

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

3RD CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 479

By: Smith of the Senate

and

Askins of the House

3RD CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to courts; stating consequences for failure to appear for jury service; amending 28 O.S. 2001, Sections 86, 152, as amended by Section 4, Chapter 440, O.S.L. 2003, and 153, as last amended by Section 23 of Enrolled House Bill No. 2725 of the 2nd Session of the 49th Oklahoma Legislature, which relate to fees and costs; requiring Supreme Court to promulgate rules to establish a Lengthy Trial Fund; stating purpose of fund; requiring court clerk to collect certain fee under specified circumstances; directing disbursement of fund; providing exemptions; assessing certain fees; directing deposit of certain fees; amending 38 O.S. 2001, Sections 21 and 22, as amended by Sections 17 and 18, Chapter 390, O.S.L. 2002, 23.1, 28, and 34 and 35, as amended by Sections 1 and 2, Chapter 134, O.S.L. 2002 (38 O.S. Supp. 2003, Sections 21, 22, 34 and 35), which relate to juries; modifying number of days for jury service; stating exceptions; stating certain policy of state; establishing causes and procedures to excuse potential jurors from service; defining term; modifying exceptions for qualification of jurors; allowing postponement of jury service under certain circumstances; establishing procedures for postponement of jury service; prohibiting certain employment actions against prospective juror; requiring automatic postponement under certain circumstances; providing for codification; 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 567B of Title 21, unless there is created a duplication in numbering, reads as follows:

An individual who fails to appear in person on the date scheduled for jury service and who has failed to obtain a

postponement in compliance with the provisions for requesting a postponement, or who fails to appear on the date set pursuant to Section 9 of this act, shall be in indirect contempt of court and shall be punished by the imposition of a fine not to exceed Five Hundred Dollars (\$500.00). The prospective juror may be excused from paying sanctions for good cause shown or in the interests of justice. In addition to or in lieu of the fine, the court may order that the prospective juror complete a period of community service for a period no less than if the prospective juror would have completed jury service, and provide proof of completion of this community service to the court.

SECTION 2. AMENDATORY 28 O.S. 2001, Section 86, is amended to read as follows:

Section 86. A. Jurors shall be paid the following fees out of the local court fund:

1. For each day's attendance before any court of record, Twenty Dollars (\$20.00); and

2. For mileage going to and returning from jury service each day, pursuant to the provisions of the State Travel Reimbursement Act, ~~Section 500.1 et seq. of Title 74.~~

B. The Court Fund Board of the district court may contract for or provide reimbursement for parking for district court jurors to be paid from the Court Fund. Parking so provided to jurors shall be in lieu of any reimbursement to jurors for parking fees.

C. The provisions of this section shall not apply to any person who is summoned for jury duty and who is excused from serving pursuant to the provisions of subsection A of Section 28 of Title 38 of the Oklahoma Statutes, beginning on the day the person is excused from service.

D. The Supreme Court shall promulgate rules to establish a Lengthy Trial Fund that shall be used to provide full or partial

wage replacement or wage supplementation to jurors who serve as petit jurors for more than ten (10) days.

1. The court rules shall provide for the selection and appointment of an Administrator for the fund; procedures for the administration of the fund, including payments of salaries of the Administrator and other necessary personnel; procedures for the accounting, auditing and investment of money in the Lengthy Trial Fund; and a report by the Supreme Court on the administration of the Lengthy Trial Fund included in its annual report on the judicial branch, setting forth the money collected for and disbursed from the fund.

2. The clerk of the court shall collect from each attorney who files a civil case, unless otherwise exempted under the provisions of this section, a fee of Ten Dollars (\$10.00) per case to be paid into the Lengthy Trial Fund. A lawyer will be deemed to have filed a case at the time the first pleading or other filing on which an individual lawyer's name appears is submitted to the court for filing and opens a new case. All such fees shall be forwarded to the Administrator of the Lengthy Trial Fund for deposit.

3. The Administrator shall use the fees deposited in the Lengthy Trial Fund to pay full or partial wage replacement or supplementation to jurors whose employers pay less than full regular wages when the period of jury service lasts more than ten (10) days.

