

ENGROSSED HOUSE
BILL NO. 2047

By: Hiett, Dank, Jackson,
Johnson, Miller (Doug),
Wesselhoft and Worthen of
the House

and

Coffee of the Senate

An Act relating to tort reform; creating the Justice and Common Sense Act of 2005; providing short title; amending 5 O.S. 2001, Sections 7 and 9, which relate to attorney fees; modifying maximum percentage of allowable attorney fees; providing exception; prohibiting attorney fees for punitive damages; providing for determination of attorney fees in class actions; requiring plaintiffs to sign representation agreements; 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 last amended by Section 1, Chapter 168, O.S.L. 2004 (12 O.S. Supp. 2004, Section 95), which relates to limitations on actions; establishing statute of repose for certain actions; establishing 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, Sections 683 and 684, as amended by Sections 3 and 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2004, Sections 683 and 684), which relate to dismissal; modifying procedure for dismissal; amending Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2004, Section 727.1), which relates to interest on judgments; limiting applicability of prejudgment interest to actions filed prior to a certain date; amending 12 O.S. 2001, Section 832, which relates to contribution; limiting right to contribution; 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, which relates to offer of judgment; clarifying language; amending 12 O.S. 2001, Sections 2008 and 2009, which relate to the Oklahoma Pleading Code; modifying monetary threshold for which amount of damages are not specified; limiting the amount of damages that may be recovered under certain circumstances; amending Section 1, Chapter 370,

O.S.L. 2004 (12 O.S. Supp. 2004, Section 2011.1), which relates to frivolous claims or defenses; modifying definition; 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; requiring potential class members to request inclusion in the class; providing procedure for summary judgment; amending 12 O.S. 2001, Section 2702, which relates to testimony by experts; providing requirements for expert testimony; providing role of the court; providing for interpretation; amending 12 O.S. 2001, Section 3226, as last amended by Section 3, Chapter 519, O.S.L. 2004 (12 O.S. Supp. 2004, Section 3226), which relates to discovery; eliminating requirement that a party produce certain agreement; requiring certain disclosures prior to discovery request; amending 15 O.S. 2001, Section 761.1, which relates to liability under the Consumer Protection Act; requiring actual damages incurred by person bringing private action; amending 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2004, Section 9.1), which relates to punitive damages; modifying factors to be considered in awarding punitive damages; limiting punitive damage award based on net worth of defendant, with exceptions; providing for determination of net worth; providing that jury award of punitive damages must be unanimous for cases filed after a certain date; providing that portion of punitive damage award in medical liability actions escheats to the state to certain fund; amending Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2004, Section 15), which relates to joint and several liability; modifying exceptions to severability; providing exception; providing for reduction of damages if the plaintiff has settled with one or more persons; providing for designation of responsible third parties; 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 proof of certain losses must be in the form of a net loss after reduction for income tax payments or unpaid tax liability; providing limits of liability for noneconomic damages for certain actions; defining term; amending 36 O.S. 2001, Section 1509, as amended by Section 56, Chapter 368, O.S.L. 2004 (36 O.S. Supp. 2004, Section 1509), which relates to assets and liabilities of insurers; extending moratorium on applicability of certain reserve requirements; amending 36 O.S. 2001, Section 1530, as amended by Section 57, Chapter 368, O.S.L. 2004 (36 O.S. Supp. 2004, Section 1530), which relates to risk-based capital for insurers; extending time insurer is exempt from certain surplus requirements; amending 47 O.S. 2001, Section 11-1112, as last amended by Section 1, Chapter 40, O.S.L. 2004 (47 O.S. Supp. 2004, Section 11-1112), which relates to child passenger restraint systems; eliminating prohibitions against admissibility of certain

evidence in civil actions; amending 51 O.S. 2001, Section 152, as last amended by Section 19, Chapter 368, O.S.L. 2004 (51 O.S. Supp. 2004, Section 152), which relates to definitions; modifying definition; modifying circumstances in which state is not liable; amending 51 O.S. 2001, Section 154, as amended by Section 2, Chapter 304, O.S.L. 2003 (51 O.S. Supp. 2004, Section 154), which relates to extent of liability; limiting liability for certain entities; amending Sections 4 and 7, Chapter 390, O.S.L. 2003 and Section 24, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2004, Sections 1-1708.1D, 1-1708.1G and 1-1708.1I), which relate to the Affordable Access to Health Care Act; requiring receipt of compensation for injury be admitted into evidence for certain purposes; limiting recovery for payment of medical bills; removing courts right to make certain determination; providing limits of liability in certain civil actions against hospitals, hospital systems and certain persons, with exceptions; requiring written acknowledgment; limiting applicability of prejudgment interest to medical liability actions filed prior to a certain date; modifying criteria for determining if an expert is qualified to offer expert testimony; providing for payment of future losses in medical liability actions; 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. 2004, 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 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. 2004, 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 Product Liability Act; providing short title; defining terms; 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; making evidence regarding measures taken after injury inadmissible; requiring filing of certain affidavit and procedures therefor; limiting liability of certain corporations for successor asbestos-related liabilities; repealing Section 8, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2004, Section 832.1), which relates to indemnification product liability actions; repealing 23 O.S. 2001, Section 103, which relates to personal injury actions asserted in bad faith; repealing 47 O.S. 2001, 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. 2004, Sections 1-1708.1F and 1-1708.1F-1), which relate to limits on noneconomic damages in medical liability actions; providing for codification; providing for noncodification; 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 not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Justice and Common Sense Act of 2005".

