

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2575:

Newport

AS INTRODUCED

An Act relating to tort reform; providing method of calculating attorney fees for class action cases; providing for judicial discretion to modify the fee award; requiring attorney fees to include noncash benefits in certain circumstances; defining term; amending 12 O.S. 2001, Section 95, as amended by Section 1, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2003, Section 95), which relates to limitations on civil actions; excluding product liability actions from the statute of limitations; providing a statute of repose for product liability actions; authorizing the court to decline to exercise jurisdiction under the doctrine of forum non conveniens; providing factors that the court may consider; requiring each plaintiff to establish venue in cases in which there are multiple plaintiffs; providing for interlocutory appeal; amending 12 O.S. 2001, Section 727, which relates to interest on judgments; providing that prejudgment interest shall not be allowed for awards for future damages; modifying method of computing postjudgment interest; amending 12 O.S. 2001, Section 990.4, which relates to stay of enforcement of judgments and appeal bonds; placing limit on the maximum amount of appeal bond; providing for the lowering of the appeal bond under certain circumstances; authorizing the court to enjoin a judgment debtor from dissipating or transferring assets in certain circumstances; amending 12 O.S. 2001, Section 993, which relates to interlocutory appeals from certain orders; modifying grounds for interlocutory appeals; providing standard for making certain determination; requiring the Supreme Court to make certain determination within certain time; amending 12 O.S. 2001, Section 1101.1, as amended by Section 7, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 1101.1), which relates to offers of judgment; modifying conditions under which a plaintiff or defendant may recover litigation costs; removing the monetary limitation on application of offer of judgment law; limiting the amount of litigation costs that may be awarded; providing that a plaintiff or defendant is not entitled to recover fees and costs in certain circumstances; excluding certain fees and costs from calculation of litigation costs; amending 12 O.S. 2001, Section 2023, which relates to class actions; requiring the court to hear and rule on certain motions before making a determination on certifying a class; providing effect of interlocutory appeal in certain circumstances; creating the Judicial Panel on Multidistrict Litigation; providing for composition and appointment of panel; providing duties and authority of the panel; providing for authority of judge to whom a

case is transferred; providing for remand of case for trial on the merits; providing for promulgation of rules; amending 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), which relates to punitive damages; providing that jury award of punitive damages must be unanimous for cases filed after a certain date; creating the Proportionate Responsibility Act; amending 23 O.S. 2001, Sections 13 and 14, which relate to comparative negligence; providing for determination of responsibility; prohibiting submission of certain questions to the jury without supportive evidence; defining term; providing for joint and several liability in certain circumstances; prohibiting the disclosure to a jury of certain information; providing for reduction of damages if the plaintiff has settled with one or more persons; providing for designation of responsible third parties; providing that the Proportionate Responsibility Act shall not be construed to affect any right of indemnity granted by contract or otherwise provided by law; amending 23 O.S. 2001, Section 61, which relates to the measure of damages for the breach of obligations not arising from contract; providing that compensation from collateral sources may be admitted into evidence; providing exception; providing proof of certain losses must be in the form of a net loss after reduction for income tax payments or unpaid tax liability; amending 47 O.S. 2001, Section 11-1112, as amended by Section 1, Chapter 55, O.S.L. 2002 (47 O.S. Supp. 2003, Section 11-1112), which relates to child passenger restraint systems; eliminating prohibitions against admissibility of violations of law and failure to properly restrain a child in civil actions; amending Sections 1, 5 and 6, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2003, Sections 1-1708.1A, 1-1708.1E and 1-1708.1F), which relate to the Affordable Access to Health Care Act; requiring certain persons to give written notice to health care provider prior to filing of medical liability action; modifying scope of limitation on noneconomic damages; removing termination date; limiting theory of recovery for certain medical liability actions; defining terms; creating certain rebuttable presumptions; providing required standard of proof in medical liability actions involving emergency care; providing for expert witnesses in medical liability actions; providing for payment of future losses in medical liability actions; creating the Education Quality and Protection Act; providing short title; stating legislative findings; stating purpose of the act; providing definitions; limiting the liability of educational entities and education employees for certain actions; stating standard of proof; limiting the liability of educational entities and education employees for certain reporting; prohibiting punitive or exemplary damages against an educational entity or education employee; making it unlawful to make a false criminal report against an education employee; providing punishment; limiting application for statements against certain persons; providing for effect on other laws; providing for the award of

costs and attorney fees; authorizing expert witness fees; limiting amount of contingency fees by an attorney; providing penalty for violation of limit; providing for waiver of a defense when liability insurance is available; providing for the applicability of other laws; amending 76 O.S. 2001, Section 31, which relates to civil immunity for volunteers, charitable organizations, and not-for-profit corporations; modifying definition; creating the Product Liability Act; providing short title; defining terms; providing duty of manufacturer to indemnify; providing that a manufacturer or seller shall not be liable for inherently unsafe products; providing procedures and requirements in actions alleging design defect; providing elements a claimant must prove in certain actions against manufacturers or sellers of firearms or ammunition; limiting liability of nonmanufacturing sellers; providing rebuttable presumption in actions relating to pharmaceutical products; providing rebuttable presumption concerning compliance with government standards; defining term; requiring plaintiff to file certain affidavit in actions against design professionals; providing exception for contemporaneous filing requirement; providing for time of filing answer; providing for construction of section; defining terms; limiting liability of certain corporations for successor asbestos-related liabilities; repealing 47 O.S. 2001, Section 12-420, which relates to inadmissibility of evidence in civil actions of failure to use seatbelt; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7.1 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. In class actions, if an award of attorney fees is available, 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 method by no more than four times based on specified factors established by rule of the Supreme Court.

