ENGROSSED HOUSE
BILL NO. 2661

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

and

Hobson of the Senate

(civil procedure – amending various sections in Titles 5, 12, 20, 23, 36, 51, 63 and 76 – class action cases – interlocutory appeals - repealing 63 O.S., Section 1-1708.1F – codification – effective date)

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

SECTION 1. AMENDATORY 5 O.S. 2001, Section 7, is amended to read as follows:

Section 7. ~~It~~ A. For contracts entered into before November 1, 2004, it shall be lawful for an attorney to contract for a percentage or portion of the proceeds of a client's cause of action or claim not to exceed fifty percent (50%) of the net amount of such judgment as may be recovered, or such compromise as may be made, whether the same arises ex contractu or ex delicto, and no compromise or settlement entered into by a client without such attorney's consent shall affect or abrogate the lien provided for in ~~this chapter~~ Section 6 of this title. Provided that all such contracts in personal injury or wrongful death cases including, but not restricted to, cases in which jurisdiction is in the ~~Industrial Commission~~ Workers' Compensation Court, shall be void and unenforceable ~~(1) if~~:

1. If secured as a result of the intervention of any laymen, association, or corporation for compensation, or promise of

compensation, or anticipation of gift, compensation or hope of reward~~,~~; or ~~(2) where~~

2. If any laymen, association or corporation has a direct or indirect interest in, or growing out of, any judgment arising out of such claim recovery or compensation from, or settlement of any such claim.

B. Beginning November 1, 2004, the maximum percentage of the net amount of a judgment or settlement that an attorney may charge as a contingency fee shall be:

1. Thirty percent (30%) for a judgment or settlement of not exceeding Two Hundred Fifty Thousand Dollars ($250,000.00);

2. Twenty percent (20%) for a judgment or settlement exceeding Two Hundred Fifty Thousand Dollars ($250,000.00), but not exceeding One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00); and

3. Ten percent (10%) for a judgment or settlement exceeding One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00).

C. The limitations of subsection B of this section shall not apply if the attorney provides evidence to the court that the actual billable services provided to the client exceed the limitations. However, in no event shall the contingency fee exceed fifty percent (50%) of the net amount of the judgment or settlement.

D. In any action not arising out of contract, attorney fees shall be awarded to the prevailing party.

SECTION 2. 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:

A. This section shall be known as the "Legal Fee Anti-Gouging Act."

B. A contract for legal services based on a percentage of recovery by judgment or settlement in excess of twenty percent (20%) of said recovery shall be void as a matter of public policy unless:

1. In cases in which the plaintiff has requested a jury trial, the jury decides, in a hearing requested by the attorney after the judgment or settlement is final, that the attorney should be entitled to a fee in excess of twenty percent (20%); or

2. In cases in which the plaintiff has not requested a jury trial, the judge decides, in a hearing requested by the attorney after the judgment or settlement is final, that the attorney should be entitled to a fee in excess of twenty percent (20%).

C. At least fifteen (15) days prior to any hearing regarding attorney fees pursuant to subsection B of this section, the client shall be notified in writing of the date, time, and place of the hearing, the fee requested by the attorney, and the right of the client to appear and be represented by separate counsel at such hearing.

D. An attorney representing a client at a hearing pursuant to subsection B of this section shall not enter into a contract with a client for legal services based on a percentage of recovery by judgment or settlement.

E. Nothing in this section shall entitle an attorney to a fee in excess of that authorized by existing law.

F. The rights given to a client pursuant to this section shall not be waived.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7.2 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. If any portion of the benefits recovered for the class in a class action are in the form of coupons or other noncash common benefits, the attorney fees awarded in the class action shall be in cash and noncash amounts in the same proportion as the recovery for the class.

B. In class actions, if an award of attorney fees is available under applicable substantive law, the trial court shall use the

Lodestar Rule to calculate the amount of fees to be awarded to class counsel. The court may increase or decrease the fee award calculated by using the Lodestar Rule by no more than five times based on factors specified in subsection C of this section; however, the fee award allowed shall not exceed Five Hundred Dollars ($500.00) per hour.

C. As used in this section, "Lodestar Rule" means the number of hours reasonably expended multiplied by the prevailing hourly rate in the community and then adjusted for other factors. In arriving at just compensation, the court shall consider the following factors:

1. Time and labor required;

2. The novelty and difficulty of the case;

3. The skill required to perform the legal service properly;

4. The preclusion of other employment by the attorney due to acceptance of the case;

5. The customary fee;

6. Whether the fee is fixed or contingent;

7. Time limitations imposed by the client or the circumstances;

8. The amount in controversy and the results obtained;

9. The experience, reputation and ability of the attorney;

10. Whether or not the case is an undesirable case;

11. The nature and length of the professional relationship with the client; and

12. Awards in similar cases.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 95.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "product liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict

products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including, but not limited to, an action for:

1. Injury or damage to or loss of real or personal property;

2. Personal injury;

3. Wrongful death;

4. Economic loss; or

5. Declaratory, injunctive, or other equitable relief.

B. Except as provided by subsections C, D and E of this section, a plaintiff must commence a product liability action against a manufacturer or seller of a product before the end of ten (10) years after the date of the sale of the product by the defendant.

C. If a manufacturer or seller expressly warrants in writing that the product has a useful safe life of longer than ten (10) years, a plaintiff must commence a product liability action against that manufacturer or seller of the product before the end of the number of years warranted after the date of the sale of the product by that seller.

D. This section shall not apply to a product liability action in which damages are sought for personal injury or wrongful death if the plaintiff alleges:

1. The plaintiff was exposed to the product that is the subject of the action before the end of ten (10) years after the date the product was first sold to the plaintiff;

2. Exposure to the product caused a disease or injury that is the basis of the action; and

3. The symptoms of the disease or the cause of the injury were not, before the end of ten (10) years after the date of the first sale of the product by the defendant, manifest to a degree and for a

duration that would put a reasonable person on notice that the person suffered some injury or that the product was subject to some defect.

E. This section shall not reduce a limitations period for a cause of action described by subsection D of this section that accrues before the end of the limitations period under this section.

F. This section shall not extend the limitations period within which a products liability action involving the product may be commenced under any other law.

G. This section applies only to the sale and not to the lease of a product.

H. This section shall not apply to any claim to which the General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298), 108 Stat. 1552 (1994), 49 U.S.C., Section 40101 or its exceptions are applicable.

SECTION 5. 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:

A medical liability action brought pursuant to the Affordable Access to Health Care Act shall be brought only in the county where the cause of action arose.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 144 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. If the court, upon motion by a party, finds that in the interest of justice and for the convenience of the parties a claim or action would be more properly heard in another forum, the court may decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action.

B. In determining whether to grant a motion to stay or dismiss an action pursuant to this section, the court may consider:

1. Whether an alternate forum exists in which the claim or action may be tried;

2. Whether the alternate forum provides an adequate remedy;

3. Whether maintenance of the claim in the court in which the case is filed would work a substantial injustice to the moving party;

4. Whether the alternate forum can exercise jurisdiction over all the defendants properly joined in the claim of the plaintiff;

5. Whether the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

6. Whether the stay or dismissal would prevent unreasonable duplication or proliferation of litigation.

SECTION 7. AMENDATORY 12 O.S. 2001, Section 683, is amended to read as follows:

Section 683. ~~An~~ Except as provided in Section 9 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 8. AMENDATORY 12 O.S. 2001, Section 684, is amended to read as follows:

Section 684. ~~A~~ Except as provided in Section 9 of this act, a plaintiff may, on the payment of costs and without an order of court, dismiss any civil action brought by ~~him~~ 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. 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.

