

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1657

By: Anderson of the Senate

and

Sullivan of the House

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2001, Section 2004, as amended by Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2005, Section 2004), which relates to process; defining term; amending 12 O.S. 2001, Section 2011, as amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2005, Section 2011), which relates to the Oklahoma Pleading Code; modifying definition; amending Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp. 2005, Section 2011.1), which relates to frivolous claims or defenses; modifying definition; providing procedure for summary judgment; amending Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2005, Section 15), which relates to joint and several liability; modifying exceptions to severability; providing limits of liability for noneconomic damages for certain actions; defining term; amending 47 O.S. 2001, Section 11-1112, as last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp. 2005, Section 11-1112), which relates to child passenger restraint systems; eliminating prohibitions against admissibility of certain evidence in civil actions; limiting liability for certain entities; amending 63 O.S. 2001, Section 1-1709.1, as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2005, Section 1-1709.1), which relates to peer review information; providing that certain information, recommendations and actions are not subject to discovery; 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; providing that existence of liability insurance is not a waiver of any defense; providing for the applicability of other laws; amending 76 O.S. 2001,

Section 25, which relates to professional review bodies; providing that peer review information is private, confidential and privileged; providing exception; providing notice requirement; providing that certain information is not subject to discovery; prohibiting testimony by certain persons; amending 76 O.S. 2001, Section 31 and Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2005, Section 32), which relate to civil immunity for volunteers, charitable organizations, not-for-profit corporations and volunteer medical professionals; modifying definition; expanding immunity for volunteer medical professionals; creating the Common Sense Consumption Act; providing short title; stating legislative intent; defining terms; providing immunity from civil liability for certain claims; providing exception; providing pleading requirements; providing for stay of discovery and other proceedings in certain circumstances; providing scope of claims covered; repealing 47 O.S. 2001, Section 12-420, as amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2005, Section 12-420), which relates to inadmissibility of evidence in civil actions of failure to use seatbelt; repealing Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2005, Sections 1-1708.1F and 1-1708.1F-1), which relate to limits on noneconomic damages in medical liability actions; providing severability; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 2004, as amended by Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2005, Section 2004), is amended to read as follows:

Section 2004.

PROCESS

A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk shall forthwith issue a summons. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

B. SUMMONS: FORM.

1. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise, the plaintiff's

address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to appear, judgment by default will be rendered against the defendant for the relief demanded in the petition.

2. A judgment by default shall not be different in kind from or exceed in amount that prayed for in either the demand for judgment or in cases not sounding in contract in a notice which has been given the party against whom default judgment is sought. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his or her pleadings.

C. BY WHOM SERVED: PERSON TO BE SERVED.

1. SERVICE BY PERSONAL DELIVERY.

- a. At the election of the plaintiff, process, other than a subpoena, shall be served by a sheriff or deputy sheriff, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The court shall freely make special appointments to serve all process, other than a subpoena, under this paragraph.
- b. A summons to be served by the sheriff or deputy sheriff shall be delivered to the sheriff by the court clerk or an attorney of record for the plaintiff. When a summons, subpoena, or other process is to be served by the sheriff or deputy sheriff of another county, the court clerk shall mail it, together with his voucher for the fees collected for the service, to the sheriff of that county. The sheriff shall deposit the voucher in the Sheriff's Service Fee Account created pursuant to Section 514.1 of Title 19 of the Oklahoma Statutes. The sheriff or deputy sheriff

shall serve the process in the manner that other process issued out of the court of the sheriff's own county is served. A summons to be served by a person licensed to make service of process in civil cases or by a person specially appointed for that purpose shall be delivered by an attorney of record for the plaintiff to such person.

c. Service shall be made as follows:

- (1) Upon an individual other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the petition personally or by leaving copies thereof at the person's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process;
- (2) Upon an infant who is less than fifteen (15) years of age, by serving the summons and petition personally and upon either of the infant's parents or guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom the infant lives; and upon an incompetent person by serving the summons and petition personally and upon the incompetent person's guardian;
- (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the

petition to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant;

- (4) Upon the United States or an officer or agency thereof in the manner specified by Federal Rule of Civil Procedure 4;
- (5) Upon a state, county, school district, public trust or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the petition to the officer or individual designated by specific statute; however, if there is no statute, then upon the chief executive officer or a clerk, secretary, or other official whose duty it is to maintain the official records of the organization; and
- (6) Upon an inmate incarcerated in an institution under the jurisdiction and control of the Department of Corrections, by delivering a copy of the summons and of the petition to the warden or superintendent or the designee of the warden or superintendent of the institution where the inmate is housed. It shall be the duty of the receiving warden or superintendent or a designee to promptly deliver the summons and petition to the inmate named therein. The warden or superintendent or his or her designee shall

reject service of process for any inmate who is not actually present in said institution.