SECTION 2. AMENDATORY 5 O.S. 2001, Section 7, is amended to read as follows:

Section 7. ~~It~~ A. For contracts entered into before November 1, 2005, it shall be lawful for an attorney to contract for a percentage or portion of the proceeds of a client's cause of action or claim not to exceed fifty percent (50%) of the net amount of such judgment as may be recovered, or such compromise as may be made, whether the same arises ex contractu or ex delicto, and no compromise or settlement entered into by a client without such attorney's consent shall affect or abrogate the lien provided for in ~~this chapter~~ Section 6 of this title. Provided that all such

contracts in personal injury or wrongful death cases including, but not restricted to, cases in which jurisdiction is in the ~~Industrial Commission~~ Workers' Compensation Court, shall be void and unenforceable ~~(1) if:~~

1. If secured as a result of the intervention of any laymen, association, or corporation for compensation, or promise of compensation, or anticipation of gift, compensation or hope of reward; or ~~(2) where~~

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

B. Beginning November 1, 2005, the maximum percentage of the net amount of a judgment or settlement that an attorney may charge as a contingency fee shall be:

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

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

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

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

D. In any action not arising out of contract, attorney fees shall not be awarded for any recovery of punitive damages.

SECTION 3. AMENDATORY 5 O.S. 2001, Section 9, is amended to read as follows:

Section 9. Should the amount of the ~~attorney's~~ attorney fees be agreed upon in the contract of employment, then such attorney's lien and cause of action against such adverse party shall be for the amount or portion of the property so agreed upon. If the fee be not fixed by contract the lien and cause of action, as aforesaid, shall be for a reasonable amount for not only the services actually rendered by such attorney, but for a sum, which it might be reasonably supposed, would have been earned by him, had he been permitted to complete his contract, and been successful in the action, and such attorney in order to recover need not establish that his client, if the case has gone to trial, would have been successful in the action, but the fact of settlement shall be sufficient without other proof to establish that the party making the settlement was liable in the action. Should the contract be for a contingent fee and specify the amount for which action is to be filed, then the lien and cause of action, as aforesaid shall be for the amount contracted for if fixed at a definite sum of money or for the percentage of the amount or property sued for as mentioned in said contract where the fee is fixed on a percentage basis, not exceeding ~~thirty-three and one-third percent (33 1/3%)~~ of the amount ~~sued on where the settlement is before a verdict or judgment and if made after verdict or judgment then the full contract price~~ provided for in subsections B and C of Section 7 of this title.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7.2 of Title 5, unless there is created a duplication in numbering, reads as follows:

A. In class actions, attorney fees shall be agreed upon by a majority of the plaintiffs in advance of the filing of the action. All plaintiffs shall be informed of the attorney fee agreement and shall sign representation agreements if they agree to the representation.

B. 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.

C. 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.

D. 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 5. AMENDATORY 12 O.S. 2001, Section 95, as last amended by Section 1, Chapter 168, O.S.L. 2004 (12 O.S. Supp. 2004, Section 95), is amended to read as follows:

Section 95. A. ~~Civil~~ Subject to the provisions of subsection C of this section, civil actions other than for the recovery of real property 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 or until five (5) years after the perpetrator is released from the custody of a state, federal or local correctional facility or jail, whichever is later. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator, unless the perpetrator was convicted of a crime of sexual abuse involving the claimant. 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 based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of criminal actions, as defined by the Oklahoma Statutes, may be brought against any person incarcerated or under the supervision of a state, federal or local correctional facility on or after November 1, 2003:

- a. at any time during the incarceration of the offender for the offense on which the action is based, or
- b. within five (5) years after the perpetrator is released from the custody of a state, federal or local correctional facility, if the defendant was serving time for the offense on which the action is based;

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

9. 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);

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

11. 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

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

B. Collection of debts owed by inmates who have received damage awards pursuant to Section 566.1 of Title 57 of the Oklahoma Statutes shall be governed by the time limitations imposed by that section.

C. An action based on fault and not arising out of contract must be commenced before the end of ten (10) years after the date of the occurrence of the act which is alleged to have caused the injury. The provisions of this subsection shall not extend the limitations period for commencing an action provided for in subsection A of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 95.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "product liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including, but not limited to, an action for:

1. Injury or damage to or loss of real or personal property;
2. Personal injury;
3. Wrongful death;
4. Economic loss; or
5. Declaratory, injunctive, or other equitable relief.

B. Except as provided by subsections C, D and E of this section, a plaintiff must commence a product liability action

against a manufacturer or seller of a product before the end of ten (10) years after the date of the sale of the product by the defendant.

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

D. This section shall not apply to a product liability action 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 ten (10) 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 ten (10) 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), 49 U.S.C., Section 40101 or its exceptions are applicable.

SECTION 7. 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 or on the court's own motion, 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 either in this state or outside this state, 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 8. 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 9. AMENDATORY 12 O.S. 2001, Section 683, as amended by Section 3, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2004, Section 683), is amended to read as follows:

Section 683. Except as provided in Section ~~5~~ 684 of this ~~act~~ title, an action may be dismissed, without prejudice to a future action:

1. By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court;
2. By the court, where the plaintiff fails to appear on the trial;
3. By the court, for the want of necessary parties;
4. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence;
5. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action; and
6. In all other cases, upon the trial of the action, the decision must be upon the merits.