SECTION 9. 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. An action shall only be dismissed by the plaintiff without order of court:

1. By filing a notice of dismissal at any time before service of an answer by the defendant or service of a motion for summary judgment on the plaintiff, whichever first occurs; or

2. By filing a stipulation of dismissal signed by all parties who have appeared in the action.

B. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court an action based on or including the same claim.

SECTION 10. 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 11. 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. Prejudgment interest shall not be added to an award of future damages. 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:

1. The average for the preceding calendar year for the bank prime loan rate, as published by the Federal Reserve Bank of New

York and as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year;

2. Five percent (5%), if the average bank prime loan rate for the preceding calendar year is less than five percent (5%); or

3. Fifteen percent (15%), if the average bank prime loan rate for the preceeding calendar year is more than fifteen percent (15%).

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 12. 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. In no event shall the bond exceed the lesser of ten percent (10%) of the net worth of the judgment debtor or Twenty-five Million Dollars ($25,000,000.00). In addition, 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 may lower the amount of the bond to an amount that will not cause the judgment debtor to suffer substantial economic harm. Nothing in this paragraph shall prevent a court from 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, transfer, conveyance, or dissipation 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 13. AMENDATORY 12 O.S. 2001, Section 993, is amended to read as follows:

Section 993. A. When an order:

1. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment;

2. Denies a temporary or permanent injunction, grants a temporary or permanent injunction except where granted at an ex parte hearing, or discharges, vacates, or modifies or refuses to discharge, vacate, or modify a temporary or permanent injunction;

3. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of a party;

4. Appoints a receiver except where the receiver was appointed at an ex parte hearing, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver;

5. Directs the payment of money pendente lite except where granted at an ex parte hearing, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite;

6. Certifies or refuses to certify an action to be maintained as a class action; ~~or~~

7. Denies a motion asserting lack of jurisdiction because an agency of this state has exclusive or primary jurisdiction of the

action or a part of the action, or asserting that a party has failed to exhaust administrative remedies; or

8. Grants a new trial or opens or vacates a judgment or order, the party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination in said cause, by filing the petition in error and the record on appeal with the Supreme Court within thirty (30) days after the order prepared in conformance with Section 696.3 of this title, is filed with the court clerk. If the appellant did not prepare the order, and Section 696.2 of this title required a copy of the order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the order was mailed to the appellant. The Supreme Court may extend the time for filing the record upon good cause shown.

B. If the order discharges or modifies an attachment or temporary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or temporary injunction shall stay the enforcement of said order and remain in full force until final order of discharge shall take effect.

C. Where a receiver shall be or has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in such sum as may have been required of the receiver by the court or a judge thereof, conditioned for the due prosecution of the appeal and the payment of all costs or damages that may accrue to the state or any officer or person by reason thereof, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

D. During the pendency of an appeal pursuant to paragraph 6 or 7 of subsection A of this section, the action in the trial court shall be stayed in all respects. Following adjudication on appeal pursuant to paragraph 6 of subsection A of this section, if the class is not certified, the stay in the trial court shall automatically dissolve and the trial court may proceed to adjudicate any remaining individual claims or defenses. If after such appeal, the class is to be certified, the stay shall dissolve and the trial court shall proceed with adjudication on the merits; provided, the trial court shall at all times prior to entry of a final order retain jurisdiction to revisit the certification issues, upon motion of a party, and to order decertification of the class if during the litigation of the case it becomes evident to the court that the action is no longer reasonably maintainable as a class action.

SECTION 14. AMENDATORY 12 O.S. 2001, Section 1101, is amended to read as follows:

Section 1101. The defendant, in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff or ~~his~~ the attorney for the plaintiff an offer, in writing, to allow judgment to be taken against ~~him~~ the defendant for the sum specified therein. If the plaintiff accept the offer and give notice thereof to the defendant or ~~his~~ the attorney for the defendant, within five (5) days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered within the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer, verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, ~~he~~ the

plaintiff shall pay the defendant's costs from the time of the offer.

SECTION 15. AMENDATORY 12 O.S. 2001, Section 1102, is amended to read as follows:

Section 1102. The making of an offer, pursuant to the provisions contained in ~~the foregoing section~~ Sections 1101 and 1101.1 of this title, shall not be a cause for a continuance of an action or a postponement of the trial.

SECTION 16. 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 for any action not arising out of contract. 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 is 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 asserted in bad faith, was without merit, 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.

SECTION 17. 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. <u>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.</u>

SECTION 18. 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 19. AMENDATORY 12 O.S. 2001, Section 2023, is amended to read as follows:

Section 2023.

CLASS ACTIONS

A. PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

1. The class is so numerous that joinder of all members is impracticable;

2. There are questions of law or fact common to the class;

3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and

4. The representative parties will fairly and adequately protect the interests of the class.

B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subsection A of this section are satisfied and in addition:

1. The prosecution of separate actions by or against individual members of the class would create a risk of:

a. inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

b. adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

2. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

3. The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

a. the interest of members of the class in individually controlling the prosecution or defense of separate actions,

b. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class,

c. the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and

d. the difficulties likely to be encountered in the management of a class action.

C. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY; STATE AGENCY WITH EXCLUSIVE OR PRIMARY JURISDICTION.

Before hearing or deciding a motion to certify a class action, the court shall hear and rule on all pending motions asserting lack of jurisdiction because an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative

remedies. The ruling of the court shall be reflected in a written order. If a motion provided for in this subsection is denied and a class is subsequently certified, a person may obtain appellate review of the order denying the motion as part of an appeal of the order certifying the class action.

D. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.

1. As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

2. In any class action maintained under paragraph 3 of subsection B of this section, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that:

a. the court will exclude him from the class if he so requests by a specified date,

b. the judgment, whether favorable or not, will include all members who do not request exclusion, and

c. any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

Where the class contains more than five hundred (500) members who can be identified through reasonable effort, it shall not be necessary to direct individual notice to more than five hundred (500) members, but the members to whom individual notice is not directed shall be given notice in such manner as the court shall direct, which may include publishing notice in newspapers, magazines, trade journals or other publications, posting it in

appropriate places, and taking other steps that are reasonably calculated to bring the notice to the attention of such members, provided that the cost of giving such notice shall be reasonable in view of the amounts that may be recovered by the class members who are being notified. Members to whom individual notice was not directed may request exclusion from the class at any time before the issue of liability is determined, and commencing an individual action before the issue of liability is determined shall be the equivalent of requesting exclusion from the class.

3. The judgment in an action maintained as a class action under ~~paragraphs~~ paragraph 1 or 2 of subsection B of this section, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under paragraph 3 of subsection B of this section, whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in paragraph 2 of this subsection ~~C of this section~~ was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

4. When appropriate:

a. an action may be brought or maintained as a class action with respect to particular issues, or

b. a class may be divided into subclasses and each subclass treated as a class.

The provisions of this section shall then be construed and applied accordingly.

~~D.~~ E. ORDERS IN CONDUCT OF ACTIONS. In the conduct of actions to which this section applies, the court may make appropriate orders:

1. Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

2. Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

3. Imposing conditions on the representative parties or on intervenors;

4. Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; and

5. Dealing with similar procedural matters.

The orders may be combined with an order under Section ~~16~~ 2016 of this ~~act~~ title and may be altered or amended as may be desirable from time to time.

~~E.~~ F. DISMISSAL OR COMPROMISE. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

SECTION 20. AMENDATORY 12 O.S. 2001, Section 2702, is amended to read as follows:

Section 2702. A. If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise, if:

1. The testimony is based upon sufficient facts or data;

2. The testimony is the product of reliable principles and methods; and

3. The witness has applied the principles and methods reliably to the facts of the case.

B. Preliminary questions concerning the admissibility of expert testimony pursuant to subsection A of this section shall be determined by the court prior to the introduction of such evidence. The court shall act as "gatekeeper" to determine the admissibility of expert testimony and shall exclude from evidence testimony that does not satisfy the requirements of subsection A of this section.

