation, the Oklahoma Bar Association may waive the original fee required by Section 39 of this act and the annual renewal fee required by Section 47 of this act. An applicant may obtain an application for waiver of these fees from the Oklahoma Bar Association and shall file the completed waiver application with the original verified application seeking admission under the Registration of Out-of-State Attorneys Act. If the waiver is granted by the Oklahoma Bar Association, the applicant shall not be required to register with the Oklahoma Tax Commission pursuant to Section 40 of this act.

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.17 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Bar Association shall prepare an annual report listing:

1. All applications filed under the Registration of Out-of-State Attorneys Act during the preceding twelve (12) months;
2. The names of all applicants; and
3. Whether the motions to associate were granted or denied.

B. The annual report shall be kept on file at the Oklahoma Bar Association and shall be available for review by the public during normal business hours at the offices of the Oklahoma Bar Association. A copy of the report shall be provided to the Chief Justice of the Oklahoma Supreme Court.

SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.18 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. Out-of-state counsel appearing under the Registration of Out-of-State Attorneys Act shall be subject to the jurisdiction of the courts and disciplinary boards of this state with respect to the

law of this state governing the conduct of attorneys to the same extent as a member of the Oklahoma Bar Association. Out-of-state counsel shall become familiar and comply with the standards of professional conduct required of members of the Oklahoma Bar Association and shall be subject to the disciplinary jurisdiction of the Oklahoma Bar Association.

B. The rules of the Oklahoma Supreme Court shall govern in any investigation or proceeding conducted by the Oklahoma Bar Association under the Registration of Out-of-State Attorneys Act.

SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.19 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma attorney of record shall be responsible for and actively participate in the representation of a client in any proceeding that is subject to the Registration of Out-of-State Attorneys Act.

B. The Oklahoma attorney of record shall be present at all hearing, trials, or any other matters in open court unless otherwise ordered by the court.

C. The Oklahoma attorney of record shall be responsible to the court, arbitrator, mediator, or administrative agency or governmental body for the administration of any proceeding that is subject to the Registration of Out-of-State Attorneys Act and for compliance with all state and local rules of practice. It is the responsibility of Oklahoma counsel to ensure that the proceeding is tried and managed in accordance with all applicable Oklahoma procedural and ethical rules.

SECTION 54. AMENDATORY 36 O.S. 2001, Section 312.1, as amended by Section 1, Chapter 315, O.S.L. 2003 (36 O.S. Supp. 2003, Section 312.1), is amended to read as follows:

Section 312.1 A. For the fiscal year ending June 30, 2004, the Insurance Commissioner shall report and disburse one hundred percent

(100%) of the fees and taxes collected under Section 624 of this title to the State Treasurer to be deposited to the credit of the Education Reform Revolving Fund created pursuant to Section 41.29b of Title 62 of the Oklahoma Statutes. The Insurance Commissioner shall keep an accurate record of all such funds and make an itemized statement and furnish same to the State Auditor and Inspector, as to all other departments of this state. The report shall be accompanied by an affidavit of the Insurance Commissioner or the Chief Clerk of such office certifying to the correctness thereof.

B. For the fiscal years beginning July 1, 2004, and ending June 30, 2009, the Insurance Commissioner shall report and disburse all of the fees and taxes collected under Section 624 of this title and Section 61 of this act, and the same are hereby apportioned as follows:

1. Forty-one and seven-tenths percent (41.7%) of the taxes collected on premiums shall be allocated and disbursed for the Oklahoma Firefighters Pension and Retirement Fund, in the manner provided for in Sections 49-119, 49-120 and 49-123 of Title 11 of the Oklahoma Statutes;

2. Seventeen percent (17%) of the taxes collected on premiums shall be allocated and disbursed to the Oklahoma Police Pension and Retirement System pursuant to the provisions of Sections 50-101 through 50-136 of Title 11 of the Oklahoma Statutes;

3. Six and one-tenth percent (6.1%) of the taxes collected on premiums shall be allocated and disbursed to the Law Enforcement Retirement Fund; and

4. All the balance and remainder of the taxes and fees provided in Section 624 of this title shall be paid to the State Treasurer to the credit of the General Revenue Fund of the state to provide revenue for general functions of state government. The Insurance Commissioner shall keep an accurate record of all such funds and make an itemized statement and furnish same to the State Auditor and

Inspector, as to all other departments of this state. The report shall be accompanied by an affidavit of the Insurance Commissioner or the Chief Clerk of such office certifying to the correctness thereof.