2. SERVICE BY MAIL.

- a. At the election of the plaintiff, a summons and petition may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to subparagraph a of paragraph 1 of this subsection, or by the court clerk upon a defendant of any class referred to in division (1), (3), or (5) of subparagraph c of paragraph 1 of this subsection. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and petition by the defendant.
- b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant. If the summons is to be served by mail by the court clerk, the court clerk shall enclose the summons and a copy of the petition or order of the court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The court clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. The return receipt shall be prepared by the plaintiff. Service by mail to a garnishee shall be accomplished by mailing a copy of the summons and notice by certified mail, return receipt requested,

and at the election of the judgment creditor by restricted delivery, to the addressee.

- c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph c of paragraph 1 of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph c of paragraph 1 of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff

pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any default or judgment by default shall be set aside upon motion of the defendant in the manner prescribed in Section 1031.1 of this title, or upon petition of the defendant in the manner prescribed in Section 1033 of this title if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. A petition shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the filing of the judgment.

d. For purposes of this section, "return receipt" may be either the actual receipt received in the mail with the recipient's signature or the proof of delivery letter which the United States Postal Service sends to the mailer as an electronic mail attachment which includes an image of the recipient's signature.

### 3. SERVICE BY PUBLICATION.

a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that the person who verified the petition or the affidavit does not know and with due diligence cannot ascertain the following:

- (1) whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of the person's successors, if any,
- (2) the names or whereabouts of the unknown successors, if any, of a named decedent,
- (3) whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not; or the names or whereabouts of its officers or successors,
- (4) whether any person designated in a record as a trustee continues to be the trustee; or the names or whereabouts of the successors of the trustee, or
- (5) the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this paragraph shall be made by publication of a notice, signed by the court clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish

legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the court is based on property, any real property subject to the jurisdiction of the court and any property or debts to be attached or garnished must be described in the notice.

- (1) When the recovery of money is sought, it is not necessary for the publication notice to state the separate items involved, but the total amount that is claimed must be stated. When interest is claimed, it is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.
- (2) It is not necessary for the publication notice to state that the judgment will include recovery of costs in order for a judgment following the publication notice to include costs of suit.

(3) In an action to quiet title to real property, it is not necessary for the publication notice to state the nature of the claim or interest of either party, and in describing the nature of the judgment that will be rendered should the defendant fail to answer, it is sufficient to state that a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state that a decree forever barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer.

(4) In an action to foreclose a mortgage, it is sufficient that the publication notice state that if the defendant does not answer, the defendant's interest in the property will be foreclosed. It is not necessary to state that a judgment forever barring the defendant from all right, title, interest, estate, property and equity of redemption in or to said property or any part thereof is requested or will be entered if the defendant does not answer.

d. Service by publication is complete when made in the manner and for the time prescribed in subparagraph c of this paragraph. Service by publication shall be proved by the affidavit of any person having knowledge of the publication. No default judgment may be entered on such service until proof of service by publication is filed with and approved by the court.

e. Before entry of a default judgment or order against a party who has been served solely by publication under this paragraph, the court shall conduct an inquiry to

determine whether the plaintiff, or someone acting in his behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of any named parties who have been served solely by publication under this paragraph. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation or association, the court shall conduct an inquiry to ascertain whether the requirements described in subparagraph b of this paragraph have been satisfied.