C. This section shall be interpreted in a manner consistent with Federal Rule of Evidence 702 and the case law applicable thereto.

SECTION 21. 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 22. 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, upon motion by a party or 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 where the deposition is to be taken, upon a finding that justice requires that a party or person be protected from annoyance, harassment, embarrassment, oppression or undue delay, burden, or expense, may enter a protective order authorizing the discovery.

B. AWARD OF EXPENSES OF MOTION. If the motion is granted, the court shall, 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 shall, 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 23. 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. There is hereby created the Judicial Panel on Multidistrict Litigation. The panel shall 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. 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.

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

1. Be for the convenience of the parties and witnesses; and

2. Promote the just and efficient conduct of actions.

D. 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.

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

SECTION 24. 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 25 of this act.

B. Whenever a district court establishes a drug court program pursuant to the provisions of Sections ~~1~~ 471 through ~~12~~ 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 25. 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 26. AMENDATORY 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2003, Section 9.1), is amended to read as follows:

Section 9.1 A. In an action for the breach of an obligation not arising from contract, the jury, in addition to actual damages, may, subject to the provisions and limitations in subsections B, C and D of this section, award punitive damages for the sake of example and by way of punishing the defendant based upon the following factors:

1. The seriousness of the hazard to the public arising from the defendant's misconduct;

2. The profitability of the misconduct to the defendant;

3. The duration of the misconduct and any concealment of it;

4. The degree of the defendant's awareness of the hazard and of its excessiveness;

5. The attitude and conduct of the defendant upon discovery of the misconduct or hazard;

6. In the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and

7. The financial condition of the defendant.

B. Category I. Where the jury finds by clear and convincing evidence that:

1. The defendant has been guilty of reckless disregard for the rights of others; or

2. An insurer has recklessly disregarded its duty to deal fairly and act in good faith with its insured; the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in an amount not to exceed the greater of:

a. One Hundred Thousand Dollars ($100,000.00), or

b. the amount of the actual damages awarded.

Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

C. Category II. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or

2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in an amount not to exceed the greatest of:

a. Five Hundred Thousand Dollars ($500,000.00),

b. twice the amount of actual damages awarded, or

c. the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing the injury to the plaintiff and other persons or entities.

The trial court shall reduce any award for punitive damages awarded pursuant to the provisions of subparagraph c of this paragraph by the amount it finds the defendant or insurer has previously paid as a result of all punitive damage verdicts entered in any court of this state for the same conduct by the defendant or insurer. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

D. Category III. Where the jury finds by clear and convincing evidence that:

1. The defendant has acted intentionally and with malice towards others; or

2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured; and the court finds, on the record and out of the presence of the jury, that there is evidence beyond a reasonable doubt that the defendant or insurer acted intentionally and with malice and engaged in conduct life-threatening to humans,

the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in any amount the jury deems appropriate, without regard to the limitations set forth in subsections B and C of this section. Any award of punitive damages under this subsection awarded in any manner other than as required in this subsection shall be void and reversible error.

E. In determining the amount, if any, of punitive damages to be awarded under either subsection B, C or D of this section, the jury

shall make the award based upon the factors set forth in subsection A of this section.

F. Punitive damages shall be awarded only if the jury is unanimous in regard to finding liability for punitive damages.

G. The provisions of this section are severable, and if any part or provision thereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions thereof.

~~G. This~~ H. The provisions of this section, except subsection F of this section, shall apply to all civil actions filed after ~~the effective date of this act~~ August 25, 1995.

I. The provisions of subsection F of this section shall apply to all civil actions filed on or after November 1, 2004.

SECTION 27. 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 or strict liability 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. 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 as to any tortfeasor who acted willfully and wantonly.

C. 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. 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 28. AMENDATORY 23 O.S. 2001, Section 61, is amended to read as follows:

Section 61. A. For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by ~~this chapter~~ law, is the amount which will compensate for all detriment proximately caused thereby, whether it could have been anticipated or not.

B. Except as provided in subsection C of this section, for the breach of an obligation not arising from contract, if the plaintiff receives compensation for the injuries or harm that gave rise to the cause of action from a source wholly independent of the defendant, such fact may be admitted into evidence and the amount may be deducted from the amount of damages that the plaintiff recovers from the defendant.

C. The provisions of subsection B of this section shall not apply if the defendant, with specific intent to do harm to others, committed a crime and, in doing so, proximately caused the damages legally recoverable by the plaintiff.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61A of Title 23, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, in any action not arising out of contract, 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. 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 all subjective, nonmonetary losses including, but not limited to, pain, suffering, inconvenience, mental anguish, emotional distress, loss of enjoyment of life, 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 the jury finds by clear and convincing evidence that the defendant committed willful and wanton negligence, the limits on noneconomic damages provided for in subsection A of this section shall not apply.

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

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

SECTION 30. AMENDATORY 23 O.S. 2001, Section 103, is amended to read as follows:

Section 103. In any action ~~for damages for personal injury except injury resulting in death, or in any action for damages to personal rights~~ not arising out of contract, the court shall, upon granting a motion to dismiss an action or a motion for summary judgment or subsequent to adjudication on the merits ~~and upon motion of the prevailing party~~, determine whether a claim or defense

asserted in the action by a nonprevailing party was frivolous. As used in this section "frivolous" means the action was asserted in bad faith, was without merit, was not well grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Upon so finding, the court shall enter a judgment ordering such nonprevailing party to reimburse the prevailing party ~~an amount not to exceed Ten Thousand Dollars ($10,000.00)~~ for reasonable costs, including attorneys fees, incurred with respect to such claim or defense. In addition, the court may impose any sanction authorized by Section 2011 of Title 12 of the Oklahoma Statutes.

SECTION 31. AMENDATORY 51 O.S. 2001, Section 152, as last amended by Section 1, Chapter 304, O.S.L. 2003 (51 O.S. Supp. 2003, Section 152), 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, and

(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 Section 3-1-101 of Title 27A of the Oklahoma Statutes,

m. for purposes of The Governmental Tort Claims Act, districts formed pursuant to the Oklahoma Irrigation District Act, and

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 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 32. 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~~ 1-1708.1A through ~~7~~ 1-1708.1G of this ~~act~~ title and Sections 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of this act shall be known and may be cited as the "Affordable Access to Health Care Act".

SECTION 33. AMENDATORY Section 4, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1708.1D), is amended to read as follows:

Section 1-1708.1D A. In every medical liability action, the court shall admit evidence of payments of medical bills made to the injured party, unless the court makes the finding described in paragraph B of this section.

B. In any medical liability action, upon application of a party, the court shall make a determination whether amounts claimed by a health care provider to be a payment of medical bills from a collateral source is subject to a formal, asserted claim of subrogation or other right of recovery. If the court makes a determination that any such payment is subject to a formal, asserted claim of subrogation or other right of recovery, evidence of the payment from the collateral source and subject to subrogation or other right of recovery shall not be admitted.

C. Any person or entity that would otherwise be entitled to make a subrogation or other type of recovery claim, but fails to do so in a written, formal asserted claim by the final pretrial conference in any medical liability action, shall be deemed to have waived the claim and shall be barred from recovery on the claim.

SECTION 34. AMENDATORY Section 5, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1708.1E), is amended to read as follows:

Section 1-1708.1E A. 1. In any medical liability action, a person asserting a health care liability claim or an authorized agent of the person shall give written notice of the claim by certified mail, return receipt requested, to each health care provider against whom such claim is being made at least sixty (60) days before the filing of the medical liability action.

2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling.

3. The notice shall require the health care provider to preserve all evidence related to the events set forth in the notice, including pathology and radiology, or other medical evidence, whether or not contained in the medical chart of the patient, electronic evidence, including e-mails, paper-tracking data, and medical information, whether or not contained in the medical record.