4. The court may pay replacement or supplemental wages of up to Two Hundred Dollars (\$200.00) per day per juror beginning on the eleventh day of jury service. In addition, for any jurors who qualify for payment by serving on a jury for more than ten (10) days, the court may, upon finding that such service posed a significant financial hardship to a juror, even in light of payments made with respect to jury service after the tenth day, award replacement or supplemental wages of up to Fifty Dollars (\$50.00) per day from the fourth to the tenth day of jury service.

5. Any juror who is serving or has served on a jury that qualifies for payment from the Lengthy Trial Fund, provided the service commenced on or after the effective date of this act, may submit a request for payment from the Lengthy Trial Fund on a form provided by the Administrator. Payment shall be limited to the difference between the state-paid jury fee and the actual amount of wages a juror earns, up to the maximum level payable, minus any amount the juror actually receives from the employer during the same time period. The form shall disclose the juror's regular wages, the amount the employer will pay during the term of jury service starting on the eleventh day and thereafter, the amount of replacement or supplemental wages requested, and any other information the Administrator deems necessary for proper payment. The juror shall be required to submit verification from the employer as to the wage information provided to the Administrator, including but not limited to the employee's most recent earnings statement or similar document, prior to initiation of payment from the fund. If an individual is self-employed or receives compensation other than wages, the individual may provide a sworn affidavit attesting to his or her approximate gross weekly income, together with such other information as the Administrator may require, in order to verify weekly income.

6. The following attorneys and causes of action are exempt from payment of the Lengthy Trial Fund fee:

- a. government attorneys entering appearances in the course of their official duties,
- b. pro se litigants,
- c. cases in small claims court or the state equivalent thereof, or
- d. claims seeking social security disability determinations, individual veterans' compensation or disability determinations, recoupment actions for

government backed educational loans or mortgages,
child custody and support cases, actions brought in
forma pauperis, and any other filings designated by
rule that involve minimal use of court resources and
that customarily are not afforded the opportunity for
a trial by jury.

SECTION 3. AMENDATORY 28 O.S. 2001, Section 152, as amended by Section 4, Chapter 440, O.S.L. 2003 (28 O.S. Supp. 2003, Section 152), is amended to read as follows:

Section 152. A. In any civil case filed in a district court, the court clerk shall collect, at the time of filing, the following flat fees, none of which shall ever be refundable, and which shall be the only charge for court costs, except as is otherwise specifically provided for by law:

1. Actions for divorce, alimony without
divorce, separate maintenance, custody or
support..... \$140.00
2. Any ancillary proceeding to modify or
vacate a divorce decree providing for
custody or support.....\$40.00
3. Probate and guardianship.....\$132.00
4. Annual guardianship report.....\$30.00
5. Any proceeding for sale or lease of real or
personal property or mineral interest in
probate or guardianship.....\$40.00
6. Any proceeding to revoke the probate of a
will.....\$40.00
7. Judicial determination of death.....\$55.00
8. Adoption.....\$102.00
9. Civil actions for an amount of Ten Thousand
Dollars (\$10,000.00) or less and
condemnation.....\$147.00

- 10. Civil actions for an amount of Ten
Thousand One Dollars (\$10,001.00) or more
.....\$160.00
- 11. Garnishment.....\$20.00
- 12. Continuing wage garnishment.....\$60.00
- 13. Any other proceeding after judgment.....\$30.00
- 14. All others, including but not limited to
actions for forcible entry and detainer,
judgments from all other courts,
including the Workers' Compensation Court.....\$82.00
- 15. Notice of renewal of judgment.....\$20.00

B. In addition to the amounts collected pursuant to subsection A of this section, the sum of Six Dollars (\$6.00) shall be assessed and credited to the Law Library Fund.

C. In addition to the amounts collected pursuant to subsections A and B of this section, the sum of Ten Dollars (\$10.00) shall be assessed and credited to the Oklahoma Court Information System Revolving Fund created pursuant to Section 1315 of Title 20 of the Oklahoma Statutes.