- f. A party against whom a default judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three (3) years after the filing of the judgment or order, have the judgment or order set aside in the manner prescribed in Sections 1031.1 and 1033 of this title. Before the judgment or order is set aside, the applicant shall notify the adverse party of the intention to make an application and shall file a full answer to the petition, pay all costs if the court requires them to be paid, and satisfy the court by affidavit or other evidence that during the pendency of the action the applicant had no actual notice thereof in time to appear in court and make a defense. The title to any property which is the subject of and which passes to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by any proceedings under this subparagraph. Nor shall proceedings under this subparagraph affect the title of any property sold before judgment under an attachment. The adverse

party, on the hearing of an application to open a judgment or order as provided by this subparagraph, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make a defense.

g. The term "successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

h. Service outside of the state does not give the court in personal jurisdiction over a defendant who is not subject to the jurisdiction of the courts of this state or who has not, either in person or through an agent, submitted to the jurisdiction of the courts of this state.

#### 4. SERVICE ON THE SECRETARY OF STATE.

a. Service of process on a domestic or foreign corporation may be made by serving the Secretary of State as the corporation's agent, if:

(1) there is no registered agent for the corporation listed in the records of the Secretary of State;  
or

(2) neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation, when service of process was attempted.

b. Before resorting to service on the Secretary of State the plaintiff must have attempted service either in person or by mail on the corporation at:

(1) the corporation's last-known address shown on the records of the Franchise Tax Division of the

Oklahoma Tax Commission, if any is listed there;  
and

- (2) the corporation's last-known address shown on the records of the Secretary of State, if any is listed there; and
- (3) the corporation's last address known to the plaintiff.

If any of these addresses are the same, the plaintiff is not required to attempt service more than once at any address. The plaintiff shall furnish the Secretary of State with a certified copy of the return or returns showing the attempted service.

- c. Service on the Secretary of State shall be made by filing two (2) copies of the summons and petition with the Secretary of State, notifying the Secretary of State that service is being made pursuant to the provisions of this paragraph, and paying the Secretary of State the fee prescribed in paragraph 7 of Section 1142 of Title 18 of the Oklahoma Statutes, which fee shall be taxed as part of the costs of the action, suit or proceeding if the plaintiff shall prevail therein. If a registered agent for the corporation is listed in the records of the Secretary of State, the plaintiff must also furnish a certified copy of the return showing that service on the registered agent has been attempted either in person or by mail, and that neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation.
- d. Within three (3) working days after receiving the summons and petition, the Secretary of State shall send notice by letter, certified mail, return receipt

requested, directed to the corporation at its registered office or the last-known address found in the office of the Secretary of State, or if no address is found there, to the corporation's last-known address provided by the plaintiff. The notice shall enclose a copy of the summons and petition and any other papers served upon the Secretary of State. The corporation shall not be required to serve its answer until forty (40) days after service of the summons and petition on the Secretary of State.

- e. Before entry of a default judgment or order against a corporation that has been served by serving the Secretary of State as its agent under this paragraph, the court shall determine whether the requirements of this paragraph have been satisfied. A default judgment or order against a corporation that has been served only by service on the Secretary of State may be set aside upon motion of the corporation in the manner prescribed in Section 1031.1 of this title, or upon petition of the corporation in the manner prescribed in Section 1033 of this title, if the corporation demonstrates to the court that it had no actual notice of the action in time to appear and make its defense. A petition shall be filed within one (1) year after the corporation has notice of the default judgment or order but in no event more than two (2) years after the filing of the default judgment or order.
- f. The Secretary of State shall maintain an alphabetical record of service setting forth the name of the plaintiff and defendant, the title, docket number, and nature of the proceeding in which the process has been

served upon the defendant, the fact that service has been effected pursuant to the provisions of this paragraph, the return date thereof, and the date when the service was made. The Secretary of State shall not be required to retain this information for a period longer than five (5) years from receipt of the service of process.

g. The provisions of this paragraph shall not apply to a foreign insurance company doing business in this state.

5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of the summons or the voluntary appearance of a defendant is equivalent to service.

6. SERVICE BY OTHER METHODS. If service cannot be made by personal delivery or by mail, a defendant of any class referred to in division (1) or (3) of subparagraph c of paragraph 1 of this subsection may be served as provided by court order in any manner which is reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

7. NO SERVICE BY PRISONER. No prisoner in any jail, Department of Corrections facility, private prison, or parolee or probationer under supervision of the Department of Corrections shall be appointed by any court to serve process on any defendant, party or witness.