B. If any portion of the benefits recovered for the class 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.

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 2. AMENDATORY 12 O.S. 2001, Section 95, as amended by Section 1, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2003, Section 95), is amended to read as follows:

Section 95. Civil actions, other than actions for the recovery of real property or product liability actions provided for in Section 3 of this act, can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

1. Within five (5) years: An action upon any contract, agreement, or promise in writing;

2. Within three (3) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;

3. Within two (2) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud - the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud;

4. Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation;

5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued;

6. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse incidents or exploitation as defined by Section 7102 of Title 10 of the Oklahoma Statutes or incest can only be brought within the latter of the following periods:

- a. within two (2) years of the act alleged to have caused the injury or condition, or
- b. within two (2) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act or that the act caused the injury for which the claim is brought.

Provided, however, that the time limit for commencement of an action pursuant to this paragraph is tolled for a child until the child reaches the age of eighteen (18) years. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator. An action pursuant to this paragraph must be based upon objective verifiable evidence in order for the victim to recover damages for injuries suffered by reason of such sexual abuse, exploitation, or incest. The evidence should include both proof that the victim had psychologically repressed the memory of the facts upon which the claim was predicated and that there was corroborating evidence that the sexual abuse, exploitation, or incest actually occurred. The victim need not establish which act in a series of continuing sexual abuse incidents, exploitation incidents, or incest caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse, exploitation, or incest. Provided further, any action based on intentional conduct specified in paragraph 6 of this section must be commenced within twenty (20) years of the victim reaching the age of eighteen (18);

7. An action to establish paternity and to enforce support obligations can be brought any time before the child reaches the age of eighteen (18);

8. An action to establish paternity can be brought by a child if commenced within one (1) year after the child reaches the age of eighteen (18);

9. Court-ordered child support is owed until it is paid in full and it is not subject to a statute of limitations;

10. An action filed by an inmate or by a person based upon facts that occurred while the person was an inmate in the custody of one of the following:

a. the State of Oklahoma,

b. a contractor of the State of Oklahoma, or

c. a political subdivision of the State of Oklahoma,

to include the revocation of earned credits, shall be commenced within one (1) year after the cause of action shall have accrued; and

11. An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

SECTION 3. 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 fifteen (15) 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 fifteen (15)

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 seeking damages for personal injury or wrongful death in which the claimant alleges:

1. The plaintiff was exposed to the product that is the subject of the action before the end of fifteen (15) years after the date the product was first sold;

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

3. The symptoms of the disease did not, before the end of fifteen (15) years after the date of the first sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffered some injury.

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), reprinted in note, 49 U.S.C., Section 40101 or its exceptions are applicable.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 140.1 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 shall 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 5. 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. In a suit in which there is more than one plaintiff, whether the plaintiffs are included by joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise, each plaintiff shall, independently of every other plaintiff, establish proper venue. If a plaintiff cannot independently establish proper venue, that plaintiff's part of the suit, including all of that plaintiff's claims and causes of action, shall be transferred to a county of proper venue or dismissed, as is appropriate, unless that plaintiff, independently of every other plaintiff, establishes that:

1. Joinder of that plaintiff or intervention in the suit by that plaintiff is proper under Oklahoma law and applicable court rules;

2. Maintaining venue as to that plaintiff in the county of suit does not unfairly prejudice another party to the suit;

3. There is an essential need to have that plaintiff's claim tried in the county in which the suit is pending; and

4. The county in which the suit is pending is a fair and convenient venue for that plaintiff and all persons against whom the suit is brought.

B. An interlocutory appeal may be taken of a trial court's determination under subsection A of this section that:

1. A plaintiff did or did not independently establish proper venue; or

2. A plaintiff that did not independently establish proper venue did or did not establish the items prescribed by paragraphs 1 through 4 of subsection A of this section.

C. The court of appeals shall:

1. Determine whether the trial court's order is proper based on an independent determination from the record and not under either an abuse of discretion or substantial evidence standard; and

2. Render judgment not later than one hundred twenty (120) days after the date the appeal is perfected.

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

Section 727.

POSTJUDGMENT INTEREST

A. 1. Except as otherwise provided by ~~this section~~ law, 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. Prejudgment interest shall not be assessed or recovered on 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 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~~ Section 2, Chapter 320, O.S.L. 1997, shall be applicable to all judgments of the district courts rendered on or after January 1, 2000. Effective January 1, 2000, 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~~ Section 2, 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, for which an award of prejudgment interest is authorized by the provisions of this section.