D. Of the amounts collected pursuant to paragraph 8 of subsection A of this section, the sum of Twenty Dollars (\$20.00) shall be deposited to the credit of the Voluntary Registry and Confidential Intermediary program and the Mutual Consent Voluntary Registry established pursuant to the Oklahoma Adoption Code.

~~D.~~ E. Of the amounts collected pursuant to subsection A of this section, the sum of Ten Dollars (\$10.00) shall be deposited to the credit of the Child Abuse Multidisciplinary Account.

~~E.~~ F. In any case in which a litigant claims to have a just cause of action and that, by reason of poverty, the litigant is unable to pay the fees and costs provided for in this section and is financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized

by law to administer oaths to that effect and upon satisfactory showing to the court that the litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or parties may file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of poverty. In all such cases, the court shall promptly set for hearing the determination of eligibility to litigate without payment of fees or costs. Until a final order is entered determining that the affiant is ineligible, the clerk shall permit the affiant to litigate without payment of fees or costs. Any litigant executing a false affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of perjury.

SECTION 4. AMENDATORY 28 O.S. 2001, Section 153, as last amended by Section 23 of Enrolled House Bill No. 2725 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 153. A. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for standing and parking violations and for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to the date of judgment:

- 1. For each defendant convicted of exceeding the speed limit by at least one (1) mile per hour but not more than ten (10) miles per hour, whether charged individually or conjointly with others..... \$77.00

2. For each defendant convicted of a
misdemeanor traffic violation other than
an offense provided for in paragraph 1 or
5 of this subsection, whether charged
individually or conjointly with others..... \$88.00
3. For each defendant convicted of a
misdemeanor, other than for driving under
the influence of alcohol or other
intoxicating substance or an offense
provided for in paragraph 1 or 2 of this
subsection, whether charged individually
or conjointly with others..... \$83.00
4. For each defendant convicted of a felony,
other than for driving under the
influence of alcohol or other
intoxicating substance, whether charged
individually or conjointly with others..... \$103.00
5. For each defendant convicted of the
misdemeanor of driving under the
influence of alcohol or other
intoxicating substance, whether charged
individually or conjointly with others..... \$283.00
6. For each defendant convicted of the felony
of driving under the influence of alcohol
or other intoxicating substance, whether
charged individually or conjointly with
others..... \$283.00
7. For the services of a court reporter at
each preliminary hearing and trial held
in the case..... \$20.00
8. For each time a jury is requested..... \$30.00

9. A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice

- a. within the county..... \$30.00, or
mileage as
established by the
Oklahoma Statutes,
whichever is
greater, or
- b. outside of the county..... \$30.00, or
actual, necessary
expenses, whichever
is greater

10. For the services of a language interpreter, other than an interpreter appointed pursuant to the provisions of the Oklahoma Interpreter for the Deaf Act, at each hearing held in the case, the actual cost of the interpreter.

B. In addition to the amount collected pursuant to paragraphs 2 through 5 of subsection A of this section, the sum of Six Dollars (\$6.00) shall be assessed and credited to the Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. In addition to the amount collected pursuant to subsection A of this section, the sum of Ten Dollars (\$10.00) shall be assessed and collected for each traffic case other than for driving under the influence of alcohol or other intoxicating substance; the sum of Fifteen Dollars (\$15.00) shall be assessed and collected for each misdemeanor case; the sum of Fifteen Dollars (\$15.00) shall be assessed and collected for each misdemeanor case for driving under the influence of alcohol or other intoxicating substance; the sum of Twenty-five Dollars (\$25.00) shall be assessed and collected for

each felony case; and the sum of Twenty-five Dollars (\$25.00) shall be assessed and collected for each felony case for driving under the influence of alcohol or other intoxicating substance.

D. In addition to the amounts collected pursuant to subsections A and B of this section, the sum of Ten Dollars (\$10.00) shall be assessed and credited to the Oklahoma Court Information System Revolving Fund created pursuant to Section 1315 of Title 20 of the Oklahoma Statutes.

E. Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the services of a language interpreter or for the issuance or service of process to obtain compulsory attendance of witnesses.

~~E.~~ F. The fees collected pursuant to this section shall be deposited into the court fund, except the following:

1. The sheriff's fee provided for in paragraph 9 of subsection A of this section which, when collected, shall be deposited in the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted;

2. The sheriff's fee provided for in Section 153.2 of this title;

3. The witness fees paid by the district attorney pursuant to the provisions of Section 82 of this title which, if collected by the court clerk, shall be transferred to the district attorney's office in the county where witness attendance was required. Fees transferred pursuant to this paragraph shall be deposited in the district attorney's maintenance and operating expense account; and

4. The fees provided for in subsection C of this section shall be forwarded to the District Attorneys Council Revolving Fund to defray the costs of prosecution.

~~F.~~ G. Costs required to be collected pursuant to this section shall not be dismissed or waived; provided, if the court determines

that a person needing the services of a language interpreter is indigent, the court may waive all or part of the costs or require the payment of costs in installments.

~~G.~~ H. As used in this section, "convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence.

~~H.~~ I. A court clerk may accept in payment for any fee, fine, or cost for violation of any traffic law a nationally recognized credit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of the payment as a service charge for the acceptance of the credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value and which is accepted by over one thousand (1,000) merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees; provided, the court clerk must ensure that no loss of state revenue will occur by the use of such cards.

~~I.~~ J. Upon receipt of payment of fines and costs for offenses charged prior to July 1, 1992, the court clerk shall apportion and pay Thirteen Dollars (\$13.00) per conviction to the court fund.

SECTION 5. AMENDATORY 38 O.S. 2001, Section 21, as amended by Section 17, Chapter 390, O.S.L. 2002 (38 O.S. Supp. 2003, Section 21), is amended to read as follows:

Section 21. If a grand jury is ordered, the number stated in the judge's order, not to exceed one hundred, shall be summoned as grand jurors, and the grand jury shall be impaneled from said persons. The judge of the district court shall order the court

clerk or one of his or her deputies to order the stated number of jurors from the Administrative Director of the Courts. In addition to the twelve (12) grand jurors to be impaneled, three additional persons shall be selected as alternate grand jurors. The alternate grand jurors shall attend all functions of the grand jury during its term and shall be subject to all laws governing grand jurors.

Provided that, no alternate juror shall participate in any deliberations of the grand jury until appointed to fill a vacancy.

If the judge so directs, the persons summoned for the grand jury panel who are not used thereon may be transferred to the petit jury panel. Additional and other drawing of as many names as the court may order may be had at any such time as the court or judge may order for the completion of a grand or petit jury panel, or for the impaneling of a new grand or petit jury if, in the judgment of the court, the same shall be necessary, or if, for any cause, the court, in its discretion, shall deem other jurors necessary. The court may excuse or discharge any person drawn and summoned as a grand or petit juror, whenever, in its discretion, such action shall be deemed expedient. No person may be required to render service as a petit juror for more than ~~a total of eighteen (18) days~~ one (1) day in any one calendar year unless, ~~when this time limit is reached, he or she is sitting upon a panel engaged in the consideration of a case, in which event he or she may be excused when such case is terminated; provided, that if the judge is of the opinion that the jury business of a term fixed by the court may be concluded within six (6) days, the judge may require a petit jury, or a petit juror, to remain until the termination of such jury service.~~ Persons summoned for petit jury service need not be required to serve during ~~previously fixed days or weeks or a term fixed by the court for jury trials, but they may be recalled from time to time as the trial needs of the district court may require, without regard to the term fixed by the court for jury trials for which they were originally~~

~~summoned~~ he or she is selected to serve in a trial or is under consideration to serve in a trial and such consideration covers a period of two (2) or more days. Once selected, a juror shall serve on the jury for the duration of the trial unless excused by the presiding judge.