D. SUMMONS AND PETITION. The summons and petition shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. The failure to serve a copy of the petition with the summons is not a ground for dismissal for insufficiency of service of process, but on motion of the party served, the court may extend the time to answer or otherwise plead. If a summons and petition are served by personal delivery, the person serving the summons shall state on the copy that is left with

the person served the date that service is made. This provision is not jurisdictional, but if the failure to comply with it prejudices the party served, the court, on motion of the party served, may extend the time to answer or otherwise plead.

E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

1. Service of the summons and petition may be made anywhere within this state in the manner provided by subsection C of this section.

2. When the exercise of jurisdiction is authorized by subsection F of this section, service of the summons and petition may be made outside this state:

- a. by personal delivery in the manner prescribed for service within this state,
- b. in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction,
- c. in the manner prescribed by paragraph 2 of subsection C of this section,
- d. as directed by the foreign authority in response to a letter rogatory,
- e. in the manner prescribed by paragraph 3 of subsection C of this section only when permitted by subparagraphs a and b of paragraph 3 of subsection C of this section, or
- f. as directed by the court.

3. Proof of service outside this state may be made in the manner prescribed by subsection G of this section, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

4. Service outside this state may be made by an individual permitted to make service of process under the law of this state or under the law of the place in which the service is made or who is designated to make service by a court of this state.

5. When subsection C of this section requires that in order to effect service one or more designated individuals be served, service outside this state under this section must be made upon the designated individual or individuals.

6. a. A court of this state may order service upon any person who is domiciled or can be found within this state of any document issued in connection with a proceeding in a tribunal outside this state. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside this state and shall direct the manner of service.
- b. Service in connection with a proceeding in a tribunal outside this state may be made within this state without an order of court.
- c. Service under this paragraph does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside this state.

F. ASSERTION OF JURISDICTION. A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States.

G. RETURN.

1. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process, but the failure to make proof of service does not affect the validity of the service.

2. When process has been served by a sheriff or deputy sheriff and return thereof is filed in the office of the court clerk, a copy of the return shall be sent by the court clerk to the plaintiff's attorney within three (3) days after the return is filed. If service is made by a person other than a sheriff, deputy sheriff, or licensed process server, that person shall make affidavit thereof. The return shall set forth the name of the person served and the date, place, and method of service.

3. If service was by mail, the person mailing the summons and petition shall endorse on the copy of the summons or order of the court that is filed in the action the date and place of mailing and the date when service was receipted or service was rejected, and shall attach to the copy of the summons or order a copy of the return receipt or returned envelope, if and when received, showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also show the date and place of any subsequent mailing pursuant to paragraph 2 of subsection C of this section. When the summons and petition are mailed by the court clerk, the court clerk shall notify the plaintiff's attorney within three (3) days after receipt of the returned card or envelope showing that the card or envelope has been received.

H. AMENDMENT. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition and the plaintiff cannot show good cause why such service was not made within that period, the action may be dismissed as to that defendant without prejudice upon the court's

own initiative with notice to the plaintiff or upon motion. The action shall not be dismissed where a summons was served on the defendant within one hundred eighty (180) days after the filing of the petition and a court later holds that the summons or its service was invalid. After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been outside of this state for one hundred eighty (180) days following the filing of the petition.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 2011, as amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2005, Section 2011), is amended to read as follows:

Section 2011.

#### SIGNING OF PLEADINGS

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

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

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

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

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

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

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

1. HOW INITIATED.

a. By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subsection B of this section. It shall be served as provided in Section 2005 of this title, but shall not be filed with or presented to the court unless, within twenty-one (21) days after service of the motion or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted,

the court may award to the party prevailing on the motion the reasonable expenses and attorneys fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

- b. On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subsection B of this section and directing an attorney, law firm, or party to show cause why it has not violated subsection B of this section with respect thereto.

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

- a. Monetary sanctions shall not be awarded against a represented party for a violation of paragraph 2 of subsection B of this section.
- b. Monetary sanctions shall not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.
- c. Monetary sanctions shall be awarded for any violations of paragraph 1 of subsection B of this section. The

sanctions shall consist of an order directing payment of reasonable costs, including attorney fees, incurred by the movant with respect to the conduct for which the sanctions are imposed. In addition, the court may impose any other sanctions authorized by this paragraph.