SECTION 10. AMENDATORY 12 O.S. 2001, Section 684, as amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2004, Section 684), is amended to read as follows:

Section 684. A. ~~Except as provided in Section 5 of this act,~~ An action may be dismissed ~~on the payment of costs and by the plaintiff~~ without an order of court by the plaintiff filing a notice of dismissal at any time before ~~a petition of intervention or answer praying for affirmative relief against the plaintiff is filed in the action. A plaintiff may, at any time before the trial is commenced, on payment of the costs and without any order of court, dismiss the action after the filing of a petition of intervention or answer praying for affirmative relief, but such dismissal shall not prejudice the right of the intervenor or defendant to proceed with the action. Any defendant or intervenor may, in like manner,~~

~~dismiss an action against the plaintiff, without an order of court, at any time before the trial is begun, on payment of the costs made on the claim filed by the defendant or intervenor. All parties to a civil action may at any time before trial, without an order of court, and on payment of costs, by agreement, dismiss the action.~~

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

~~C. When an action is dismissed after a jury in the action is empanelled and the case is subsequently refiled, the court, at the conclusion of the subsequent action, may assess costs and attorney fees incurred in the previous action by the defendants subsequent to the jury being empanelled service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or by filing a stipulation for dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.~~

~~B. Except as provided in subsection A of this section, an action shall not be dismissed at the plaintiff's instance except upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaims can remain pending for independent adjudication by the court. Unless otherwise~~

specified in the order, a dismissal under this paragraph is without prejudice.

C. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subsection and any dismissal not provided for in this section, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party, operates as an adjudication upon the merits.

D. The provisions of this section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subsection A of this section shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

SECTION 11. AMENDATORY Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2004, Section 727.1), is amended to read as follows:

Section 727.1

POSTJUDGMENT INTEREST

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

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

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

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in which the judgment was rendered, or until the judgment is paid, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each

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

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

PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section or Section 1-1708.1G of Title 63 of the Oklahoma Statutes, in actions filed before November 1, 2005, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering judgment shall add interest on the verdict at a rate prescribed pursuant to subsection I of this

section from the date the suit resulting in the judgment was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the ~~calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date judgment is filed, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each 2005 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, for an action filed prior to November 1, 2005, a verdict of the type described by subsection E of this section is rendered against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the rate prescribed pursuant to subsection I of this section from the date the suit was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment or the date the

judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall ~~begin with~~ be the rate prescribed by subsection I of this section which is in effect for the 2005 calendar year ~~in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date the judgment is rendered as expressly stated in the judgment, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to The Governmental Tort Claims Act.~~

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

judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk.

H. If, for an action filed prior to November 1, 2005, a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest at a rate prescribed pursuant to subsection I of this section from the date the lien is filed to the date of verdict.

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

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

K. For purposes of computing prejudgment interest, the provisions of this section shall be applicable to all actions which are filed in the district courts on or after January 1, 2005, and prior to November 1, 2005, for which an award of prejudgment interest is authorized by the provisions of this section. Prejudgment interest shall not be applicable to any action filed on or after November 1, 2005.

SECTION 12. AMENDATORY 12 O.S. 2001, Section 832, is amended to read as follows:

Section 832. A. When two or more persons become jointly ~~or~~ severally liable in tort for the same injury to person or property

or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them except as provided in this section.

B. The right of contribution exists only in favor of a tort-feasor who has paid more than ~~their~~ the tort-feasor's pro rata share of the common liability, and the total recovery is limited to the amount paid by the tort-feasor in excess of their pro rata share. No tort-feasor is compelled to make contribution beyond ~~their~~ the tort-feasor's pro rata share of the entire liability.

C. There is no right of contribution in favor of any tort-feasor who has intentionally caused or contributed to the injury or wrongful death.

D. A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

~~E. A liability insurer which by payment has discharged, in full or in part, the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.~~

~~F.~~ This act does not impair any right of indemnity under existing law. When one tort-feasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

~~G.~~ F. This act shall not apply to breaches of trust or of other fiduciary obligation.

~~H.~~ G. When a release, covenant not to sue, or a similar agreement is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

1. It does not discharge any other tort-feasor from liability for the injury or wrongful death unless the other tort-feasor is specifically named; but it reduces the claim against others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and

2. It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.

SECTION 13. AMENDATORY 12 O.S. 2001, Section 993, is amended to read as follows:

Section 993. A. When an order:

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

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

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

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

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

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

7. Denies a motion 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 8 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 8 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 14. AMENDATORY 12 O.S. 2001, Section 1101, is amended to read as follows:

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

plaintiff fails to obtain judgment for more than was offered by the defendant, ~~he~~ the plaintiff shall pay the defendant's costs from the time of the offer.

SECTION 15. AMENDATORY 12 O.S. 2001, Section 2008, is amended to read as follows:

Section 2008.

GENERAL RULES OF PLEADING

A. CLAIMS FOR RELIEF. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain:

1. A short and plain statement of the claim showing that the pleader is entitled to relief; and

2. A demand for judgment for the relief to which he deems himself entitled. Every pleading demanding relief for damages in money in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ Seventy-five Thousand Dollars (\$75,000.00) shall, without demanding any specific amount of money, set forth only that the amount sought as damages is in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ Seventy-five Thousand Dollars (\$75,000.00), except in actions sounding in contract. Every pleading demanding relief for damages in money in an amount of ~~Ten Thousand Dollars (\$10,000.00)~~ Seventy-five Thousand Dollars (\$75,000.00) or less shall specify the amount of such damages sought to be recovered. If the amount of damages sought to be recovered is Seventy-five Thousand Dollars (\$75,000.00) or less, the amount of damages that may be recovered shall not exceed the amount set forth in the pleadings.