L. Beginning November 1, 2004, the postjudgment interest rate shall be based on the prime rate published by the Federal Reserve Bank on the date of computation. The provisions of this subsection shall apply to all judgments rendered on or after November 1, 2004,

and to all judgments remaining unpaid on or after November 1, 2004.

The interest rate shall be:

1. Five percent (5%) per year if the prime rate is less than five percent (5%);

2. The prime rate if the prime rate is five percent (5%) or more but less than fifteen percent (15%); or

3. Fifteen percent (15%) if the prime rate is more than fifteen percent (15%).

SECTION 7. 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 fifty percent (50%) 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 shall 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 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 8. 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 in a class action 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;

8. Determines whether or not a plaintiff has established proper venue pursuant to Section 5 of this act; or

9. 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~~ If 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. If the order determines whether or not a plaintiff has established proper venue pursuant to Section 5 of this act, the Supreme Court shall determine whether the order of the trial court is proper based on an independent determination of the record and not under either an abuse of discretion or substantial evidence standard and shall render judgment within one hundred twenty (120) days after the date the appeal is perfected.

E. During the pendency of an appeal pursuant to paragraph 6, 7, or 8 of subsection A of this section, the action in the trial court shall be stayed in all respects.

SECTION 9. AMENDATORY 12 O.S. 2001, Section 1101.1, as amended by Section 7, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 1101.1), is amended to read as follows:

Section 1101.1 A. Actions for personal injury, wrongful death, and certain specified actions.

1. ~~Subject to the provisions of paragraph 5 of this subsection,~~
~~after~~ After a civil action is brought for the recovery of money as the result of a claim for personal injury, wrongful death, or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall be deemed to include any costs or attorney fees otherwise recoverable unless it expressly provides otherwise. If an offer of judgment is filed, each plaintiff to whom an offer of judgment is made shall, within ten (10) days, file:

- a. a written acceptance or rejection of such offer, or
- b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If the plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment directed to each defendant who has filed an offer of judgment. If a counteroffer of judgment is filed, each defendant to whom the counteroffer of judgment is made shall, within

ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or deemed rejected does not preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. In the event the plaintiff rejects the offer(s) of judgment and the judgment awarded the plaintiff is less than eighty percent (80%) of the final offer of judgment, then the defendant filing the offer of judgment shall be entitled to recover reasonable litigation costs and reasonable attorney fees incurred by that defendant from the date of filing of the final offer of judgment until the date of the verdict. Such costs and fees may be offset from the judgment entered against the offering defendant; provided, however, that prior to any such offset, the plaintiff's attorney may:

- a. exercise any attorneys lien claimed in an amount not to exceed twenty-five percent (25%) of the judgment, and
- b. recover the plaintiff's reasonable litigation costs, not to exceed an additional fifteen percent (15%) of the judgment or Five Thousand Dollars (\$5,000.00), whichever is greater.

4. In the event a defendant rejects the counteroffer(s) of judgment and the judgment awarded to the plaintiff is greater than one hundred twenty percent (120%) of the final counteroffer of judgment, the plaintiff shall be entitled to recover reasonable litigation costs and reasonable attorney fees incurred by the plaintiff from the date of filing of the final counteroffer of judgment until the date of the verdict. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

~~5. The provisions of this subsection shall apply only where the plaintiff demands in a pleading or in trial proceedings more than~~

~~One Hundred Thousand Dollars (\$100,000.00), or where the defendant makes an offer of judgment more than One Hundred Thousand Dollars (\$100,000.00). Any offer of judgment may precede the demand.~~

B. Other actions.

1. After a civil action is brought for the recovery of money or property in an action other than for personal injury, wrongful death or pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes, any defendant may file with the court, at any time more than ten (10) days prior to trial, an offer of judgment for a sum certain to any plaintiff with respect to the action or any claim or claims asserted in the action. An offer of judgment shall be deemed to include any costs and attorney fees otherwise recoverable unless it expressly provides otherwise. If an offer of judgment is filed, the plaintiff or plaintiffs to whom the offer of judgment is made shall, within ten (10) days, file:

- a. a written acceptance or rejection of the offer, or
- b. a counteroffer of judgment, as described in paragraph 2 of this subsection.

If a plaintiff fails to file a timely response, the offer of judgment shall be deemed rejected. The fact an offer of judgment is made but not accepted or is deemed rejected does not preclude subsequent timely offers of judgment.

2. In the event a defendant files an offer of judgment, the plaintiff may, within ten (10) days, file with the court a counteroffer of judgment to each defendant who has filed an offer of judgment and the claim or claims which are the subject thereof. If a counteroffer of judgment is filed, each defendant to whom a counteroffer of judgment is made shall, within ten (10) days, file a written acceptance or rejection of the counteroffer of judgment. If a defendant fails to file a timely response, the counteroffer of judgment shall be deemed rejected. The fact a counteroffer of judgment is made but not accepted or is deemed rejected does not

preclude subsequent counteroffers of judgment if subsequent offers of judgment are made.

3. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff is less than eighty percent (80%) of one or more offers of judgment, the defendant shall be entitled to reasonable litigation costs and reasonable attorney fees incurred by the defendant with respect to the action or the claim or claims included in the offer of judgment from and after the date of the first offer of judgment which is greater than the judgment until the date of the judgment. Such costs and fees may be offset from the judgment entered against the offering defendant.

4. If no offer of judgment or counteroffer of judgment is accepted and the judgment awarded the plaintiff is greater than one hundred twenty percent (120%) of one or more counteroffers of judgment, the plaintiff shall be entitled to recover the reasonable litigation costs and reasonable attorney fees incurred by the plaintiff with respect to the action or the claim or claims included in the counteroffer of judgment from and after the date of the first counteroffer of judgment which is less than the judgment until the date of the judgment. Such costs and fees may be added to the judgment entered in favor of the plaintiff.

5. An award of reasonable litigation costs and reasonable attorneys fees under paragraph 3 of this subsection shall not preclude an award under paragraph 4 of this subsection, and an award under paragraph 4 of this subsection shall not preclude an award under paragraph 3 of this subsection.

6. This subsection shall not apply to actions brought pursuant to Chapter 21 of Title 25 or Section 5 of Title 85 of the Oklahoma Statutes.

C. For purposes of comparing the amount of a judgment with the amount of an offer under paragraph 3 or 4 of subsection A of this section or paragraph 3 or 4 of subsection B of this section,

attorney fees and costs otherwise recoverable shall be included in the amount of the compared judgment only if the offer was inclusive of attorney fees and costs. Fees or costs recoverable for work performed after the date of the offer shall not be included in the amount of the judgment for purposes of comparison.

D. Evidence of an offer of judgment or a counteroffer of judgment shall not be admissible in any action or proceeding for any purpose except in proceedings to enforce a settlement arising out of an offer of judgment or counteroffer of judgment or to determine reasonable attorneys fees and reasonable litigation costs under this section.

E. This section shall apply whether or not litigation costs or attorneys fees are otherwise recoverable.

F. The litigation costs that may be awarded pursuant to this section shall not be greater than an amount computed by:

1. Determining the sum of:

- a. fifty percent (50%) of the economic damages to be awarded to the plaintiff in the judgment,
- b. one hundred percent (100%) of the noneconomic damages to be awarded to the plaintiff in the judgment, and
- c. one hundred percent (100%) of the punitive or additional damages to be awarded to the plaintiff in the judgment; and

2. Subtracting from the amount determined pursuant to paragraph 1 of this subsection, the amount of any statutory or contractual liens in connection with the occurrences or incidents giving rise to the claim.

G. If a plaintiff or a defendant is entitled to recover fees and costs pursuant to another law, the plaintiff or defendant shall not recover litigation costs in addition to the fees and costs recoverable under the other law.

H. If a plaintiff or defendant is entitled to recover fees and costs pursuant to another law, the court shall not include fees and costs incurred by the plaintiff or defendant after the date of rejection of the judgment offer when calculating the amount of the litigation costs pursuant to subsection F of this section.

I. 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~~ J. The amendments to this section enacted pursuant to this act shall apply to all civil actions filed on or after the effective date of this act November 1, 2004.

SECTION 10. 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 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 subsection C D 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 ~~46~~ 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 11. 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 pretrial proceedings, including summary judgment or other dispositive motions, but not for trial on the merits.

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. Any action transferred pursuant to this section shall be remanded to the court in which the action was originally filed for trial on the merits.

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

SECTION 12. 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 and is unanimous in regard to the amount of punitive damages to be awarded.

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 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11.1 of Title 23, unless there is created a duplication in numbering, reads as follows:

Sections 12 through 14 of Title 23 of the Oklahoma Statutes and Sections 16 through 19 of this act shall be known and may be cited as the "Proportionate Responsibility Act".

SECTION 14. AMENDATORY 23 O.S. 2001, Section 13, is amended to read as follows:

Section 13. In all actions hereafter brought, whether arising before or after the effective date of this act, for negligence resulting in personal injuries or wrongful death, or injury to property, contributory negligence shall not bar a recovery, unless any; or

1. Any negligence of the person so injured, damaged or killed,
is of greater degree than any negligence of the person, firm or
corporation causing such damage,~~or unless any; or~~

2. Any negligence of the person so injured, damaged or killed,
is of greater degree than the combined negligence of any persons,
firms or corporations causing such damage.

SECTION 15. AMENDATORY 23 O.S. 2001, Section 14, is
amended to read as follows:

Section 14. ~~Where such~~ A. If contributory negligence is shown
on the part of the person injured, damaged or killed, the amount of
the recovery shall be diminished in proportion to such person's
contributory negligence. Except as otherwise provided in the
Proportionate Responsibility Act, a liable defendant is liable to a
plaintiff only for the percentage of damages found by the trier of
fact equal to the defendant's percentage of responsibility with
respect to the harm for which the damages are allowed.