4. The sixty-day notice period set forth in paragraph 1 of this subsection shall cause a tolling of the statute of limitations for an equal period of sixty (60) days.

B. 1. In any medical liability action, except as provided in subsection ~~B~~ C of this section, the plaintiff shall attach to the petition an affidavit attesting that:

a. the plaintiff has consulted and reviewed the facts of the claim with a qualified expert,

b. the plaintiff has obtained a written opinion from a qualified expert that clearly identifies the plaintiff and includes the expert's determination that, based upon a review of the available medical records, facts or other relevant material, a reasonable

interpretation of the facts supports a finding that the acts or omissions of the health care provider against whom the action is brought constituted professional negligence, and

c. on the basis of the qualified expert's review and consultation, the plaintiff has concluded that the claim is meritorious and based on good cause.

2. In any medical liability action, except as provided in subsection C of this section, the defendant shall attach to the answer, if denying the claim by the plaintiff or if pleading affirmative defenses, an affidavit attesting that:

a. the defendant has consulted and reviewed the facts of the claim with a qualified expert,

b. the defendant has obtained a written opinion from a qualified expert that clearly identifies the claimant and includes a determination by the expert that, based upon a review of the medical records, facts, or other relevant material, a reasonable interpretation of the facts supports a finding that the acts or omissions of the health care provider against whom the claim is brought did not constitute professional negligence, and

c. on the basis of the review and consultation by the qualified expert, the denial of the claims and the assertion of affirmative defenses are supported by the evidence and based on good cause.

~~2.~~ 3. If a medical liability action is filed:

a. without an affidavit being attached to the petition, as required in paragraph 1 of this subsection, and

b. no extension of time is subsequently granted by the court, pursuant to subsection ~~B~~ C of this section,

the court shall, upon motion of the defendant, dismiss the action without prejudice to its refiling.

4. In a medical liability action if an answer is filed without an affidavit being attached and no extension of time is subsequently granted as provided in subsection C of this section, the court shall, upon motion of the plaintiff, strike all affirmative defenses raised in the answer.

~~3.~~ 5. The written opinion from the qualified expert for the claimant shall state the acts or omissions of the defendant(s) that the expert then believes constituted professional negligence and shall include reasons explaining why the acts or omissions constituted professional negligence. The written opinion from the qualified expert shall not be admissible at trial for any purpose nor shall any inquiry be permitted with regard to the written opinion for any purpose either in discovery or at trial.

6. The written opinion from the qualified expert for the defendant shall state the acts and omissions that the expert believes did not constitute professional negligence and shall include reasons why the claim is denied and explaining the basis for each affirmative defense including why the adverse outcome is not caused by the acts or omissions of the health care provider. The written opinion from the qualified expert shall not be admissible at trial for any purpose nor shall any inquiry be permitted with regard to the written opinion for any purpose either in discovery or at trial.

~~B.~~ C. 1. The court may, upon application of ~~the plaintiff~~ either party for good cause shown, grant the plaintiff an extension of time, not exceeding ninety (90) days after the date the petition is filed, except for good cause shown, to file in the action an affidavit attesting that the ~~plaintiff~~ party has obtained a written opinion from a qualified expert as described in paragraph 1 of subsection ~~A~~ B of this section.

2. If on the expiration of an extension period described in paragraph 1 of this subsection, ~~the plaintiff~~ either party has failed to file in the action an affidavit as described above, the court shall, upon motion of ~~the defendant~~ other party, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling.

~~C.~~ D. 1. Upon written request of ~~any defendant~~ either party in a medical liability action, ~~the plaintiff~~ other party shall, within ten (10) business days after receipt of such request, provide the ~~defendant~~ other party with:

a. a copy of the written opinion of a qualified expert mentioned in an affidavit filed pursuant to subsection ~~A~~ B or ~~B~~ C of this section, and

b. in the case of a request by the defendant, an authorization from the plaintiff in a form that complies with applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996, for the release of any and all medical records, excluding psychiatric records, related to the plaintiff for a period commencing five (5) years prior to the incident that is at issue in the medical liability action.

2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1E-1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In a medical liability action, a plaintiff shall, not later than one hundred twenty (120) days after the date the action was filed, serve on each party or the party's attorney one or more

expert reports, with a curriculum vitae of each expert listed in the report for each health care provider against whom a liability claim is asserted. The date for serving the report may be extended by written agreement of the affected parties. Each party whose conduct is implicated in a report shall file and serve any objection to the sufficiency of the report not later than twenty-one (21) days after the date a report was served, or all objections are waived.

B. If, as to any defendant, an expert report has not been served within the period specified by subsection A of this section, the court, on the motion of the defendant, may, subject to subsection C of this section, enter an order that:

1. Awards to the affected health care provider reasonable attorney fees and costs of court incurred by the defendant; and

2. Dismisses the claim with respect to the defendant, without prejudice to the refiling of the claim.

C. If an expert report has not been served within the period specified by subsection A of this section or is found to be deficient, the court may grant one thirty-day extension to the plaintiff in order to serve the expert report or cure the deficiency.

D. A plaintiff may satisfy any requirement of this section for serving an expert report by serving reports of separate experts regarding different health care providers or regarding different issues arising from the conduct of a health care provider, such as issues of liability and causation. Nothing in this section shall be construed to mean that a single expert must address all liability and causation issues with respect to all health care providers or with respect to both liability and causation issues for a health care provider.

E. Nothing in this section shall be construed to require the serving of an expert report regarding any issue other than an issue relating to liability or causation.

F. Subject to subsection J of this section, an expert report served under this section:

1. Is not admissible in evidence by any party;

2. Shall not be used in a deposition, trial, or other proceeding; and

3. Shall not be referred to by any party during the course of the action for any purpose.

G. A court shall grant a motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent an objective good faith effort to comply with the definition of an expert report provided in subsection H of this section.

H. "Expert report" means a written report by an expert that provides a fair summary of the opinions of the expert as of the date of the report regarding applicable standards of care, the manner in which the care rendered by the health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed.

I. Until a plaintiff has served the expert report and curriculum vitae as required by subsection A of this section, all discovery in a health care liability claim is stayed except for the acquisition by the plaintiff of information, including medical or hospital records or other documents or tangible things, related to the patient's health care and the standard sets of interrogatories and requests for production as provided for in Section 40 of this act.

J. If an expert report is used by the plaintiff in the course of the action for any purpose other than to meet the service requirement of subsection A of this section, the restrictions imposed by subsection F of this section on use of the expert report by any party are waived.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1E-2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In every medical liability action, the plaintiff shall within forty-five (45) days after the date of filing of the original petition serve on the defendant's attorney or, if no attorney has appeared for the defendant, on the defendant, full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the appropriate standard set of requests for production of documents and things promulgated by the Health Care Discovery Panel, established by subsection I of this section.

B. Every health care provider who is a defendant in a health care liability claim shall within forty-five (45) days after the date on which an answer to the petition was due serve on the plaintiff's attorney or, if the plaintiff is not represented by an attorney, on the plaintiff, full and complete answers to the appropriate standard set of interrogatories and complete responses to the standard set of requests for production of documents and things promulgated by the Health Care Discovery Panel.

C. Except on motion and for good cause shown, no objection may be asserted regarding any standard interrogatory or request for production of documents and other items, but no response shall be required if a particular interrogatory or request is clearly inapplicable under the circumstances of the case.

D. Failure to file full and complete answers and responses to standard interrogatories and requests for production of documents and other items in accordance with subsections A and B of this section or the making of a groundless objection under subsection C of this section shall be grounds for sanctions by the court in accordance with Section 3237 of Title 12 of the Oklahoma Statutes.