Relief in the alternative or of several different types may be demanded.

B. DEFENSES; FORM OF DENIALS. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to

the truth of an averment, he shall so state and this statement has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in Section 2011 of this title.

C. AFFIRMATIVE DEFENSES. In pleading to a preceding pleading, a party shall set forth affirmatively:

1. Accord and satisfaction;
2. Arbitration and award;
3. Assumption of risk;
4. Contributory negligence;
5. Discharge in bankruptcy;
6. Duress;
7. Estoppel;
8. Failure of consideration;
9. Fraud;
10. Illegality;
11. Injury by fellow servant;
12. Laches;
13. License;
14. Payment;
15. Release;
16. Res judicata;
17. Statute of frauds;
18. Statute of limitations;

19. Waiver; and

20. Any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

D. EFFECT OF FAILURE TO DENY. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

E. PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

1. Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

2. A party may set forth, and at trial rely on, two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Section 2011 of this title.

F. CONSTRUCTION OF PLEADINGS. All pleadings shall be so construed as to do substantial justice.

SECTION 16. AMENDATORY 12 O.S. 2001, Section 2009, is amended to read as follows:

Section 2009.

PLEADING SPECIAL MATTERS

A. CAPACITY. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and he shall have the burden of proof on that issue.

B. FRAUD, MISTAKE, CONDITION OF THE MIND. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

C. CONDITIONS PRECEDENT. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

D. OFFICIAL DOCUMENT OR ACT. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

E. JUDGMENT. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

F. TIME AND PLACE. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

G. SPECIAL DAMAGE. When items of special damage are claimed, their nature shall be specifically stated. In actions where exemplary or punitive damages are sought, the petition shall not

state a dollar amount for damages sought to be recovered but shall state whether the amount of damages sought to be recovered is in excess of or not in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ Seventy-five Thousand Dollars (\$75,000.00). If the amount of damages sought to be recovered is Seventy-five Thousand Dollars (\$75,000.00) or less, the amount of damages that may be recovered shall not exceed the amount set forth in the pleadings.

SECTION 17. AMENDATORY Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp. 2004, 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 credible evidence, was not grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law. 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 18. 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 potential members of the class the best notice practicable under the circumstances, including individual notice to all potential members who can be identified through reasonable effort. The notice shall advise each potential member that:

- a. the court will ~~exclude him from~~ include the potential member in the class only if ~~he~~ the potential member so requests by a specified date,
- b. the judgment, whether favorable or not, will include ~~all~~ only members who ~~do not request exclusion~~ have advised the court by the specified date, that they desire to be included in the class, and
- c. any member who ~~does not request exclusion~~ requests inclusion may, ~~if he desires,~~ enter an appearance through ~~his~~ counsel.

~~Where~~ If the class contains more than five hundred (500) potential members who can be identified through reasonable effort, it shall not be necessary to direct individual notice to more than five hundred (500) potential members, but the potential 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~~ Potential members to whom individual notice was not directed may request ~~exclusion from~~ inclusion in the class at any time before the issue of liability is determined, ~~and;~~ provided, commencing an individual action before the issue of liability is determined in the

class action shall ~~be the equivalent of requesting~~ result in 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 this subsection ~~C of this section~~ was directed, and who have ~~not~~ requested ~~exclusion~~ inclusion, and whom the court finds to be members of the class.

4. When appropriate:

- a. an action may be brought or maintained as a class action with respect to particular issues, or
- b. a class may be divided into subclasses and each subclass treated as a class.

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

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

1. Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
2. Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

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

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

5. Dealing with similar procedural matters.

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

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

SECTION 19. 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. 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. In ruling on a motion for summary judgment, the court shall not weigh the evidence but shall make a determination of whether a genuine issue as to any material fact exists whether the

moving party is entitled to a judgment as a matter of law because of the nonexistence of issues of material fact.

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

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

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

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

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

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

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

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

SECTION 21. AMENDATORY 12 O.S. 2001, Section 3226, as last amended by Section 3, Chapter 519, O.S.L. 2004 (12 O.S. Supp. 2004, Section 3226), is amended to read as follows:

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

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

1. IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. ~~A party shall produce upon request pursuant to Section 3234 of this title, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at~~

~~trial. For purposes of this section, an application for insurance shall not be treated as a part of an insurance agreement.~~

2. INITIAL DISCLOSURES.

- a. Except in categories of proceedings specified in subparagraph b of this paragraph, or to the extent otherwise stipulated or directed by order, a party, without awaiting a discovery request, must provide to other parties a computation of any category of damages claimed by the disclosing party, making available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.
- b. The following categories of proceedings are exempt from initial disclosure under subparagraph a of this paragraph:
- (1) an action for review on an administrative record,
 - (2) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence,
 - (3) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision,
 - (4) an action to enforce or quash an administrative summons or subpoena,
 - (5) an action by the United States to recover benefit payments,
 - (6) an action by the United States to collect on a student loan guaranteed by the United States,
 - (7) a proceeding ancillary to proceedings in other courts, and
 - (8) an action to enforce an arbitration award.