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

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

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

SECTION 3. AMENDATORY Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp. 2005, Section 2011.1), is amended to read as follows:

Section 2011.1 In any action not arising out of contract, the court shall, upon granting a motion to dismiss an action or a motion for summary judgment or subsequent to adjudication on the merits, determine whether a claim or defense asserted in the action by a nonprevailing party was frivolous. As used in this section, "frivolous" means the action was knowingly asserted in bad faith, was unsupported by ~~any~~ sufficiently credible evidence, was not grounded in fact, or was unwarranted by existing law or ~~a good faith~~ an objectively reasonable argument for the extension, modification, or reversal of existing law or the establishment of new law. Upon

so finding, the court shall enter a judgment ordering such nonprevailing party to reimburse the prevailing party for reasonable costs, including attorney fees, incurred with respect to such claim or defense. In addition, the court may impose any sanction authorized by Section 2011 of ~~Title 12 of the Oklahoma Statutes~~ this title.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2056 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. FOR CLAIMANT. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may move, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary judgment by the adverse party, with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

B. FOR DEFENDING PARTY. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move, at any time, with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

C. MOTIONS AND PROCEEDINGS THEREON. The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

D. NOT FULLY ADJUDICATED ON MOTION. If, on motion under this section, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall ascertain, if practicable, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall make thereupon an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

E. FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, a party may not rest upon the mere allegations or denials of the party's pleading, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial or no genuine issue for trial, as appropriate. The adverse party has the burden of producing evidence on any issue raised in the motion on which the adverse party would have the burden of persuasion at trial. If the adverse party does not so respond, summary judgment, if otherwise appropriate hereunder, shall be entered against the adverse party.

F. WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just. Upon request of a party opposing a motion for summary judgment, the court shall allow a reasonable amount of time to conclude discovery sufficient to allow the party to adequately respond to the motion for summary judgment.

G. AFFIDAVITS MADE IN BAD FAITH. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

H. STANDARD OF PROOF. Summary judgment shall be granted in favor of a party only where there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. If a standard of proof beyond a preponderance of the evidence applies at trial, the heightened standard shall not be taken into account by the court in ruling on a motion for summary judgment.

I. APPEALS. An order denying summary judgment, summary disposition of issues, or partial summary adjudication will be appealable as part of any appeal from an appealable order or judgment which is later rendered in the case.

J. SUPERSESION. The provisions of this section supersede any court rules otherwise applicable to the subject matter of this section.

SECTION 5. AMENDATORY Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2005, Section 15), is amended to read as follows:

Section 15. A. Except as provided in ~~subsections~~ subsection B and ~~C~~ of this section, in any civil action based on fault and not arising out of contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor.

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

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

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

~~E. C.~~ The provisions of this section shall apply to all civil actions based on fault and not arising out of contract that accrue on or after November 1, ~~2004~~ 2006.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61.3 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, in any action not arising out of contract, the amount of noneconomic damages awarded shall not exceed Three Hundred Thousand Dollars (\$300,000.00), regardless of the number of parties against whom the

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

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

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

D. The provisions of this section shall apply only to actions that accrue on or after November 1, 2006.

SECTION 7. AMENDATORY 47 O.S. 2001, Section 11-1112, as last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp. 2005, Section 11-1112), is amended to read as follows:

Section 11-1112. A. Every driver, when transporting a child under six (6) years of age 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., Section 571.213.

B. Children at least six (6) 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;

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

5. The transportation of a child who weighs more than forty (40) pounds and who is being transported in the back seat of a vehicle while wearing only a lap safety belt when the back seat of the vehicle is not equipped with combination lap and shoulder safety belts, or when the combination lap and shoulder safety belts in the back seat are being used by other children who weigh more than forty (40) pounds. Provided, however, for purposes of this paragraph, back seat shall include all seats located behind the front seat of a vehicle operated by a licensed child care facility or church. Provided further, there shall be a rebuttable presumption that a child has met the weight requirements of this paragraph if at the request of any law enforcement officer, the licensed child care facility or church provides the officer with a written statement verified by the parent or legal guardian that the child weighs more than forty (40) pounds.