E. The time limits imposed under subsections A and B of this section may be extended by the court on the motion of a responding

party for good cause shown and shall be extended if agreed in writing between the responding party and all opposing parties. In no event shall an extension be for a period of more than an additional thirty (30) days.

F. If a party is added by an amended pleading, intervention, or otherwise, the new party shall file full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the standard set of requests for production of documents and things no later than forty-five (45) days after the date of filing of the pleading by which the party first appeared in the action.

G. If information or documents required to provide full and complete answers and responses as required by this section are not in the possession of the responding party or attorney when the answers or responses are filed, the party shall supplement the answers and responses.

H. Nothing in this section shall preclude any party from taking additional nonduplicative discovery of any other party. The standard sets of interrogatory and requests for production provided for by this section shall not limit the number of interrogatories and requests for production allowed by the Oklahoma Discovery Code.

I. There is hereby created the Health Care Discovery Panel. The Panel shall develop standard sets of interrogatories and requests for documents and other items appropriate for each of the categories of plaintiffs and defendants usually involved in medical liability actions.

J. The Panel shall be composed of nine (9) members, to be appointed as follows:

1. Three attorneys licensed to practice law in this state, one physician licensed to practice medicine in this state, and one consumer advocate, to be appointed by the Governor;

2. One attorney licensed to practice law in this state and one physician licensed to practice medicine in this state, to be appointed by the Speaker of the House of Representatives; and

3. One attorney licensed to practice law in this state and one physician licensed to practice medicine in this state, to be appointed by the President Pro Tempore of the Senate.

K. Members of the Panel shall serve at the pleasure of the appointing authority. Any vacancy on the Panel shall be filled by the original appointing authority. A majority of the members present at a meeting shall constitute a quorum for the transaction of business. The Panel may elect a chair and a vice-chair. Employees of the Office of the Administrative Director of the Courts shall serve as staff for the Panel.

L. Members of the Panel shall serve without compensation but shall be entitled reimbursement for necessary expenses pursuant to the State Travel Reimbursement Act.

M. The Panel shall submit the standard sets of interrogatories and requests for documents developed pursuant to subsection I of this section to the Supreme Court by February 1, 2005.

SECTION 37. 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 of this section, in any civil action brought against a hospital or hospital system, or its employees, officers, directors, or volunteers, for damages based on an act or omission by the hospital or hospital system, or its employees, officers, directors, or volunteers, the liability of the hospital or hospital system is limited to money damages in a maximum amount of Five Hundred Thousand Dollars ($500,000.00) for any act or omission resulting in damage or injury to a patient if the patient or, if the patient is a minor or is otherwise legally incompetent,

the person responsible for the patient, signs a written statement that acknowledges:

1. That the hospital is providing care that is not administered for or in expectation of compensation; and

2. The limitations on the recovery of damages from the hospital in exchange for receiving the health care services.

B. This section shall not apply to wrongful death actions or to an act or omission that is the result of gross negligence or willful or wanton misconduct.

SECTION 38. 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. In addition, "relative" includes any person who has a family-type relationship with a plaintiff. "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 39. 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. A health care provider performing charitable health care services, without expectation or actual receipt of compensation, shall not be liable for civil damages on the basis of any act or omission in providing the medical services if:

1. The health care provider was acting in good faith and within the scope of the license issued to the health care provider pursuant to Title 59 or 63 of the Oklahoma Statutes;

2. The acts or omissions were not caused by gross negligence or willful and wanton misconduct; and

3. The acts or omissions were committed in the course of providing health care services.

B. The charitable medical services provided without expectation of compensation on the part of a health care provider may be provided at any location.

C. The civil immunity for the health care provider provided in subsection A of this section does not apply unless the person receiving the charitable health care services, or the legal representative of the person receiving the charitable health care services, provides informed consent that:

1. The health care services are being provided with no expectation of compensation on the part of the health care provider; and

2. The health care services are governed by this section providing immunity from civil damages for the health care provider.

D. The civil immunity provided for in subsection A of this section applies only to the actions taken by the health care provider during the provision of the health care services and does not confer any immunity for actions taken prior to or subsequent to the provision of health care services.

E. In any civil action in which a health care provider prevails based upon the civil immunity provided for in subsection A of this section, the court may award all reasonable attorney fees incurred by the health care provider in defending the action.

F. The provisions of this section shall not apply to actions brought for wrongful death.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1J of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If the plaintiff in a medical liability action has settled with one or more persons, the court shall reduce the amount of damages to be recovered by the plaintiff with respect to a cause of action by an amount equal to one of the following, as elected by the defendant:

1. The sum of the dollar amounts of all settlements; or

2. A percentage equal to each settling person's percentage of responsibility as found by the trier of fact.

B. An election made under subsection A of this section shall be made by any defendant filing a written election before the issues of the action are submitted to the trier of fact and when made, shall be binding on all defendants. If no defendant makes this election or if conflicting elections are made, all defendants are considered to have elected the option provided for in paragraph 1 of subsection A of this section.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1K of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In an action for damages that involves a claim of negligence arising from the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a

hospital emergency department, the court shall instruct the jury to consider, together with all other relevant matters:

1. Whether the person providing care did or did not have the patient's medical history or was able or unable to obtain a full medical history, including the knowledge of preexisting medical conditions, allergies, and medications;

2. The presence or lack of a preexisting physician-patient relationship or health care provider-patient relationship;

3. The circumstances constituting the emergency; and

4. The circumstances surrounding the delivery of the emergency medical care.

B. The provisions of subsection A of this section shall not apply to medical care or treatment:

1. That occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient;

2. That is unrelated to the original medical emergency; or

3. That is related to an emergency caused in whole or in part by the negligence of the defendant.

C. The provisions of this section shall apply to all actions filed on or after November 1, 2004.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1L 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 certified by a licensing agency of one or more states of the United States or a national professional certifying agency, or has other substantial training or experience, in the area of health care relevant to the claim; and

2. Is actively practicing or retired from practicing health care in an 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.

D. A pretrial objection to the qualifications of a witness under this section shall be made not later than the later of the twenty-first day after the date the objecting party receives a copy of the witness's curriculum vitae or the twenty-first day after the date of the witness's deposition. If circumstances arise after the date on which the objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.2 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Future damages" means damages that are incurred after the date of judgment for:

a. medical, health care, or custodial care services,

b. physical pain and mental anguish, disfigurement, or physical impairment,

c. loss of consortium, companionship, or society, or

d. loss of earnings;

2. "Future loss of earnings" means the following losses incurred after the date of the judgment:

a. loss of income, wages, or earning capacity and other pecuniary losses, and

b. loss of inheritance; and

3. "Periodic payments" means the payment of money or its equivalent to the recipient of future damages at defined intervals.

B. This section applies only to an action in which the present value of the award of future damages, as determined by the court, equals or exceeds One Hundred Thousand Dollars ($100,000.00).

C. At the request of a defendant or a plaintiff, the court shall order that medical, health care, or custodial services awarded in an action be paid in whole or in part in periodic payments rather than by a lump-sum payment.

D. At the request of a defendant or a plaintiff, the court may order that future damages other than medical, health care, or custodial services awarded in a health care liability claim be paid in whole or in part in periodic payments rather than by a lump-sum payment.

E. The court shall make a specific finding of the dollar amount of periodic payments that will compensate the plaintiff for the future damages.

F. The court shall specify in its judgment ordering the payment of future damages by periodic payments the:

1. Recipient of the payments;

2. Dollar amount of the payments;

3. Interval between payments; and

4. Number of payments or the period of time over which payments must be made.

G. The entry of an order for the payment of future damages by periodic payments constitutes a release of the health care liability claim filed by the plaintiff.

H. As a condition to authorizing periodic payments of future damages, the court shall require a defendant who is not adequately insured to provide evidence of financial responsibility in an amount adequate to assure full payment of damages awarded by the judgment.