3. TIME FOR DISCLOSURES. These disclosures must be made at or within fourteen (14) days after the discovery conference provided for in subsection F of this section unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the discovery plan. In ruling on the object, the court must determine what disclosures, if any, are to be made and set the time for disclosure. Any party first served or otherwise joined after the discovery conference must make these disclosures with thirty (30) days after being served or joined unless a different time is set by stipulation or court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

4. TRIAL PREPARATION: MATERIALS. Subject to the provisions of paragraph ~~3~~ 5 of this subsection, discovery may be obtained of documents and tangible things otherwise discoverable under paragraph 1 of this subsection and prepared in anticipation of litigation or for trial by or for another party or by or for the representative of that other party, including his attorney, consultant, surety, indemnitor, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable, without undue hardship, to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

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

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

~~3.~~ 5. TRIAL PREPARATION: EXPERTS.

- a. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph 1 of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:
 - (1) A party may, through interrogatories, require any other party to identify each person whom that other party expects to call as an expert witness at trial and give the address at which that expert witness may be located.
 - (2) After disclosure of the names and addresses of the expert witnesses, the other party expects to call as witnesses, the party, who has requested disclosure, may depose any such expert witnesses subject to scope of this section. Prior to

taking the deposition the party must give notice as required in subsections A and C of Section 3230 of this title. If any documents are provided to such disclosed expert witnesses, the documents shall not be protected from disclosure by privilege or work product protection and they may be obtained through discovery.

(3) In addition to taking the depositions of expert witnesses the party may, through interrogatories, require the party who expects to call the expert witnesses to state the subject matter on which each expert witness is expected to testify; the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; the qualifications of each expert witness, including a list of all publications authored by the expert witness within the preceding ten (10) years; the compensation to be paid to the expert witness for the testimony and preparation for the testimony; and a listing of any other cases in which the expert witness has testified as an expert at trial or by deposition within the preceding four (4) years. An interrogatory seeking the information specified above shall be treated as a single interrogatory for purposes of the limitation on the number of interrogatories in Section 3233 of this title.

b. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be

called as a witness at trial, only upon motion, when the court may order discovery as provided in Section 3235 of this title or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by any other means.

c. Unless manifest injustice would result:

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

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

~~4.~~ 6. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION MATERIALS. When a party withholds information otherwise discoverable under the Oklahoma Discovery Code by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

C. PROTECTIVE ORDERS.

1. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the

dispute without court action, and for good cause shown, the court in which the action is pending or on matters relating to a deposition, the district court in the county where the deposition is to be taken may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense, including one or more of the following:

- a. that the discovery not be had,
- b. that the discovery may be had only on specified terms and conditions, including a designation of the time or place,
- c. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery,
- d. that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters,
- e. that discovery be conducted with no one present except persons designated by the court,
- f. that a deposition after being sealed be opened only by order of the court,
- g. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way, and
- h. that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

2. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the

motion. Any protective order of the court which has the effect of removing any material obtained by discovery from the public record shall contain the following:

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

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

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

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

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

7. When a case is filed in which a party intends to seek a protective order removing material from the public record, the plaintiff(s) and defendant(s) shall be initially designated on the petition under pseudonym such as "John or Jane Doe", or "Roe", and

the petition shall clearly indicate that the party designations are fictitious. The party seeking confidentiality or other order removing the case, in whole or in part, from the public record, shall immediately present application to the court, seeking instructions for the conduct of the case, including confidentiality of the records.

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

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

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

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

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

- a. (i) the party knows that the response was incorrect in some material respect when made, or
- (ii) the party knows that the response, which was correct when made, is no longer true in some material respect; and

- b. the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

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

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

1. A statement of the issues as they then appear;
2. A proposed plan and schedule of discovery;
3. Any limitations proposed to be placed on discovery;
4. Any other proposed orders with respect to discovery; and
5. A statement showing that the attorney making the motion has

made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

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

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

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

G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS.

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

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

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

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

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

SECTION 22. AMENDATORY 15 O.S. 2001, Section 761.1, is amended to read as follows:

Section 761.1 A. The commission of any act or practice declared to be a violation of the Consumer Protection Act shall render the violator liable to the aggrieved consumer for the payment of actual damages sustained by the customer and costs of litigation including reasonable ~~attorney's~~ attorney fees, and the aggrieved consumer shall have a private right of action for actual damages sustained by the consumer, including but not limited to, costs and ~~attorney's~~ attorney fees. In any private action for damages for a violation of the Consumer Protection Act, the consumer must show injury in fact to the consumer and a loss of money or property as a result of the violation. In any private action for damages for a violation of the Consumer Protection Act the court shall, subsequent to adjudication on the merits and upon motion of the prevailing party, determine whether a claim or defense asserted in the action by a nonprevailing party was asserted in bad faith, was not well grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Upon so finding, the court shall enter a judgment ordering such nonprevailing party to reimburse the prevailing party an amount not to exceed Ten Thousand Dollars (\$10,000.00) for reasonable costs, including ~~attorney's~~ attorney fees, incurred with respect to such claim or defense.

B. The commission of any act or practice declared to be a violation of the Consumer Protection Act, if such act or practice is also found to be unconscionable, shall render the violator liable to the aggrieved customer for the payment of a civil penalty, recoverable in an individual action only, in a sum set by the court of not more than Two Thousand Dollars (\$2,000.00) for each violation. In determining whether an act or practice is unconscionable the following circumstances shall be taken into consideration by the court: (1) whether the violator knowingly or with reason to know, took advantage of a consumer reasonably unable

to protect his or her interests because of his or her age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor; (2) whether, at the time the consumer transaction was entered into, the violator knew or had reason to know that price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by like consumers; (3) whether, at the time the consumer transaction was entered into, the violator knew or had reason to know that there was no reasonable probability of payment of the obligation in full by the consumer; (4) whether the violator knew or had reason to know that the transaction he or she induced the consumer to enter into was excessively one-sided in favor of the violator.