B. The trier of fact, as to each cause of action asserted,
shall determine the percentage of responsibility, stated in whole
numbers, for the following persons with respect to each person's
causing or contributing to cause in any way the harm for which
recovery of damages is sought, whether by negligent act or omission,
by any defective or unreasonably dangerous product, by other conduct
or activity that violates an applicable legal standard, or by any
combination of such factors:

1. Each claimant;
2. Each defendant;
3. Each settling person; and
4. Each responsible third party.

C. The provisions of this section shall not allow a submission
to the jury of a question regarding conduct by any person without
sufficient evidence to support the submission.

D. As used in this section, "responsible third party" means any person to whom all of the following apply:

1. The court in which the action was filed could exercise jurisdiction over the person;

2. The person could have been, but was not, sued by the claimant; and

3. The person is or may be liable to the plaintiff for all or a part of the damages claimed against the named defendant or defendants.

The term "responsible third party" does not include the employer of the plaintiff, if the employer maintained workers' compensation insurance coverage at the time of the act, event, or occurrence made the basis of the claimant's suit or a person or entity that is a debtor in bankruptcy proceedings or a person or entity against whom the plaintiff's claim has been discharged in bankruptcy, except to the extent that liability insurance or other source of third party funding may be available to pay claims asserted against the debtor.

SECTION 16. 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. Each liable defendant, in addition to liability pursuant to Section 13 of Title 23 of the Oklahoma Statutes, shall be jointly and severally liable for the damages recoverable by the plaintiff with respect to a cause of action if:

1. The percentage of responsibility attributed to the defendant with respect to the cause of action is greater than fifty percent (50%) of the total responsibility of all the defendants; or

2. The defendant, with the specific intent to do harm to others, acted in concert with another person to engage in committing any of the following crimes and, in doing so, proximately caused the damages legally recoverable by the plaintiff:

a. any degree of murder,

- b. kidnapping,
- c. aggravated assault and battery,
- d. sexual assault,
- e. child abuse or abuse of an elderly or incapacitated person,
- f. forgery,
- g. bribery,
- h. misapplication of fiduciary property or property of a financial institution,
- i. securing execution of a document by deception,
- j. fraudulent destruction, removal, or concealment of a writing, or
- k. any larceny which is a felony.

B. Paragraph 2 of subsection A of this section applies only if the defendant was convicted of the crime and the plaintiff proves that the defendant acted, or failed to act, with specific intent to do harm. A defendant acts with specific intent to do harm with respect to the nature and result of the act if it is the defendant's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to one or more other persons.

C. The jury shall not be made aware through voir dire, introduction into evidence, jury instruction, or any other means that the conduct provided for in paragraph 2 of subsection A of this section is a crime.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. If the plaintiff 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 a percentage equal to the percentage of responsibility of each settling person.

B. If the plaintiff in a health care liability claim 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.

C. An election made under subsection B 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 B of this section.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion shall be filed on or before the sixtieth day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

B. Nothing in this section affects the third-party practice provided for in Section 2014 of Title 12 of the Oklahoma Statutes with regard to the assertion by a defendant of rights to contribution or indemnity. Nothing in this section affects the filing of cross-claims or counterclaims.

C. If a person is designated under this section as a responsible third party, a claimant is not barred by limitations from seeking to join that person, even though such joinder would otherwise be barred by limitations, if the claimant seeks to join

that person not later than sixty (60) days after that person is designated as a responsible third party.

D. A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the fifteenth day after the date the motion is served.

E. If an objection to the motion for leave is timely filed, the court shall grant leave to designate the person as a responsible third party unless the objecting party establishes:

1. The defendant did not plead sufficient facts concerning the alleged responsibility of the person to pleading requirements; and

2. After having been granted leave to replead, the defendant failed to plead sufficient facts concerning the alleged responsibility of the person to satisfy pleading requirements.

F. By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this section without further action by the court or any party. The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person:

1. Does not by itself impose liability on the person; and

2. Shall not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

G. Notwithstanding any other provision of this section, if, not later than sixty (60) days after the filing of the defendant's original answer, the defendant alleges in an answer filed with the court that an unknown person committed a criminal act that was a cause of the loss or injury that is the subject of the lawsuit, the court shall grant a motion for leave to designate the unknown person as a responsible third party if:

1. The court determines that the defendant has pleaded facts sufficient for the court to determine that there is a reasonable probability that the act of the unknown person was criminal;

2. The defendant has stated in the answer all identifying characteristics of the unknown person, known at the time of the answer; and

3. The allegation satisfies the pleading requirements provided by law.

H. An unknown person designated as a responsible third party pursuant to subsection G of this section is denominated as "Jane Doe" or "John Doe" until the person's identity is known.

I. After adequate time for discovery, a party may move to strike the designation of a responsible third party on the ground that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage. The court shall grant the motion to strike unless a defendant produces sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility for the claimant's injury or damage.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18 of Title 23, unless there is created a duplication in numbering, reads as follows:

Nothing in the Proportionate Responsibility Act shall be construed to affect any right of indemnity granted by contract or otherwise provided by law.

SECTION 20. 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 any of the crimes provided for in subsection A of Section 16 of this act and, in doing so, proximately caused the damages legally recoverable by the plaintiff.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61.2 of Title 23, unless there is created a duplication in numbering, reads as follows:

If any plaintiff seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any state or federal income tax law. The court shall instruct the jury as to whether any recovery sought by the plaintiff is subject to federal or state income taxes.