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 Fifty Dollars (\$50.00) and shall pay all court costs thereof. Revenue from such fine shall be apportioned to the Department of Public Safety Revolving Fund and used by the Oklahoma Highway Safety Office to promote the use of child passenger restraint systems as provided in Section 11-1113 of this title. This fine shall be suspended and the court costs limited to a maximum of Fifteen Dollars (\$15.00) 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 8. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2005, Section 1-1709.1), is amended to read as follows:

Section 1-1709.1 A. As used in this section:

1. "Credentialing or recredentialing data" means:

- a. the application submitted by a health care professional requesting appointment or reappointment to the medical staff of a health care facility or requesting clinical privileges or other permission to provide health care services at a health care facility,
- b. any information submitted by the health care professional in support of such application,
- c. any information, unless otherwise privileged, obtained by the health care facility during the credentialing or recredentialing process regarding such application, and

- d. the decision made by the health care facility regarding such application;

2. "Credentialing or recredentialing process" means any process, program or proceeding utilized by a health care facility to assess, review, study or evaluate the credentials of a health care professional;

3. "Health care facility" means:

- a. any hospital or related institution offering or providing health care services under a license issued pursuant to Section 1-706 of this title,
- b. any ambulatory surgical center offering or providing health care services under a license issued pursuant to Section 2660 of this title, and
- c. the clinical practices of accredited allopathic and osteopathic state medical schools;

4. "Health care professional" means any person authorized to practice allopathic medicine and surgery, osteopathic medicine, podiatric medicine, optometry, chiropractic, psychology, dentistry or a dental specialty under a license issued pursuant to Title 59 of the Oklahoma Statutes;

5. "Peer review information" means all records, documents and other information generated during the course of a peer review process, including any reports, statements, memoranda, correspondence, record of proceedings, materials, opinions, findings, conclusions and recommendations, but does not include:

- a. the medical records of a patient whose health care in a health care facility is being reviewed,
- b. incident reports and other like documents regarding health care services being reviewed, regardless of how the reports or documents are titled or captioned,
- c. the identity of any individuals who have personal knowledge regarding the facts and circumstances

surrounding the patient's health care in the health care facility,

- d. factual statements regarding the patient's health care in the health care facility from any individuals who have personal knowledge regarding the facts and circumstances surrounding the patient's health care, which factual statements were generated outside the peer review process,
- e. the identity of all documents and raw data previously created elsewhere and considered during the peer review process,
- f. copies of all documents and raw data previously created elsewhere and considered during the peer review process, whether available elsewhere or not, or
- g. credentialing or recredentialing data regarding the health care professional who provided the health care services being reviewed or who is the subject of a credentialing or recredentialing process; and

6. "Peer review process" means any process, program or proceeding, including a credentialing or recredentialing process, utilized by a health care facility or county medical society to assess, review, study or evaluate the credentials, competence, professional conduct or health care services of a health care professional.

B. 1. Peer review information shall be private, confidential and privileged;

- ~~a.~~ except that a health care facility or county medical society shall be permitted to provide relevant peer review information to the state agency or board which licensed the health care professional who provided the health care services being reviewed in a peer review process or who is the subject of a credentialing or

recredentialing process, with notice to the health care professional, ~~and~~

~~b. except as provided in subsections C and D of this section.~~

2. Nothing in this section shall be construed to abrogate, alter or affect any provision in the Oklahoma Statutes which provides that information regarding liability insurance of a health care facility or health care professional is not discoverable or admissible.

C. In any civil action in which a patient or patient's legal representative has alleged that the patient has suffered injuries resulting from negligence by a health care professional in providing health care services to the patient in a health care facility, factual statements, presented during a peer review process utilized by such health care facility, regarding the patient's health care in the health care facility from individuals who have personal knowledge of the facts and circumstances surrounding the patient's health care shall not be subject to discovery, ~~pursuant to the Oklahoma Discovery Code, upon an affirmative showing that such statements are not otherwise available in any other manner.~~

D. ~~1.~~ In any civil action in which a patient or patient's legal representative has alleged:

~~a. that~~

1. That the patient has suffered injuries resulting from negligence by a health care professional in providing health care services to the patient in a health care facility~~;~~ or

~~b. that~~

2. That the health care facility was independently negligent as a result of permitting the health care professional to provide health care services to the patient in the health care facility, the recommendations made and action taken as a result of any peer review process utilized by such health care facility regarding the

health care professional prior to the date of the alleged negligence shall not be subject to discovery pursuant to the Oklahoma Discovery Code.