SECTION 6. AMENDATORY 38 O.S. 2001, Section 22, as amended by Section 18, Chapter 390, O.S.L. 2002 (38 O.S. Supp. 2003, Section 22), is amended to read as follows:

Section 22. Said jurors, when impaneled, shall constitute a general panel ~~for the two-week period,~~ for service as jurors in all district, superior, common pleas and county court in the county, and shall be used interchangeably in all such courts. In the event of a deficiency of jurors at any given time to meet the requirement of all of such courts, the presiding judge having control of the general panel ~~for the two-week period~~ shall direct the district court clerk to request from the Administrative Director of the Courts such additional jurors as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no further needed.

SECTION 7. AMENDATORY 38 O.S. 2001, Section 23.1, is amended to read as follows:

Section 23.1 A. In those district courts in which an on-call system is implemented by order of the chief judge of the district court, each juror retained for services subject to call shall be required to contact a center for information as to the time and place of his or her next assignment.

B. For purposes of this section, "on-call system" means a method whereby the chief judge of a district court estimates the number of jurors required for a jury term of court.

C. Pursuant to summons for service on petit juries in the district court, each qualified, nonexempt juror is retained for service subject to call and is assigned to a judge or a case.

D. In those districts in which an on-call system is implemented by order of the chief justice of the trial court, no person shall be required to render service as a juror for more than one (1) day in a calendar year, unless he or she is selected to serve in a trial or is under consideration to serve in a trial and such consideration covers a period of two (2) or more days. Once selected, a juror shall serve on the jury for the duration of the trial unless excused by the presiding judge.

SECTION 8. AMENDATORY 38 O.S. 2001, Section 28, is amended to read as follows:

Section 28. A. It is the policy of this state that all citizens qualified for jury service pursuant to this section have an obligation to serve on petit juries when summoned by the courts of this state, unless excused.

B. All citizens of the United States, residing in this state, having the qualifications of electors of this state, ~~who are of sound mind and discretion and of good moral character~~ are competent jurors to serve on all grand and petit juries within their counties; provided, that persons over seventy (70) years of age and persons who have served as a grand or petit juror during the last two (2) immediately preceding calendar years shall not be compelled to serve as jurors in this state and the court may excuse or discharge any juror drawn and summoned as a grand or petit juror if jury:

1. The prospective juror has a mental or physical condition that causes him or her to be incapable of performing jury service. The juror, or the juror's personal representative, shall provide the court with documentation from a physician licensed to practice medicine verifying that a mental or physical condition renders the person unfit for jury service for a period of up to twenty-four (24) months; or

2. Jury service would ~~result in substantial~~ cause undue or extreme physical or financial hardship to the prospective juror or a

person under his or her care or supervision. A judge of the court for which the individual was called to jury service shall make undue or extreme physical or financial hardship determinations. The authority to make these determinations is delegable only to court officials or personnel who are authorized by the laws of this state to function as members of the judiciary. A person requesting to be excused based on a finding of undue or extreme physical or financial hardship shall take all actions necessary to have obtained a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty. For purposes of this act, "undue or extreme physical or financial hardship" is limited to circumstances in which an individual would be required to abandon a person under his or her personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury, incur costs that would have a substantial adverse impact on the payment of the individual's necessary daily living expenses or on those for whom he or she provides the principle means of support, or suffer physical hardship that would result in illness or disease. Undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from his or her place of employment. A person requesting a judge to grant an excuse based on undue or extreme physical or financial hardship shall be required to provide the judge with documentation, such as, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship, and similar documents, which the judge finds to clearly support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused.

After two (2) years, a person excused from jury service shall become eligible once again for qualification as a juror unless the

person was excused from service permanently. A person is excused from jury service permanently only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature.