C. Any person who is found to be in violation of the Oklahoma Consumer Protection Act in a civil action or who willfully violates the terms of any injunction or court order issued pursuant to the Consumer Protection Act shall forfeit and pay a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) per violation, in addition to other penalties that may be imposed by the court, as the court shall deem necessary and proper. For the purposes of this section, the district court issuing an injunction shall retain jurisdiction, and in such cases, the Attorney General, acting in the name of the state, or a district attorney may petition for recovery of civil penalties.

D. In administering and pursuing actions under this act, the Attorney General and a district attorney are authorized to sue for and collect reasonable expenses, ~~attorney's~~ attorney fees, and investigation fees as determined by the court. Civil penalties or contempt penalties sued for and recovered by the Attorney General or a district attorney shall be used for the furtherance of their duties and activities under the Consumer Protection Act.

E. In addition to other penalties imposed by the Oklahoma Consumer Protection Act, any person convicted in a criminal proceeding of violating the Oklahoma Consumer Protection Act shall be guilty of a misdemeanor for the first offense and upon conviction thereof shall be subject to a fine not to exceed One Thousand Dollars (\$1,000.00), or imprisonment in the county jail for not more than one (1) year, or both such fine and imprisonment. If the value of the money, property or valuable thing referred to in this section is Five Hundred Dollars (\$500.00) or more or if the conviction is for a second or subsequent violation of the provisions of the Oklahoma Consumer Protection Act, any person convicted pursuant to this subsection shall be deemed guilty of a felony and shall be subject to imprisonment in the State Penitentiary, for not more than ten (10) years, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

SECTION 23. AMENDATORY 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2004, 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, E and G 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 and any harm likely to result or harm that has actually occurred due to the misconduct;

2. The profitability of the misconduct to the defendant;

3. The duration and frequency 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 any civil action in which an entitlement to punitive damages shall have been established, no award of punitive damages shall exceed the following:

1. Twenty Million Dollars (\$20,000,000.00) for a defendant with a net worth of more than One Billion Dollars (\$1,000,000,000.00);

2. Fifteen Million Dollars (\$15,000,000.00) for a defendant with a net worth of more than Seven Hundred Fifty Million Dollars (\$750,000,000.00) but not more than One Billion Dollars (\$1,000,000,000.00);

3. Ten Million Dollars (\$10,000,000.00) for a defendant with a net worth of more than Five Hundred Million Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty Million Dollars (\$750,000,000.00);

4. Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) for a defendant with a net worth of more than One Hundred Million Dollars (\$100,000,000.00) but not more than Five Hundred Million Dollars (\$500,000,000.00);

5. Five Million Dollars (\$5,000,000.00) for a defendant with a net worth of more than Fifty Million Dollars (\$50,000,000.00) but not more than One Hundred Million Dollars (\$100,000,000.00); or

6. Four percent (4%) of the defendant's net worth for a defendant with a net worth of Fifty Million Dollars (\$50,000,000.00) or less.

F. For the purposes of determining the defendant's net worth in subsection E of this section, the amount of the net worth shall be determined in accordance with generally accepted accounting principles. The limitation on the amount of punitive damages imposed by subsection E of this section shall not be disclosed to the trier of fact, but shall be applied by the court to any punitive damages verdict.

G. The limitation on the amount of punitive damages imposed by subsection E of this section shall not apply to actions brought for damages or an injury resulting from an act or failure to act by the defendant:

1. If the defendant was convicted of a felony under the laws of this state or under federal law which caused the damages or injury;
or

2. While the defendant was under the influence of alcohol or under the influence of drugs other than lawfully prescribed drugs administered in accordance with a prescription.

H. 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.~~ I. 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.

J. Fifty percent (50%) of any punitive damages awarded in any medical liability action shall escheat to the state and be deposited to the credit of the Oklahoma Health Care Authority Revolving Fund.

K. 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~~ L. The provisions of this section, except subsections E, F, G, I and J of this section, shall apply to all civil actions filed after the effective date of this act August 25, 1995.

M. The provisions of subsections E, F, G, I and J of this section shall apply to all civil actions filed on or after November 1, 2005.

SECTION 24. AMENDATORY Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2004, 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~~ 2005.

SECTION 25. 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 26. 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 27. 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. For the breach of an obligation not arising from contract, if the plaintiff receives compensation or is to receive compensation in the future 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 shall be deducted from the amount of damages that the plaintiff recovers from the defendant.

SECTION 28. 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:

A. 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.

B. The court shall instruct the jury as to whether any recovery sought by the plaintiff is subject to federal or state income taxes.

SECTION 29. 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, 2005.

SECTION 30. AMENDATORY 36 O.S. 2001, Section 1509, as amended by Section 56, Chapter 368, O.S.L. 2004 (36 O.S. Supp. 2004, Section 1509), is amended to read as follows:

Section 1509. A. If the Insurance Commissioner determines in writing that an insurer's unearned premium reserve, however computed, is inadequate, the Commissioner may require the insurer to

compute the reserve or any part thereof according to any other method or methods as are prescribed in this article.