I. The judgment must provide for payments to be funded by:

1. An annuity contract issued by a company licensed to do business as an insurance company, including an assignment within the meaning of Section 130, Internal Revenue Code of 1986, as amended;

2. An obligation of the United States;

3. Applicable and collectible liability insurance from one or more qualified insurers; or

4. Any other satisfactory form of funding approved by the court.

J. On termination of periodic payments of future damages, the court shall order the return of the security, or as much as remains, to the defendant.

K. On the death of the recipient, money damages awarded for loss of future earnings continue to be paid to the estate of the recipient of the award without reduction. Following the

satisfaction or termination of any obligations specified in the judgment for periodic payments, any obligation of the defendant health care provider to make further payments ends and any security given reverts to the defendant.

L. For purposes of computing the award of attorney fees when the plaintiff is awarded a recovery that will be paid in periodic payments, the court shall place a total value on the payments based on the plaintiff's projected life expectancy and reduce the amount to present value.

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1O of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

B. The Panel shall be composed of nine (9) members to be appointed as follows:

1. Three physicians licensed to practice medicine in this state, one attorney licensed to practice law in this state and one consumer advocate to be appointed by the Governor;

2. One attorney licensed to practice law in this state and one physician licensed to practice medicine in this state to be appointed by the Speaker of the House of Representatives; and

3. One attorney licensed to practice law in this state and one physician licensed to practice medicine in this state to be appointed by the President Pro Tempore of the Senate.

C. Members of the Panel shall serve at the pleasure of the respective appointing authority. Any vacancy on the Panel shall be filled by the original appointing authority. A majority of the

members present at a meeting shall constitute a quorum for the transaction of business. The Panel may elect a chair and vice-chair. Employees of the State Department of Health shall serve as staff for the Panel.

D. Members of the Panel are not entitled to compensation for their services, but shall be entitled to reimbursement of any necessary expense incurred in the performance of duties pursuant to the State Travel Reimbursement Act.

E. 1. To the extent feasible, the Panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

2. The Panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and, for those treatments and procedures that do require disclosure, shall establish the degree of disclosure required and the form in which the disclosure will be made.

3. Lists prepared under this section together with written explanations of the degree and form of disclosure shall be published in the Oklahoma Register.

F. At least annually, or at such other period as the Panel may determine from time to time, the Panel will identify and examine any new medical treatments and surgical procedures that have been developed since its last determination, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. The Panel will also examine such treatments and procedures for the purpose of revising lists previously published. These determinations shall be published in the Oklahoma Register.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1708.1P of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure, the health care provider shall give written estimate of the cost of the medical care or surgical procedure to the patient or person authorized to give consent for the patient.

B. Every health care provider shall publish and make available to the public costs for medical services and procedures that are performed by the health care provider.

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-140 of Title 70, unless there is created a duplication in numbering, reads as follows:

Sections 46 through 53 of this act shall be known and may be cited as the "School Protection Act".

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-141 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in the School Protection Act:

1. "Education employee" means a member of the board of education of a school district or any individual who is employed by a school as a:

a. teacher, superintendent, principal, student teacher, school nurse, or support employee as defined in Section 1-116 of Title 70 of the Oklahoma Statutes,

b. resident teacher as defined in Section 6-182 of Title 70 of the Oklahoma Statutes, or

c. substitute teacher or teacher assistant; and

2. "School" means a public school district, including charter schools, the Oklahoma School of Science and Mathematics, or a

governmental entity that employs teachers as defined in Section 1-116 of Title 70 of the Oklahoma Statutes.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-142 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An education employee of a school district is not personally liable for any act that is within the scope of the duties of employment of the employee and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which an education employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

B. This section shall not apply to the operation, use, or maintenance of any motor vehicle.

C. In addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001, 20 U.S.C., Section 6731 et seq. Nothing in this section shall be construed to limit or abridge any immunity or protection afforded an individual under state law.

D. For purposes of this section, "individual" shall include a person who provides services to private schools, to the extent provided by federal law.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-143 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days before the date a person files a suit against an education employee of a school, the person shall give written notice to the employee of the claim, reasonably describing the incident from which the claim arose.

B. An education employee of a school against whom a suit is pending who does not receive written notice, as required by

subsection A of this section, may file a motion to dismiss the action within thirty (30) days after the date the person files an original answer in the court in which the suit is pending.

C. The court shall dismiss the action without prejudice if the court, after a hearing, finds that the education employee was not provided notice as required by this section.

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-144 of Title 70, unless there is created a duplication in numbering, reads as follows:

A person may not file suit against an education employee of a school unless the person has exhausted the remedies provided by the school district for resolving the complaint.

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-145 of Title 70, unless there is created a duplication in numbering, reads as follows:

A court in which a judicial proceeding is being brought against an education employee of a school may refer the case to an alternative dispute resolution procedure as provided by law.

SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-146 of Title 70, unless there is created a duplication in numbering, reads as follows:

In an action against an education employee of a school involving an act that is within the scope of duty of the employee’s employment and brought against the employee in the individual capacity of the employee, the employee shall be entitled to recover attorney fees and court costs from the plaintiff if the employee is found immune from liability under the School Protection Act.

SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-147 of Title 70, unless there is created a duplication in numbering, reads as follows:

The School Protection Act shall be in addition to and shall not limit or amend The Governmental Tort Claims Act or any other applicable law.

SECTION 54. AMENDATORY 76 O.S. 2001, Section 5A, is amended to read as follows:

Section 5A. A. 1. ~~A~~ Any person who is qualified pursuant to this subsection and who, in good faith and without expectation of compensation, renders emergency care or treatment outside of a medical facility by the use of an automated external defibrillator shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct in the use of such device.

2. A person is qualified pursuant to this subsection upon successful completion of appropriate training in the use of automated external defibrillators and cardiopulmonary resuscitation. Appropriate training shall consist of a course ~~of at least four (4) hours of training~~ in the use of automated external defibrillators and cardiopulmonary resuscitation. ~~Providers and instructors of these~~ Such courses shall be approved pursuant to rules ~~adopted by and shall be subject to approval or disapproval in the discretion of the Commissioner of Health~~ promulgated by the State Board of Health. These rules may include appropriate periodic retraining at intervals established by the ~~Commissioner~~ State Board of Health by rule.

3. Course directors and trainers who have completed the training required by the State Department of Health for teaching courses in the use of automated external defibrillators and cardiopulmonary resuscitation shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct in the teaching of such training courses.

B. ~~1.~~ A ~~qualified person or~~ prescribing physician who, in good faith and without expectation of or actual receipt of compensation, writes a prescription for the use of an automated external defibrillator to render emergency care or treatment shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct in the prescribing of the device.

C. An entity which owns, leases, possesses, or otherwise controls an automated external defibrillator shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct~~.~~

~~2. A person or entity is qualified pursuant to this subsection~~, if the ~~person or~~ entity:

~~a. requires users of~~

1. Requires its own authorized agents who may use the automated external defibrillator to be qualified pursuant to subsection A of this section~~, and~~; or

~~b. maintains~~

2. Maintains and stores its automated external defibrillator with a usage detection device which automatically signals first responders or designated qualified employees of the entity; and

3. Maintains and tests its automated external defibrillator according to the manufacturer's instructions.

~~C.~~ D. An entity which owns, leases, possesses or otherwise controls an automated external defibrillator shall communicate to the proper first responder the locations and placements of the automated external defibrillator owned, leased, possessed or otherwise controlled by the entity.