~~B.~~ C. Persons who are not qualified to serve as jurors are:

1. Justices of the Supreme Court or the Court of Civil Appeals;
2. Judges of the Court of Criminal Appeals or the district court;
3. Sheriffs or deputy sheriffs;
4. Jailers or law enforcement officers, state or federal, having custody of prisoners;
5. Licensed attorneys engaged in the practice of law;
6. Persons who have been convicted of any felony or who have served a term of imprisonment in any penitentiary, state or federal, for the commission of a felony; provided, any such citizen convicted, who has been fully restored to his or her civil rights, shall be eligible to serve as a juror; and
7. Legislators during session of the Legislature or involved in state business.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28.1 of Title 38, unless there is created a duplication in numbering, reads as follows:

A. Individuals scheduled to appear for jury service have the right to postpone the date of their initial appearance for jury service one time only. When requested, postponements shall be granted, provided that:

1. The juror has not previously been granted a postponement;
2. The prospective juror appears in person or contacts the clerk of the court by telephone, electronic mail, or in writing to request a postponement; and
3. Prior to the grant of a postponement with the concurrence of the clerk of the court, the prospective juror fixes a date certain

on which he or she will appear for jury service that is not more than six (6) months after the date on which the prospective juror originally was called to serve and on which date the court will be in session unless the prospective juror is permanently excused.

B. A subsequent request to postpone jury service may be approved by a judicial officer only in the event of an extreme emergency, such as a death in the family, sudden grave illness, or a natural disaster or a national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a second postponement, the prospective juror must fix a date certain on which the individual will appear for jury service within six (6) months of the postponement on a date when the court will be in session.

SECTION 10. AMENDATORY 38 O.S. 2001, Section 34, as amended by Section 1, Chapter 134, O.S.L. 2002 (38 O.S. Supp. 2003, Section 34), is amended to read as follows:

Section 34. A. Any person who is summoned to serve as a juror and who notifies his or her employer of such summons within a reasonable period of time after receipt of a summons and prior to his or her appearance for jury duty may not be terminated, removed or otherwise subject to any adverse employment action as a result of such service.

B. An employee may not be required or requested to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or time spent actually serving on a jury. Nothing in this provision shall be construed to require an employer to provide annual, vacation, or sick leave to such employees who otherwise are not entitled to such benefits under company policies.

C. Every person, firm or corporation who discharges an employee, causes an employee to be discharged, takes other adverse

action against an employee or requires an employee to use sick ~~leave,~~ annual or vacation leave because of said employee's absence from employment by reason of said employee's having been required to serve as a grand, multicounty grand, or petit juror on a grand, multicounty grand, or petit jury shall be guilty of a misdemeanor and, upon conviction, shall be punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00). The provisions of this section shall not require an employer to pay an employee wages for the time the employee is absent from employment for jury duty unless the employee uses paid leave for that purpose. It shall be the decision of the employee whether to use paid leave or take leave without pay for absence from employment for jury duty.

D. A court shall automatically postpone and reschedule the service of a summoned juror who is employed by an employer with five or fewer full-time employees, or their equivalent, if another employee of that employer has previously been summoned to appear during the same period. Such postponement will not effect an individual's right to one automatic postponement under Section 9 of this act.

SECTION 11. AMENDATORY 38 O.S. 2001, Section 35, as amended by Section 2, Chapter 134, O.S.L. 2002 (38 O.S. Supp. 2003, Section 35), is amended to read as follows:

Section 35. Every person, firm or corporation who discharges an employee, causes an employee to be discharged, takes other adverse action against an employee or requires an employee to use sick ~~leave,~~ annual or vacation leave because of said employee's absence from employment by reason of said employee's having been required to serve as a grand, multicounty grand, or petit juror on a grand, multicounty grand, or petit jury shall be liable to the employee in a civil action at law for both actual and exemplary damages. Damages shall include all pecuniary losses suffered including, but not limited to, lost earnings, both past and future, the value of

lost leave, mental anguish and all reasonable damages incurred in obtaining other suitable employment. The provisions of this section shall not require an employer to pay an employee wages for the time the employee is absent from employment for jury duty unless the employee takes paid leave for that purpose. It shall be the decision of the employee whether to use paid leave or take leave without pay for absence from employment for jury duty.

SECTION 12. Section 1 and 3 through 11 of this act shall become effective July 1, 2004.

SECTION 13. Section 2 of this act shall become effective January 1, 2005.

SECTION 14. 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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