SECTION 22. AMENDATORY 47 O.S. 2001, Section 11-1112, as amended by Section 1, Chapter 55, O.S.L. 2002 (47 O.S. Supp. 2003, Section 11-1112), is amended to read as follows:

Section 11-1112. A. Every driver, when transporting a child under four (4) years of age weighing sixty (60) pounds or less in a motor vehicle operated on the roadways, streets, or highways of this state, shall provide for the protection of said child by properly using a child passenger restraint system. For purposes of this section and Section 11-1113 of this title, "child passenger restraint system" means an infant or child passenger restraint

system which meets the federal standards as set by 49 C.F.R.
§571.213.

B. Children at least four (4) years of age but younger than thirteen (13) years of age shall be protected by use of a child passenger restraint system or a seat belt.

C. The provisions of this section shall not apply to:

1. The driver of a school bus, taxicab, moped, motorcycle, or other motor vehicle not required to be equipped with safety belts pursuant to state or federal laws;

2. The driver of an ambulance or emergency vehicle;

3. The driver of a vehicle in which all of the seat belts are in use; or

4. The transportation of children who for medical reasons are unable to be placed in such devices.

D. A law enforcement officer is hereby authorized to stop a vehicle if it appears that the driver of the vehicle has violated the provisions of this section and to give an oral warning to said driver. The warning shall advise the driver of the possible danger to children resulting from the failure to install or use a child passenger restraint system or seat belts in the motor vehicle.

~~E. A violation of the provisions of this section shall not be admissible as evidence in any civil action or proceeding for damages.~~

~~F. In any action brought by or on behalf of an infant for personal injuries or wrongful death sustained in a motor vehicle collision, the failure of any person to have the infant properly restrained in accordance with the provisions of this section shall not be used in aggravation or mitigation of damages.~~

~~G.~~ Any person convicted of violating subsection A or B of this section shall be punished by a fine of Ten Dollars (\$10.00) and shall pay a maximum of Fifteen Dollars (\$15.00) court costs thereof. This fine shall be suspended in the case of the first offense upon

proof of purchase or acquisition by loan of a child passenger restraint system. Provided, the Department of Public Safety shall not assess points to the driving record of any person convicted of a violation of this section.

SECTION 23. 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 26, 27 and 28 of this act shall be known and may be cited as the "Affordable Access to Health Care Act".

SECTION 24. 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. 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.

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. 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.

3. The written opinion from the qualified expert 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.

~~B~~ C. 1. The court may, upon application of the plaintiff 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 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 has failed to file in the action an affidavit as described above, the court shall, upon motion of the defendant, 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 in a medical liability action, the plaintiff shall, within ten (10) business days after receipt of such request, provide the defendant 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. 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 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 25. AMENDATORY Section 6, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1708.1F), is amended to read as follows:

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

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

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

the amount of noneconomic damages awarded shall not exceed ~~Three Hundred Thousand Dollars (\$300,000.00)~~ Two Hundred Fifty Thousand Dollars (\$250,000.00), regardless of the number of parties against

whom the action is brought or the number of actions brought with respect to the personal injury.

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

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

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

E. ~~This section of law shall terminate on July 1, 2008.~~ The provisions of this section, as amended by this act, shall apply to all actions filed on or after November 1, 2004.

SECTION 26. 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 a medical liability action that is based on a claim that the health care provider failed to disclose or failed to adequately disclose the risks and hazards involved in the medical care or surgical procedure rendered by the health care provider, the only theory upon which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

B. Written notice to a patient or a person authorized to consent for a patient of the specific risks and hazards that are involved in the medical care or surgical procedure and written authorization for the medical care or surgical procedure, signed by

the patient or a person authorized to consent for the patient, shall create a rebuttable presumption that adequate disclosure was given.

C. Failure to give written notice to a patient or a person authorized to consent for a patient of the specific risks and hazards that are involved in the medical care or surgical procedure and obtain written authorization for the medical care or surgical procedure, signed by the patient or a person authorized to consent for the patient, shall create a rebuttable presumption that adequate disclosure was not given.

D. The provisions of this section shall apply to all 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 1-1708.1I of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In any medical liability action involving a claim against a health care provider for injury to a patient arising out of the provision of emergency medical care in a hospital emergency department, obstetrical unit, or surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the plaintiff bringing the action may show that the treatment or lack of treatment departed from accepted standards of medical care only if the plaintiff proves by a preponderance of the evidence that the health care provider, with willful and wanton negligence, deviated from the degree of care and skill that is reasonably expected of an ordinarily prudent health care provider in the same or similar circumstances.

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

SECTION 28. 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. 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 health care in rendering 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 must 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 29. 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. 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 a medical liability action against a health care provider 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 health care provider or a plaintiff, the court shall order that medical, health care, or custodial services awarded in a medical liability 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 health care provider 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. Periodic payments, other than future loss of earnings, terminate on the death of the recipient. If the recipient of periodic payments dies before all payments required by the judgment are paid, the court may modify the judgment to award and apportion the unpaid damages for future loss of earnings in an appropriate manner. 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 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-201 of Title 70, unless there is created a duplication in numbering, reads as follows:

Sections 30 through 39 of this act shall be known and may be cited as the "Education Quality and Protection Act".