~~2. Any information discovered pursuant to this subsection :~~

- ~~a. shall not be admissible as evidence until a judge or jury has found the health care professional to have been negligent in providing health care services to the patient in such health care facility, and~~
- ~~b. shall not at any time include the identity or means by which to ascertain the identity of any other patient or health care professional.~~

E. No person involved in a peer review process may be permitted or required to testify regarding the peer review process in any civil proceeding or disclose by responses to written discovery requests any peer review information.

SECTION 9. 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 9 through 17 of this act shall be known and may be cited as the "Education Quality and Protection Act".

SECTION 10. 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 11. 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 12. 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 13. 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 14. 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 or adjudication, at the discretion of the court, be subject to any of the following:

1. Suspension 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 15. 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 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 16. 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:

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 17. 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:

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 18. AMENDATORY 76 O.S. 2001, Section 25, is amended to read as follows:

Section 25. A. A professional review body, members and staff of such professional review body and persons who contract with such professional review body shall not be liable in any way in damages under any law of this state with respect to a professional review action taken in good faith by such professional review body.

B. Peer review information shall be private, confidential and privileged except that a peer review body shall be permitted to provide relevant peer review information to a state agency or board which licensed the professional whose competence and performance is being reviewed in a peer review process or who is the subject of a credentialing or recredentialing process. Notice that the information is being provided to a state agency or board shall be given to the professional.

C. In any civil action in which a plaintiff or legal representative of a plaintiff has alleged that the plaintiff has suffered injuries resulting from the negligence of the professional in providing professional services to the plaintiff, factual statements, presented during a peer review process shall not be subject to discovery.

D. In any civil action in which a plaintiff or legal representative of a plaintiff has alleged that the plaintiff has suffered injuries resulting from the negligence of the professional in providing professional services to the plaintiff, the recommendations made and action taken as a result of any peer review process shall not be subject to discovery.

E. No person involved in a peer review process may be permitted or required to testify regarding the peer review process in any civil proceeding or disclose by responses to written discovery requests any peer review information.

SECTION 19. 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 for the service or undertaking performed 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 20. AMENDATORY Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2005, Section 32), is amended to read as follows:

Section 32. A. This section shall be known and may be cited as the "Volunteer Medical Professional Services Immunity Act".

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

1. The volunteer medical professional services were provided ~~at a free clinic where neither the professional nor the clinic receives~~ without any kind of compensation being paid for any the treatment provided ~~at the clinic;~~

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

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

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

5. Before the volunteer medical professional provides professional medical services, the volunteer medical professional and the person receiving the services or, if that person is a minor

or otherwise legally incapacitated, the person's parent, conservator, legal guardian, or other person with legal responsibility for the care of the person signs a written statement that acknowledges:

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

C. In the event the volunteer medical professional refers the patient covered by this section to another volunteer medical professional for additional treatment, the referred volunteer medical professional shall be subject to the provisions of this section if:

1. The referred volunteer medical professional provides services without receiving any compensation for the treatment;
2. The referred volunteer medical professional was acting in good faith and, if licensed, the services provided were within the scope of the license of the referred volunteer medical professional;
3. The referred volunteer medical professional commits the act or omission in the course of providing professional services;
4. The damage or injury was not caused by gross negligence or willful and wanton misconduct by the referred volunteer medical professional; and
5. Before the referred volunteer medical professional provides professional services, the referred volunteer medical professional and the person receiving the services or, if that person is a minor or otherwise legally incapacitated, the person's parent, conservator, legal guardian, or other person with legal

responsibility for the care of the person signs a written statement that acknowledges:

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

D. The provisions of this section shall not affect the liability that any person may have which arises from the operation of a motor vehicle, watercraft, or aircraft in rendering the service, care, assistance, advice or other benefit as a volunteer medical professional.