C. For the fiscal year ending June 30, 2010, and for each fiscal year thereafter the Insurance Commissioner shall report and disburse all of the fees and taxes collected under Section 624 of this title and Section 61 of this act, and the same are hereby apportioned as follows:

1. Thirty-four percent (34%) of the taxes collected on premiums shall be allocated and disbursed for the Oklahoma Firefighters Pension and Retirement Fund, in the manner provided for in Sections 49-119, 49-120 and 49-123 of Title 11 of the Oklahoma Statutes;

2. Fourteen percent (14%) of the taxes collected on premiums shall be allocated and disbursed to the Oklahoma Police Pension and Retirement System pursuant to the provisions of Sections 50-101 through 50-136 of Title 11 of the Oklahoma Statutes;

3. Five percent (5%) of the taxes collected on premiums shall be allocated and disbursed to the Law Enforcement Retirement Fund; and

4. All the balance and remainder of the taxes and fees provided in Section 624 of this title shall be paid to the State Treasurer to the credit of the General Revenue Fund of the state to provide revenue for general functions of state government. The Insurance Commissioner shall keep an accurate record of all such funds and make an itemized statement and furnish same to the State Auditor and Inspector, as to all other departments of this state. The report shall be accompanied by an affidavit of the Insurance Commissioner or the Chief Clerk of such office certifying to the correctness thereof.

D. The disbursements provided for in subsections A, B and C of this section shall be made monthly. The Insurance Commissioner

shall report annually to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the State Auditor and Inspector, the amounts collected and disbursed pursuant to this section.

SECTION 55. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Legislature finds that the availability of medical professional liability insurance for physicians, allied health care professionals and health care facilities is an essential component of the delivery of health care in Oklahoma. There now exists a threatened loss of insurers currently issuing policies of medical malpractice insurance. It is in the public interest to avoid a disruption in the delivery of health care in this state which would arise if medical professional liability insurance is not available. Continued availability of medical malpractice insurance will be fostered by establishing a moratorium on the application of adequate reserve and surplus requirements which apply to domestic insurers engaged in providing medical professional liability insurance for physicians, allied health care professionals and health care facilities.

SECTION 56. AMENDATORY 36 O.S. 2001, Section 1509, is amended to read as follows:

Section 1509. A. If the Insurance Commissioner determines in writing that an insurer's unearned premium reserve, however computed, is inadequate, ~~he~~ the Commissioner may require the insurer to compute ~~such~~ the reserve or any part thereof according to ~~such~~ any other method or methods as are prescribed in this article.

B. If the loss experience of an insurer shows that its loss reserves, however estimated, are inadequate, the ~~Insurance~~ Commissioner, in writing, shall require the insurer to maintain loss reserves in ~~such~~ an increased amount as is needed to make them adequate.



C. 1. Insurers shall not use present value discounting for computing reserves for property and casualty insurance, except for workers' compensation carriers and physicians' and hospitals' professional liability insurance written on an occurrence basis. Workers' compensation carriers may use present value discounting at a rate of four percent (4%) for disability and death claims. Property and casualty insurers which elect to use present value discounting for computing reserves on physicians' and hospitals' professional liability insurance shall file initially, and thereafter annually, an actuarial opinion certifying to the adequacy of such reserves which shall include an analysis of the propriety of loss payout patterns, interest rate assumptions used in developing the discount and the adequacy of the insurer's rates. Additionally, ~~such~~ the actuary shall consider the quality and liquidity of the insurer's assets and the nature and extent of the insurer's reinsurance program. In no event shall the interest rate used to compute the discounted reserves exceed the insurer's average yield on invested assets for the year, less one percent (1%).

2. Annual actuarial opinions required pursuant to this subsection shall be filed by the insurer on or before the first day of April. All actuarial opinions shall be from an independent actuary with membership in the American Academy of Actuaries or The Casualty Actuarial Society.

3. Except for workers' compensation insurance carriers, insurers discounting reserves pursuant to this subsection shall invest and maintain their funds only in cash; securities described in the following sections of this Code:

- a. Section 1607 (securities of or guaranteed by the United States),
- b. Section 1608 (state and Canadian public obligations),
- c. Section 1609 (county, municipal and district obligations),

- d. Section 1610 (public improvement bonds),
- e. Section 1611 (obligations payable from public utility revenues) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record,
- f. Section 1614 (corporate obligations) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record, and
- g. Section 1620 (deposits, banks, savings and loans);

and any other investment specifically approved by the Commissioner.