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-202 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that ensuring the quality of education is a compelling state interest. The educational environment of

students is often not conducive to learning. Violence is sometimes a threat, while at other times educators may lack the authority to maintain safety and discipline in the public schools. The filing of meritless lawsuits against school districts, teachers, administrators, and other school employees interferes with attempts to ensure the quality of public education, particularly when such lawsuits arise out of the good faith efforts of educators to maintain classroom discipline or address threats to student safety. Meritless litigation also diverts financial and personnel resources to litigation defense activities and reduces the availability of such resources for education opportunities for students. The Legislature further finds that legislation to deter meritless lawsuits and sanction deliberately false reports against educators is a rational and appropriate method to address this compelling public interest.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-203 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in the Education Quality and Protection Act:

1. "Educational entity" means the State Board of Education or the board of education of a public school district; and
2. "Education employee" means any individual elected or appointed to an educational entity or any individual who is an employee of an educational entity.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-204 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An educational entity or education employee shall not be subject to liability for any of the following:

1. Taking any action regarding the control, grading, suspension, expulsion, or discipline of students while such students

are on the property of the educational entity or under the supervision of the educational entity or education employee; and

2. Using corporal punishment, to the extent allowed by law, when and to the extent reasonably necessary and appropriate to maintain discipline or to promote student welfare.

B. The immunity provided for in subsection A of this section shall not apply if the action of the educational entity or the education employee violates an express law, rule, regulation, or clearly articulated policy of the state or educational entity. The burden of proof of such violation shall rest with the plaintiff and shall be established by clear and convincing evidence to the court as part of a summary proceeding.

C. An educational entity or education employee shall not be subject to liability for making a report consistent with federal law to the appropriate law enforcement authority or school official if the individual making the report has reasonable grounds to suspect a student is:

1. Under the influence of alcoholic beverages or a controlled substance not lawfully prescribed to that student;

2. In possession of a firearm, alcoholic beverages, or a controlled substance not lawfully prescribed to that student; or

3. Involved in the illegal sale or distribution of firearms, alcoholic beverages, or a controlled substance.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-205 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. An educational entity shall not be liable for punitive or exemplary damages. An education employee shall not be liable for punitive or exemplary damages for acts or omissions within the course and scope of employment.

B. For purposes of this section, an education employee shall not be considered as acting within the course and scope of employment if the employee acted with specific intent to cause harm.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-206 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in this section, any person eighteen (18) years of age or older who acts with specific intent in making a false accusation of criminal activity against an education employee to law enforcement authorities or school district officials, or both, shall be guilty of a misdemeanor and upon conviction punishable by a fine of not more than Two Thousand Dollars (\$2,000.00).

B. Except as otherwise provided in this section, any student between the ages of seven (7) and seventeen (17) who acts with specific intent in making a false accusation of criminal activity against an education employee to law enforcement authorities or school district officials, or both, shall upon conviction, at the discretion of the court, be subject to any of the following:

1. Suspended out-of-school for a period of time to be determined by the court, subject to the provisions of Section 24-101.3 of Title 70 of the Oklahoma Statutes;

2. Community service of a type and for a period of time to be determined by the court; or

3. Any other sanction as the court in its discretion may deem appropriate.

C. The provisions of this section shall not apply to statements regarding individuals elected or appointed to an educational entity.

D. This section is in addition to and does not limit the civil or criminal liability of a person who makes false statements alleging criminal activity by another.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-207 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. In any civil action or proceeding against an educational entity or an education employee in which the educational entity or education employee prevails, the court shall award costs and reasonable attorney's fees to the prevailing defendant or defendants. The court in its discretion may determine whether such fees and costs are to be borne by the plaintiff's attorney, the plaintiff, or both.

B. Expert witness fees may be included as part of the costs awarded under this section.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-208 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of twenty-five percent (25%) of any civil judgment rendered against an educational entity or education employee, or of any settlement made pursuant to the laws of this state.

B. Any interested person may file a civil action or petition with the appropriate court to rescind any provision of the attorney fee contract inconsistent with this section and to compel the disgorgement of any fees paid in excess of the amounts allowed under this section. In addition, a court with jurisdiction over the matter shall upon conviction impose a fine against the attorney that is equal to or less than the amount of money sought by the attorney in excess of the amount permitted by this section or Two Thousand Dollars (\$2,000.00), whichever amount is more.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-209 of Title 70, unless there is created a duplication in numbering, reads as follows:

Unless otherwise provided by law, the existence of any policy of insurance indemnifying an educational entity or an education employee against liability for damages is not a waiver of any defense otherwise available to the educational entity or its employees in the defense of the claim.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-210 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

SECTION 40. 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 41. 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 41 through 49 of this act shall be known and may be cited as the "Product Liability Act".