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

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

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

3. Except for workers' compensation insurance carriers, insurers discounting reserves pursuant to this subsection shall

invest and maintain their funds only in cash; securities described in the following sections of this Code:

- a. Section 1607 (securities of or guaranteed by the United States),
- b. Section 1608 (state and Canadian public obligations),
- c. Section 1609 (county, municipal and district obligations),
- d. Section 1610 (public improvement bonds),
- e. Section 1611 (obligations payable from public utility revenues) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record,
- f. Section 1614 (corporate obligations) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record, and
- g. Section 1620 (deposits, banks, savings and loans);

and any other investment specifically approved by the Commissioner.

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

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

E. Insurers shall report, on a form prescribed by the Commissioner and filed with their annual statement, all funds collected through policy fees or assessments which were collected in

response to a written request to increase inadequate reserves from the Commissioner made pursuant to the provisions of this section.

F. 1. Insurers domiciled in this state that are issuing policies of medical professional liability insurance to physicians, allied health care professionals and health care institutions, as defined by Section ~~59~~ 2202 of this ~~act~~ title, on July 1, 2004, are granted a moratorium on the applicability of any provisions of the laws of this state that require the maintenance of adequate reserves. The moratorium shall be in effect until ~~January 1, 2006~~ December 31, 2008.

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

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

NOTICE

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

SECTION 31. AMENDATORY 36 O.S. 2001, Section 1530, as amended by Section 57, Chapter 368, O.S.L. 2004 (36 O.S. Supp. 2004, Section 1530), is amended to read as follows:

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

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

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

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

D. Insurers domiciled in this state that are issuing policies of medical professional liability insurance to physicians, allied health care professionals and health care institutions as defined by Section ~~59~~ 2202 of this ~~act~~ title on July 1, 2004, which notify the Commissioner in writing of the insurer's election to utilize the moratorium provided in Section 1509 of this title shall be exempt from the provisions of this title which require an insurer to maintain an adequate surplus as regards policyholders as a condition to obtaining or renewal of a license to act as an insurer, until ~~January 1, 2006~~ December 31, 2008. The Commissioner shall not enforce any recapitalization plan against any insurer domiciled in this state that is issuing policies of physicians', allied health care professionals' and health care institutions' professional liability insurance until ~~January 1, 2006~~ December 31, 2008.

SECTION 32. AMENDATORY 47 O.S. 2001, Section 11-1112, as last amended by Section 1, Chapter 40, O.S.L. 2004 (47 O.S. Supp. 2004, 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 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 33. AMENDATORY 51 O.S. 2001, Section 152, as last amended by Section 19, Chapter 368, O.S.L. 2004 (51 O.S. Supp. 2004, Section 152), is amended to read as follows:

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

1. "Action" means a proceeding in a court of competent jurisdiction by which one party brings a suit against another;

2. "Agency" means any board, commission, committee, department or other instrumentality or entity designated to act in behalf of the state or a political subdivision;

3. "Claim" means any written demand presented by a claimant or the claimant's authorized representative in accordance with this act to recover money from the state or political subdivision as compensation for an act or omission of a political subdivision or the state or an employee;

4. "Claimant" means the person or the person's authorized representative who files notice of a claim in accordance with The Governmental Tort Claims Act. Only the following persons and no others may be claimants:

- a. any person holding an interest in real or personal property which suffers a loss, provided that the claim of the person shall be aggregated with claims of all other persons holding an interest in the property and the claims of all other persons which are derivative of the loss, and that multiple claimants shall be considered a single claimant,
- b. the individual actually involved in the accident or occurrence who suffers a loss, provided that the individual shall aggregate in the claim the losses of all other persons which are derivative of the loss, or
- c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in the claim all losses of all persons which are derivative of the death;

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

- a. Employee also includes:
 - (1) all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor,

- (2) from September 1, 1991, through June 30, 1996, licensed physicians, licensed osteopathic physicians and certified nurse-midwives providing prenatal, delivery or infant care services to State Department of Health clients pursuant to a contract entered into with the State Department of Health in accordance with paragraph 3 of subsection B of Section 1-106 of Title 63 of the Oklahoma Statutes but only insofar as services authorized by and in conformity with the terms of the contract and the requirements of Section 1-233 of Title 63 of the Oklahoma Statutes, and
- (3) any volunteer, full-time or part-time firefighter when performing duties for a fire department provided for in subparagraph j of paragraph 8 of this section.

b. For the purpose of The Governmental Tort Claims Act, the following are employees of this state, regardless of the place in this state where duties as employees are performed:

- (1) physicians acting in an administrative capacity,
- (2) resident physicians and resident interns participating in a graduate medical education program of the University of Oklahoma Health Sciences Center or the College of Osteopathic Medicine of Oklahoma State University,
- (3) faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University, while engaged in teaching duties,

- (4) physicians who practice medicine or act in an administrative capacity as an employee of an agency of the State of Oklahoma, ~~and~~
- (5) physicians who provide medical care to inmates pursuant to a contract with the Department of Corrections; and
- (6) licensed mental health professionals as defined in Sections 1-103 and 5-502 of Title 43A of the Oklahoma Statutes, who are contracting with the Department of Mental Health and Substance Abuse Services or are employed by an entity who is contracting with the Department of Mental Health and Substance Abuse Services to conduct initial examinations of individuals for the purpose of determining whether the individual meets the criteria for emergency detention.