4. This subsection applies to reserves established in connection with incidents of loss occurring on or after January 1, 1989. The investment limitations prescribed by this subsection shall be applicable on or after January 1, 1989.

D. During any period of reserve strengthening mandated by the ~~Insurance~~ Commissioner pursuant to the provisions of this section, no insurer shall pay dividends or other benefits which would not be normal payments under the terms of a policy to any stockholder or policyholder of such insurer and such insurer shall be subject to any additional reasonable restrictions as the Commissioner shall deem prudent.

E. Insurers shall report, on a form prescribed by the ~~Insurance~~ Commissioner and filed with their annual statement, all funds collected through policy fees or assessments which were collected in response to a written request to increase inadequate reserves from the Commissioner made pursuant to the provisions of this section.

F. 1. Insurers domiciled in this state that are issuing policies of medical professional liability insurance to physicians, allied health care professionals and health care institutions, as defined by Section 59 of this act, on July 1, 2004, are granted a moratorium on the applicability of any provisions of the laws of

this state that require the maintenance of adequate reserves. The moratorium shall be in effect until January 1, 2006.

2. Any insurer eligible to utilize the moratorium provided by this section that elects to utilize the moratorium shall notify the Commissioner in writing of the election prior to the application of the moratorium to the insurer.

3. Any policy issued by an insurer utilizing the moratorium provided by this section shall, during the moratorium period, contain the following notice in ten-point type on the front page and the declaration page:

NOTICE

The insurer is not subject to the insurance laws and regulations related to maintenance of reserves and surplus.

SECTION 57. AMENDATORY 36 O.S. 2001, Section 1530, is amended to read as follows:

Section 1530. A. The provisions of this act are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the Insurance Commissioner under such laws, including, but not limited to, Article 18 or 19 of the Insurance Code.

B. The Commissioner may promulgate reasonable rules necessary for the implementation of this act.

C. The Commissioner may exempt from the application of this act in any year any domestic insurer which:

1. Writes direct business only in this state; and
2. Assumes no reinsurance in excess of five percent (5%) of direct premium written.

D. Insurers domiciled in this state that are issuing policies of medical professional liability insurance to physicians, allied health care professionals and health care institutions as defined by Section 59 of this act on July 1, 2004, which notify the Commissioner in writing of the insurer's election to utilize the

moratorium provided in Section 1509 of this title shall be exempt from the provisions of this title which require an insurer to maintain an adequate surplus as regards policyholders as a condition to obtaining or renewal of a license to act as an insurer, until January 1, 2006. The Commissioner shall not enforce any recapitalization plan against any insurer domiciled in this state that is issuing policies of physicians', allied health care professionals' and health care institutions' professional liability insurance until January 1, 2006.

SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2201 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 58 through 66 of this act shall be known and may be cited as the "Oklahoma Medical Professional Liability Trusts Act".

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2202 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Medical Professional Liability Trusts Act:

1. "Allied health care professional" shall mean a physician's assistant, a certified registered nurse anesthetist or a nurse practitioner who is duly licensed by the appropriate licensing entity of the state and is supervised or employed by a physician and/or health care institution;

2. "Association" shall mean a nonprofit corporation that has been in continuous existence for a period of at least ten (10) years, the purpose of which is to federate into one organization all duly licensed physicians, allied health care professionals and/or health care institutions in this state;

3. "Commissioner" shall mean the Insurance Commissioner;

4. "Department" shall mean the Insurance Department;

5. "Health care institutions" shall mean hospitals, outpatient treatment facilities and facilities licensed pursuant to the Nursing Home Care Act;

6. "Medical professional liability claim" shall mean a claim or cause of action against a physician and/or a health care institution for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract;

7. "Physician" shall mean a doctor of medicine or osteopathy legally authorized to practice medicine and surgery in this state;

8. "Insureds" shall mean the physician, allied health care professional and health care institution members of an association that have medical professional liability coverage through the trust. "Insureds" shall also include entities and individuals specified in subsection C of Section 60 of this act if authorized by the trust; and

9. "Trust" shall mean a medical professional liability trust created pursuant to the Oklahoma Medical Professional Liability Trusts Act.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2203 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An association may create a trust to self-insure physicians, allied health care professionals or health care institutions against medical professional liability claims and related risks upon complying with the following conditions:

1. Establishment of a trust to provide coverage against medical professional liability claims and related risks;

2. Employment of appropriate professional staff and consultants for program management and purchase of such administrative services as may be required;

3. The trust investment powers and limitations shall be the same as those of any Oklahoma domestic casualty insurance company; and

4. Performance of all acts necessary or desirable to the conduct of the business of a medical professional liability insurer.