SECTION 42. 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 43. 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 44. 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, a manufacturer or seller shall not be liable if:

1. The product is inherently unsafe and the product is known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community; and

2. The product is a common consumer product intended for personal consumption, such as sugar, castor oil, alcohol, tobacco, and butter, as identified in comment i to Section 402A of the Restatement (Second) of Torts.

B. For purposes of this section, the term "product liability action" does not include an action based on manufacturing defect or breach of an express warranty.

SECTION 45. 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 in which a claimant alleges a design defect, the burden is on the claimant to prove by a preponderance of the evidence that:

1. There was a safer alternative design; and

2. The defect was a producing cause of the personal injury, property damage, or death for which the claimant seeks recovery.

B. In this section, "safer alternative design" means a product design other than the one actually used that in reasonable probability:

1. Would have prevented or significantly reduced the risk of the claimant's personal injury, property damage, or death without substantially impairing the product's utility; and

2. Was economically and technologically feasible at the time the product left the control of the manufacturer or seller by the

application of existing or reasonably achievable scientific knowledge.

C. This section does not supersede or modify any statute, regulation, or other law of this state or of the United States that relates to liability for, or to relief in the form of, abatement of nuisance, civil penalties, cleanup costs, cost recovery, an injunction, or restitution that arises from contamination or pollution of the environment.

D. This section does not apply to:

1. A cause of action based on a toxic or environmental tort; or
2. A drug or device, as those terms are defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321).

E. This section is not declarative, by implication or otherwise, of the common law with respect to any product and shall not be construed to restrict the courts of this state in developing the common law with respect to any product which is not subject to this section.

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 106 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. In a product liability action brought against a manufacturer or seller of a firearm or ammunition that alleges a design defect in the firearm or ammunition, the burden is on the claimant to prove, in addition to any other elements that the claimant must prove, that:

1. The actual design of the firearm or ammunition was defective, causing the firearm or ammunition not to function in a manner reasonably expected by an ordinary consumer of firearms or ammunition; and

2. The defective design was a proximate cause of the personal injury, property damage, or death.

B. The claimant may not prove the existence of the defective design by a comparison or weighing of the benefits of the firearm or ammunition against the risk of personal injury, property damage, or death posed by its potential to cause such injury, damage, or death when discharged.

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 107 of Title 76, unless there is created a duplication in numbering, reads as follows:

A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves:

1. That the seller participated in the design of the product;
2. That the seller altered or modified the product and the claimant's harm resulted from that alteration or modification;
3. That the seller installed the product, or had the product installed, on another product and the claimant's harm resulted from the product's installation onto the assembled product;
4. That:
 - a. the seller exercised substantial control over the content of a warning or instruction that accompanied the product,
 - b. the warning or instruction was inadequate, and
 - c. the claimant's harm resulted from the inadequacy of the warning or instruction;
5. That:
 - a. the seller made an express factual representation about an aspect of the product,
 - b. the representation was incorrect,
 - c. the claimant relied on the representation in obtaining or using the product, and

- d. if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm;

6. That:

- a. the seller actually knew of a defect to the product at the time the seller supplied the product, and
- b. the claimant's harm resulted from the defect; or

7. That the manufacturer of the product is:

- a. insolvent, or
- b. not subject to the jurisdiction of the court.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 108 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 casually related to the claimant's injury;

2. The pharmaceutical product as 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 casually 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 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 109 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 federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture and that governed the product risk that allegedly 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 unreasonable risks of injury or damage; 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. 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 allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product was subject to premarket licensing or approval by the federal government, or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to

premarket licensing or approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. The claimant may rebut this presumption by establishing that:

1. The standards or procedures used in the particular premarket approval or licensing process were inadequate to protect the public from unreasonable risks of injury or damage; or

2. The manufacturer, before or after premarket approval or licensing of the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury.

D. 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 federal government or an agency of the federal government.

E. This section does not extend to products covered by Section 48 of this act.

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "design professional" means a registered architect or licensed professional engineer.

B. In any action for damages alleging professional negligence by a design professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party registered architect or licensed professional engineer competent to testify and practicing in the same area of practice as the defendant, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. The third-party professional engineer or registered

architect shall be licensed in this state and actively engaged in the practice of architecture or engineering.

C. The contemporaneous filing requirement of subsection B of this section shall not apply to any case in which the period of limitation will expire within ten (10) days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party registered architect or professional engineer could not be prepared. In such cases, the plaintiff shall have thirty (30) days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause, extend such time as it shall determine justice requires.

D. The defendant shall not be required to file an answer to the complaint and affidavit until thirty (30) days after the filing of such affidavit.

E. The plaintiff's failure to file the affidavit in accordance with subsection B or C of this section may result in dismissal with prejudice of the complaint against the defendant.

F. This statute shall not be construed to extend any applicable period of limitation.

SECTION 51. 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 which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors, 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 April 1, 2003, 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 premise or 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 does 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, then 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 52. REPEALER 47 O.S. 2001, Section 12-420, is hereby repealed.

SECTION 53. This act shall become effective November 1, 2004.

49-2-8151 SD 01/21/04