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

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

1. Physician;
2. Physician's assistant;
3. Registered nurse;

4. Advanced nurse practitioner or vocational nurse;
5. Pharmacist;
6. Podiatrist;
7. Dentist or dental hygienist; or
8. Optometrist.

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

G. Any person participating in a Medical Reserve Corps and assisting with emergency management, emergency operations, or hazard mitigation in response to any emergency, man-made disaster, or natural disaster, or participating in public health initiatives endorsed by a city, county or state health department in the State of Oklahoma, shall not be liable for civil damages on the basis of any act or omission, if:

1. The person was acting in good faith and within the scope of the official duties and functions of the Medical Reserve Corps; and
2. The acts or omissions were not caused from gross, willful, or wanton acts of negligence.

H. This section shall apply to all civil actions filed on or after November 1, 2006.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 33 of Title 76, unless there is created a duplication in numbering, reads as follows:

Sections 21 through 24 of this act shall be known and may be cited as the "Common Sense Consumption Act".

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 34 of Title 76, unless there is created a duplication in numbering, reads as follows:

The intent of the Common Sense Consumption Act is to prevent frivolous lawsuits against manufacturers, packers, distributors,

carriers, holders, sellers, marketers or advertisers of food products that comply with applicable statutory and regulatory requirements.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 35 of Title 76, unless there is created a duplication in numbering, reads as follows:

As used in the Common Sense Consumption Act:

1. "Claim" means any claim by or on behalf of a natural person, as well as any derivative or other claim arising therefrom asserted by or on behalf of any other individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or governmental officer, or private attorney;

2. "Generally known condition allegedly caused by or allegedly likely to result from long-term consumption" means a condition generally known to result or to likely result from the cumulative effect of consumption, and not from a single instance of consumption; and

3. "Knowing and willful" violation means that:

- a. the conduct constituting the violation was committed with the intent to deceive or injure consumers or with actual knowledge that such conduct was injurious to consumers, and
- b. the conduct constituting the violation was not required by regulations, orders, rules or other pronouncement of, or any statute administered by, a federal, state, or local government agency.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 36 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, a manufacturer, packer, distributor, carrier, holder, seller, marketer

or advertiser of a food, as defined in Section 201(f) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)), or an association of one or more such entities, shall not be subject to civil liability arising under any law of this state, including all statutes, regulations, rules, common law, public policies, court or administrative decisions or decrees, or other state action having the effect of law, for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food.

B. Subsection A of this section shall not preclude civil liability if the claim of weight gain, obesity, health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food is based on:

1. A material violation of an adulteration or misbranding requirement prescribed by statute or regulation of this state or the United States of America and the claimed injury was proximately caused by such violation; or

2. Any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that such violation is knowing and willful, and the claimed injury was proximately caused by such violation.

C. In any action exempted under paragraph 1 of subsection B of this section, the complaint initiating such action shall state with particularity the following: the statute, regulation or other law of this state or of the United States that was allegedly violated; the facts that are alleged to constitute a material violation of such statute or regulation; and the facts alleged to demonstrate that such violation proximately caused actual injury to the plaintiff. In any action exempted under paragraph 2 of subsection B

of this section, in addition to the foregoing pleading requirements, the complaint initiating such action shall state with particularity facts sufficient to support a reasonable inference that the violation was with intent to deceive or injure consumers or with the actual knowledge that such violation was injurious to consumers. For purposes of applying the Common Sense Consumption Act, the foregoing pleading requirements are hereby deemed part of the substantive law of this state and not merely in the nature of procedural provisions.

D. In any action exempted under subsection B of this section, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. During the pendency of any stay of discovery pursuant to this subsection, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of such party and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under Section 3234 of Title 12 of the Oklahoma Statutes.

E. The provisions of the Common Sense Consumption Act shall apply to all covered claims pending on November 1, 2006, and all claims filed thereafter, regardless of when the claim arose.

SECTION 25. REPEALER 47 O.S. 2001, Section 12-420, as amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2005, Section 12-420), is hereby repealed.

SECTION 26. REPEALER Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004, and

Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2005, Sections 1-1708.1F and 1-1708.1F-1), are hereby repealed.

SECTION 27. The provisions of this act are severable and if any part or provision shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 28. This act shall become effective November 1, 2006.

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