B. A trust may purchase, on behalf of the members of the organizing association, specific excess insurance, aggregate excess insurance, and reinsurance, as in the opinion of the trustee are necessary. A trust is further authorized to purchase risk management services as may be required and pay claims that arise under any deductible provisions.

C. If the terms of the trust so authorize, the trust may insure the following entities against medical professional liability claims and related risks:

1. Organizations or associations in which physicians, allied health care professionals or health care institutions are qualified members;

2. Entities that own or operate otherwise qualified health care institutions under the Oklahoma Medical Professional Liability Trusts Act;

3. Physicians' professional practice entities; and

4. Any person for whose acts or omissions an insured may be held legally responsible.

D. Laws of this state and the provisions of any chapters, articles or sections of Title 36 of the Oklahoma Statutes related to required amounts of reserves and surplus are declared inapplicable to a trust organized and operated under the Oklahoma Medical Professional Liability Trusts Act, except as provided in the Oklahoma Medical Professional Liability Trusts Act.

E. A licensed domestic stock insurer that prior to the effective date of this act writes physicians', allied health care professionals' or health care institutions' medical professional

liability insurance and is owned wholly by an association shall be entitled to convert to a trust by:

1. Filing a plan, statement of conversion and trust instrument with the Commissioner. The plan, statement of conversion and trust instrument shall list all conditions to be fulfilled by a designated date, upon which such conversion will be effective, and all base rates to be charged by the trust;

2. Approval by vote or written consent of three-fourths (3/4) of the board of directors or trustees of the insurer's parent association;

3. Creation of a trust by the insurer's parent association;

4. Transfer of the assets and liabilities of the insurer to the trust;

5. Upon ninety (90) days' prior written notice to affected policyholders, replacement of the insurer's outstanding policies by the trust; and

6. Surrender or divesture for reasonable consideration of the insurer's license.

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2204 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A medical professional liability trust shall file the following items with the Commissioner:

1. Within forty-five (45) days after the end of each of the first three quarterly periods of each fiscal year, a statement of the assets and liabilities of the trust as of the end of the quarterly period, a statement of the revenue and expenditures of the trust, and a statement of the changes in corpus of the trust for the period, in each case accompanied by a certificate to the effect that the statements were prepared from the official books and records of the trust;

2. Within ninety (90) days after the end of each fiscal year, a statement of the assets and liabilities of the trust as of the end of that year, a statement of the revenue and expenditures of the trust, and a statement of the changes in corpus of the trust for that year, in each case accompanied by a certificate signed by a firm of independent certified public accountants indicating that the firm has conducted an audit of those statements in accordance with generally accepted auditing standards and indicating the results of the audit;

3. The independently audited annual financial statement of the trust by June 1 of each year;

4. The closed claim reports as are required pursuant to Sections 6810 through 6816 of Title 36 of the Oklahoma Statutes;

5. Rates and forms within thirty (30) days after issuance of the first policy and within thirty (30) days after any changes to the previously filed rates and forms; and

6. Any amendment to the trust instrument within thirty (30) days of making the amendment.

B. A trust shall, annually, on or before the first day of March, report under oath to the Commissioner, the total amount of direct written consideration received from the membership during the preceding calendar year, or since the last return of such considerations was made by such trust.

1. A trust shall pay to the Department, on or before March 1, an annual tax on all direct written considerations, after all returned considerations are deducted for the privileges of having written, continued and/or serviced contracts of indemnity except considerations paid by any governmental agency or instrumentality. The rate of taxation shall be two and twenty-five one-hundredths percent (2.25%). If any trust fails to remit such taxes in a timely manner, it shall remain liable therefor together with interest thereon at an annual rate equal to the average United States



Treasury Bill rate of the preceding calendar year as certified by the State Treasurer on the first regular business day in January of each year, plus four (4) percentage points.