E. For purposes of this section:

1. "Automated external defibrillator" means a medical device consisting of a heart monitor and defibrillator which:

a. has received approval of its premarket notification, filed pursuant to 21 U.S.C., Section 360(k), from the United States Food and Drug Administration,

b. is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, and is capable of determining, without intervention by an operator, whether defibrillation should be performed, and

c. upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart; ~~and~~

2. "Entity" means public and private organizations including, but not limited to, the State of Oklahoma and its agencies and political subdivisions, a proprietorship, partnership, limited liability company, corporation, or other legal entity, whether or not operated for profit;

3. "First responder" means an individual certified by the State Department of Health to perform emergency medical services in accordance with the Oklahoma Emergency Response Systems Development Act and in accordance with the rules and standards promulgated by the State Board of Health; and

4. "Prescribing physician" means a person licensed to practice medicine in the state pursuant to Chapters 11 and 14 of Title 59 of the Oklahoma Statutes.

SECTION 55. AMENDATORY 76 O.S. 2001, Section 18, as amended by Section 4, Chapter 462, O.S.L. 2002 (76 O.S. Supp. 2003, Section 18), is amended to read as follows:

Section 18. ~~An~~ A. Except as provided in subsection B of this section, an action for damages for injury or death against any physician, health care provider or hospital licensed under the laws of this state, whether based in tort, breach of contract or otherwise, arising out of patient care, shall be brought within two

(2) years of the date the plaintiff knew or should have known, through the exercise of reasonable diligence, of the existence of the death, injury or condition complained of; provided, however, the minority or incompetency when the cause of action arises will extend said period of limitation.

B. Any action for damages for injury or death against any physician, health care provider, or hospital licensed under the laws of this state, based in tort and arising out of patient care, shall be brought within ten (10) years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose and all actions which are not brought within ten (10) years after the act or omission giving rise to the claim are time barred.

SECTION 56. 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, but is not limited to, 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 57 through 63 of this act shall govern such land.

SECTION 57. AMENDATORY 76 O.S. 2001, Section 10, is amended to read as follows:

Section 10. A. Sections 57 through 63 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. This article applies only to an owner of land who:

a. (1) either does not charge for entry to the land, or

(2) charges for entry to the land, but whose total charges collected in the previous calendar year for all recreational uses of the land of the owner are not more than one-tenth (1/10) of the use value of the land for the previous calendar year determined pursuant to the Ad Valorem Tax Code, or

b. has liability insurance coverage in effect on an act or omission described by Section 59 of this act and in the amounts equal to or greater than those provided by Section 59 of this act.

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, 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~~.~~;

~~(c)~~ 3. "Recreational purpose" includes, but is not limited to, 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, 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 56 of this act.

SECTION 58. 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~~ 61 of this act, an owner ~~of~~ who provides the public with land 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 59. 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~~ 61 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~~ 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, trespasser, or otherwise.

C. 1. Subject to paragraph 2 of this subsection, the total liability of an owner of land used for recreational purposes for an act or omission by the owner relating to the premises that results in damages to a person who has entered or has used the premises is limited to a maximum amount of Five Hundred Thousand Dollars ($500,000.00) for each person and One Million Dollars ($1,000,000.00) for a single occurrence of bodily injury or death and One Hundred Thousand Dollars ($100,000.00) for each single occurrence for injury to or destruction of property.

2. This subsection applies only to an owner of land used for recreational purposes who has liability insurance coverage in effect on an act or omission described by paragraph 1 of this subsection and in the amounts equal to or greater than those provided by paragraph 1 of this subsection. The coverage may be provided under a contract of insurance or other plan of insurance authorized by statute. The limit of liability insurance coverage applicable with respect to land may be a combined single limit in the amount of One Million Dollars ($1,000,000.00) for each single occurrence.

3. This subsection 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.

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

SECTION 60. 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~~ 58 and ~~12~~ 59 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 61. 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 62. 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. Create a duty of care or ground of liability for injury to persons or property~~.~~; or

~~(b)~~ 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.

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 63. 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 64. 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 65. AMENDATORY 76 O.S. 2001, Section 31, is amended to read as follows:

Section 31. A. Any volunteer shall be immune from liability in a civil action on the basis of any act or omission of the volunteer resulting in damage or injury if:

1. The volunteer was acting in good faith and within the scope of the volunteer's official functions and duties for a charitable organization or not-for-profit corporation; and

2. The damage or injury was not caused by gross negligence or willful and wanton misconduct by the volunteer.

B. In any civil action against a charitable organization or not-for-profit corporation for damages based upon the conduct of a volunteer, the doctrine of respondeat superior shall apply, notwithstanding the immunity granted to the volunteer in subsection A of this section.

C. Any person who, in good faith and without compensation, or expectation of compensation, donates or loans emergency service equipment to a volunteer shall not be liable for damages resulting from the use of such equipment by the volunteer, except when the donor of the equipment knew or should have known that the equipment was dangerous or faulty in a way which could result in bodily injury, death or damage to property.

D. Definitions.

1. For the purposes of this section, the term "volunteer" means a person who enters into a service or undertaking of the person's free will without compensation or expectation of compensation in money or other thing of value in order to provide a service, care, assistance, advice, or other benefit ~~where the person does not offer that type of service, care, assistance, advice or other benefit for sale to the public~~; provided, being legally entitled to receive compensation shall not preclude a person from being considered a volunteer.

2. For the purposes of this section, the term "charitable organization" means any benevolent, philanthropic, patriotic, eleemosynary, educational, social, civic, recreational, religious group or association or any other person performing or purporting to perform acts beneficial to the public.

3. For the purposes of this section, the term "not-for-profit corporation" means a corporation formed for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such, and having no capital stock.

E. 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.

F. The immunity from civil liability provided for 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, and does not confer any immunity to any person for actions taken by the volunteer prior to or after the rendering of the service, care, assistance, advice, or other benefit as a volunteer.

G. This section shall apply to all civil actions filed after the effective date of this act.

SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 71 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

a. property damage caused by the installation, presence, or removal of asbestos,

b. the health effects of exposure to asbestos, including any claim for:

(1) personal injury or death,

(2) mental or emotional injury,

(3) risk of disease or other injury, or

(4) the costs of medical monitoring or surveillance, and

c. any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person;

2. "Corporation" means a corporation for profit, including:

a. a domestic corporation organized under the laws of this state, or

b. a foreign corporation organized under laws other than the laws of this state;

3. "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as

a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under subsection D of this section, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction;

4. "Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities; and

5. "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

B. 1. The limitations in subsection C of this section shall apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor or which is a successor of a successor corporation, but in the latter case only to the extent of the limitation of liability applied under paragraph 2 of subsection C of this section and subject to the limitations found in this section.

2. The limitations in subsection C of this section shall not apply to:

a. workers' compensation benefits,

b. any claim against a corporation that does not constitute a successor asbestos-related liability,

c. an insurance company,

d. any obligations under the National Labor Relations Act (29 U.S.C., Section 151 et seq.), as amended, or under any collective bargaining agreement,

e. a successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor,

f. a contractual obligation existing as of November 1, 2004, that was entered into with claimants or potential claimants or their counsel and which resolves asbestos claims or potential asbestos claims,

g. any claim made against the estate of a debtor in a bankruptcy proceeding commenced prior to November 1, 2004, under the United States Bankruptcy Code (11 U.S.C., Section 101 et seq.) by or against such debtor, or against a bankruptcy trust established under 11 U.S.C., Section 524(g) or similar provisions of the United States Code in such a bankruptcy proceeding commenced prior to such date, or

h. a cause of action for premises liability, but only if the successor owned or controlled the premises at issue after the merger or consolidation.

C. 1. Except as further limited in paragraph 2 of this subsection, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation shall not have any

responsibility for successor asbestos-related liabilities in excess of this limitation.

2. If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in paragraph 1 of this subsection for purposes of determining the limitation of liability of a corporation.

D. 1. A corporation may establish the fair market value of total gross assets for the purpose of the limitations under subsection C of this section through any method reasonable under the circumstances, including:

a. by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction, or

b. in the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

2. Total gross assets include intangible assets.

3. Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectable to cover successor asbestos-related liabilities, except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor. A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor ten (10) years or more before the enactment of this section shall be determinative of the

aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

4. The fair market value of total gross assets shall reflect no deduction for any liabilities arising from any asbestos claim.

E. 1. Except as otherwise provided in this section, the fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

a. the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, and

b. one percent (1%).

2. The rate provided for in paragraph 1 of this subsection shall not be compounded.

3. The adjustment of fair market value of total gross assets continues as provided under paragraph 1 of this subsection until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

4. No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets.

SECTION 67. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 101 of Title 76, unless there is created a duplication in numbering, reads as follows:

Sections 67 through 71 of this act shall be known and may be cited as the “Product Liability Act”.

SECTION 68. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 102 of Title 76, unless there is created a duplication in numbering, reads as follows:

In the Product Liability Act:

1. “Claimant” means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant;

2. “Product liability action” means any action against a manufacturer or seller for recovery of damages arising out of personal injury, death, or property damage allegedly caused by a defective product whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories;

3. “Seller” means a person who is engaged in the business of distributing or otherwise placing, for any commercial purpose, in the stream of commerce for use or consumption a product or any component part thereof; and

4. “Manufacturer” means a person who is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part thereof and who places the product or any component part thereof in the stream of commerce.

SECTION 69. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103 of Title 76, 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.

SECTION 70. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 104 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. In a product liability action alleging that an injury was caused by a failure to provide adequate warnings or information with regard to a pharmaceutical product, there is a rebuttable presumption that the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, are not liable with respect to the allegations involving failure to provide adequate warnings or information if:

1. The warnings or information that accompanied the product in its distribution were those approved by the United States Food and Drug Administration for a product approved under the federal Food, Drug, and Cosmetic Act (21 U.S.C., Section 301 et seq.), as amended,

or Section 351, Public Health Service Act (43 U.S.C., Section 262), as amended; or

2. The warnings provided were those stated in monographs developed by the United States Food and Drug Administration for pharmaceutical products that may be distributed without an approved new drug application.

B. The claimant may rebut the presumption provided for in subsection A of this section as to each defendant by establishing that:

1. The defendant, before or after premarket approval or licensing of the product, withheld from or misrepresented to the United States Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

2. The pharmaceutical product was sold or prescribed in the United States by the defendant after the effective date of an order of the United States Food and Drug Administration to remove the product from the market or to withdraw its approval of the product;

3. a. The defendant recommended, promoted, or advertised the pharmaceutical product for an indication not approved by the United States Food and Drug Administration,

b. The product was used as recommended, promoted, or advertised, and

c. The claimant's injury was causally related to the recommended, promoted, or advertised use of the product;

4. a. The defendant prescribed the pharmaceutical product for an indication not approved by the United States Food and Drug Administration,

b. The product was used as prescribed, and

c. The claimant's injury was causally related to the prescribed use of the product; or

5. The defendant, before or after premarket approval or licensing of the product, engaged in conduct that would constitute a violation of 18 U.S.C., Section 201 and that conduct caused the warnings or instructions approved for the product by the United States Food and Drug Administration to be inadequate.

SECTION 71. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. In a product liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the formula, labeling, or design for the product complied with mandatory safety standards or regulations adopted and promulgated by the appropriate regulatory agency of the federal government that were applicable to the product at the time of manufacture and that specifically related to the formula, labeling or design that directly caused harm.

B. The claimant may rebut the presumption in subsection A of this section by establishing that:

1. The mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from harm; or

2. The manufacturer, before or after marketing the product, withheld or misrepresented information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action.

C. This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the appropriate regulatory agency of the federal government.

SECTION 72. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6822 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Within sixty (60) days after receipt by a medical professional liability insurer of properly executed proof of liability, the claimant shall be advised of the acceptance or denial of the claim by the insurer, or if further investigation is necessary. No medical professional liability insurer shall deny a claim because of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. A denial shall be given to any claimant in writing, and the claim file of the medical professional liability insurer shall contain a copy of the denial. If there is a reasonable basis supported by specific information available for review by the Insurance Commissioner that the claimant has fraudulently caused or contributed to the loss, a medical professional liability insurer shall be relieved from the requirements of this subsection. In the event of a weather-related catastrophe or a major natural disaster, as declared by the Governor, the Insurance Commissioner may extend the deadline imposed under this subsection an additional twenty (20) days.

B. If a claim is denied for reasons other than those described in subsection A of this section, and is made by any other means than writing, an appropriate notation shall be made in the claim file of the medical professional liability insurer until such time as a written confirmation can be made.

C. Every medical professional liability insurer shall complete investigation of a claim within sixty (60) days after notification of proof of loss unless such investigation cannot reasonably be completed within such time. If such investigation cannot be completed, or if a medical professional liability insurer needs more time to determine whether a claim should be accepted or denied, it

shall so notify the claimant within sixty (60) days after receipt of the proof of loss, giving reasons why more time is needed. If the investigation remains incomplete, a medical professional liability insurer shall, within sixty (60) days from the date of the initial notification, send to such claimant a letter setting forth the reasons additional time is needed for investigation. Except for an investigation of possible fraud or arson which is supported by specific information giving a reasonable basis for the investigation, the time for investigation shall not exceed one hundred twenty (120) days after receipt of proof of loss. Provided, in the event of a weather-related catastrophe or a major natural disaster, as declared by the Governor, the Insurance Commissioner may extend this deadline for investigation an additional twenty (20) days.

D. Insurers shall not fail to settle claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

E. Insurers shall not continue or delay negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney, for a length of time which causes the rights of the claimant to be affected by a statute of limitations, or a policy or contract time limit, without giving the claimant written notice that the time limit is expiring and may affect the claimant's rights. Such notice shall be given to first-party claimants thirty (30) days, and to third-party claimants sixty (60) days, before the date on which such time limit may expire.

F. No insurer shall make statements which indicate that the rights of a third-party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying a third-party claimant of the provision of a statute of limitations.

G. If a lawsuit on the claim is initiated, the time limits provided for in this section shall not apply.

SECTION 73. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 999 of Title 36, unless there is created a duplication in numbering, reads as follows:

ARTICLE 9C. INSURANCE RATE ROLLBACK

A. For any coverage for accident and health insurance, medical malpractice insurance, property insurance, vehicle insurance, casualty insurance excluding workers' compensation insurance, and employer liability insurance issued or renewed on or after July 1, 2005, every insurer shall reduce its charges to levels that are at least twenty-five percent (25%) less than the charges for the same coverage that were in effect on January 1, 2003.

B. Between July 1, 2005, and July 1, 2006, rates and premiums reduced pursuant to subsection A of this section may be increased only to the extent that the Insurance Commissioner finds, after an open hearing at which a record is made, that an insurer is unable to earn a fair rate of return.

C. Commencing July 1, 2006, insurance rates for medical malpractice insurance must be approved by the Insurance Commissioner prior to being used.

D. Any separate affiliate of an insurer is subject to the provisions of this section.

SECTION 74. REPEALER Section 6, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1708.1F), is hereby repealed.

SECTION 75. RECODIFICATION 76 O.S. 2001, Sections 10, as amended by Section 57 of this act, 11, as amended by Section 58 of this act, 12, as amended by Section 59 of this act, 13, as amended by Section 60 of this act, 14, as amended by Section 61 of this act, 15, as amended by Section 62 of this act, and 15.1, as amended by Section 63 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 76. RECODIFICATION 2 O.S. 2001, Section 16-71, as amended by Section 56 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 77. This act shall become effective November 1, 2004.

Passed the House of Representatives the 9th day of March, 2004.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2004.

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Presiding Officer of the Senate