2. For any trust taxed pursuant to this section, the annual tax shall be in lieu of all other state taxes or fees, except the taxes and fees of any subdivision or municipality of the state and except ad valorem taxes. Any trust failing to make such returns and payments promptly and correctly shall forfeit and pay to the Commissioner, in addition to the amount of said taxes and fees and interest, the sum of Five Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater; and the trust so failing or neglecting for sixty (60) days shall thereafter be debarred from transacting any business in this state until said taxes, fees and penalties are fully paid.

3. All taxes, fees and penalties collected under this section shall be reported and disbursed by the Commissioner and appropriated pursuant to the provisions of Section 312.1 of Title 36 of the Oklahoma Statutes.

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2205 of Title 36, unless there is created a duplication in numbering, reads as follows:

In addition to the requirements of Section 60 of this act, the trust instrument shall provide:

1. That there shall be a minimum period during which any insured must participate in the trust;
2. That all insureds shall execute a participation agreement;
3. That the trustee shall be an individual or an institution such as a bank, insurance company or other appropriate entity;
4. A preliminary assessment of all insureds for initial expenses necessary to commence operation;
5. For establishment of necessary facilities;
6. Details of the management of the trust;

7. Procedures for assessment of all insureds to defray losses and expenses;

8. Description of commission arrangements;

9. Description of reasonable and objective underwriting standards;

10. Procedures for and description of acceptance and cession of reinsurance;

11. Procedures for and descriptions of appointment of servicing carriers or other servicing arrangements; and

12. Procedures for determining amounts of insurance to be provided by the trust.

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2206 of Title 36, unless there is created a duplication in numbering, reads as follows:

The total of the reserves and surplus of a trust organized under the Oklahoma Medical Professional Liability Trusts Act, in excess of the amount necessary to support the trust's retention, must equal or exceed forty percent (40%) of a range of values that makes reasonable provision for losses and loss expenses.

SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2207 of Title 36, unless there is created a duplication in numbering, reads as follows:

No trust created pursuant to the Oklahoma Medical Professional Liability Trusts Act shall be permitted to join or contribute financially to any insurance insolvency guaranty fund or similar entity, nor shall any trust or its insureds receive any benefit from any insurance guaranty fund or similar entity for claims made against the trust or its insureds.

SECTION 65. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2208 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner shall annually review negotiations between the trust and any entity to provide administrative, claim, underwriting or claim management services or excess insurance, aggregate excess insurance and reinsurance to the trust.

B. The Commissioner shall, at least twice yearly, review and evaluate each category of operations of the trust or association as follows:

1. Underwriting policies and activities, including all new applications for coverage, as well as all decisions regarding denial of new policies and surcharges on or nonrenewal of existing insureds;

2. Summaries of all claims activities, including number of claims filed, lawsuits filed, resolution of closed claims and lawsuits, amounts paid in settlements, jury verdicts, defense attorney fees, expert witness costs and other defense costs;

3. Consumer satisfaction with quality of service by the trust or its agents;

4. Investment activities;

5. All filed base rates and proposed rate increases; and

6. All risk-management activities, including continuing education and counseling of insureds.

C. The Commissioner shall further study and analyze the cost of administration of the trust to determine how its administrative costs compare to the administrative costs of other medical professional liability trusts and insurers providing medical liability coverage. The Commissioner shall submit a report of the Commissioner's study to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than February 1 of each year.

D. The trust shall provide the Commissioner with policy changes, rate changes, rules proposed by the trust and changes to the trust instrument prior to implementation of policy changes, rate

changes, proposed rules and changes to the trust instrument within thirty (30) days of implementation of such changes.

SECTION 66. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Commissioner may promulgate emergency rules in accordance with the provisions of the Administrative Procedures Act in order to effectuate the purposes of the Oklahoma Medical Professional Liability Trusts Act.

SECTION 67. RECODIFICATION 76 O.S. 2001, Sections 10, as amended by Section 26 of this act, 11, as amended by Section 27 of this act, 12, as amended by Section 28 of this act, 13, as amended by Section 29 of this act, 14, as amended by Section 30 of this act, 15, as amended by Section 31 of this act, and 15.1, as amended by Section 32 of this act, shall be recodified as Sections 16-71.1 through 16-71.7 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 68. RECODIFICATION 2 O.S. 2001, Section 16-71, as amended by Section 25 of this act, shall be recodified as Section 10.1 of Title 76 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 69. Sections 54 through 66 of this act shall become effective July 1, 2004.

SECTION 70. Sections 1 through 53 and Sections 67 and 68 of this act shall become effective November 1, 2004.

SECTION 71. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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