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

c. Except as provided in subparagraph ~~(b)~~ of this paragraph ~~5 of this section~~, in no event shall the state be held liable for:

- (1) the tortious conduct of any physician, resident physician or intern while practicing medicine or providing medical treatment to patients, or
- (2) the tortious conduct of any licensed mental health professional as defined in Sections 1-103 and 5-502 of Title 43A of the Oklahoma Statutes while conducting an initial examination of an

individual for the purpose of determining whether
the individual meets the criteria for emergency
detention;

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

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

8. "Political subdivision" means:

a. a municipality,

b. a school district,

c. a county,

d. a public trust where the sole beneficiary or beneficiaries are a city, town, school district or county. For purposes of The Governmental Tort Claims Act, a public trust shall include a municipal hospital created pursuant to Section 30-101 et seq. of Title 11 of the Oklahoma Statutes, a county hospital created pursuant to Section 781 et seq. of Title 19 of the Oklahoma Statutes, or is created pursuant to a joint agreement between such governing authorities, that is operated for the public benefit by a public trust created pursuant to Section 176 et seq. of Title 60 of the Oklahoma Statutes and managed by a governing board appointed or elected by the municipality, county, or both, who exercises control of the hospital, subject to the approval of the governing body of the municipality, county, or both,

e. for the purposes of The Governmental Tort Claims Act only, a housing authority created pursuant to the provisions of the Oklahoma Housing Authority Act,

f. for the purposes of The Governmental Tort Claims Act only, corporations organized not for profit pursuant

to the provisions of the Oklahoma General Corporation Act for the primary purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents,

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

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

and all their institutions, instrumentalities or agencies;

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

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

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

SECTION 34. AMENDATORY 51 O.S. 2001, Section 154, as amended by Section 2, Chapter 304, O.S.L. 2003 (51 O.S. Supp. 2004, Section 154), is amended to read as follows:

Section 154. A. The total liability of the state and its political subdivisions on claims within the scope of The Governmental Tort Claims Act, arising out of an accident or occurrence happening after the effective date of this act, Section 151 et seq. of this title, shall not exceed:

1. Twenty-five Thousand Dollars (\$25,000.00) for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence;

2. Except as otherwise provided in this paragraph, One Hundred Twenty-five Thousand Dollars (\$125,000.00) to any claimant for a claim for any other loss arising out of a single act, accident, or occurrence. The limit of liability for the state or any city or county with a population of three hundred thousand (300,000) or more according to the latest federal Decennial Census shall not exceed One Hundred Seventy-five Thousand Dollars (\$175,000.00). Except however, the limits of said liability for the University Hospitals and State Mental Health Hospitals operated by the Department of Mental Health and Substance Abuse Services for claims arising from medical negligence shall be Two Hundred Thousand Dollars (\$200,000.00). For claims arising from medical negligence by any licensed physician, osteopathic physician or certified nurse-midwife rendering prenatal, delivery or infant care services from September 1, 1991, through June 30, 1996, pursuant to a contract authorized by subsection B of Section 1-106 of Title 63 of the Oklahoma Statutes and in conformity with the requirements of Section 1-233 of Title 63 of the Oklahoma Statutes, the limits of said liability shall be Two Hundred Thousand Dollars (\$200,000.00); or

3. One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.

B. 1. Beginning on the effective date of this act, claims shall be allowed for wrongful criminal felony conviction resulting in imprisonment if the claimant has received a full pardon on the basis of a written finding by the Governor of actual innocence for the crime for which the claimant was sentenced or has been granted judicial relief absolving the claimant of guilt on the basis of actual innocence of the crime for which the claimant was sentenced. The Governor or the court shall specifically state, in the pardon or order, the evidence or basis on which the finding of actual innocence is based.

2. As used in paragraph 1 of this subsection, for a claimant to recover based on "actual innocence", the individual must meet the following criteria:

- a. the individual was charged, by indictment or information, with the commission of a public offense classified as a felony,
- b. the individual did not plead guilty to the offense charged, or to any lesser included offense, but was convicted of the offense,
- c. the individual was sentenced to incarceration for a term of imprisonment as a result of the conviction,
- d. the individual was imprisoned solely on the basis of the conviction for the offense, and
- e. (1) in the case of a pardon, a determination was made by either the Pardon and Parole Board or the Governor that the offense for which the individual was convicted, sentenced and imprisoned, including any lesser offenses, was not committed by the individual, or
(2) in the case of judicial relief, a court of competent jurisdiction found by clear and convincing evidence that the offense for which

the individual was convicted, sentenced and imprisoned, including any lesser included offenses, was not committed by the individual and issued an order vacating, dismissing or reversing the conviction and sentence and providing that no further proceedings can be or will be held against the individual on any facts and circumstances alleged in the proceedings which had resulted in the conviction.

3. A claimant shall not be entitled to compensation for any part of a sentence in prison during which the claimant was also serving a concurrent sentence for a crime not covered by this subsection.

4. The total liability of the state and its political subdivisions on any claim within the scope of The Governmental Tort Claims Act arising out of wrongful criminal felony conviction resulting in imprisonment shall not exceed One Hundred Seventy-five Thousand Dollars (\$175,000.00).

5. The provisions of this subsection shall apply to convictions occurring on or before the effective date of this act as well as convictions occurring after the effective date of this act. If a court of competent jurisdiction finds that retroactive application of this subsection is unconstitutional, the prospective application of this subsection shall remain valid.

C. No award for damages in an action or any claim against the state or a political subdivision shall include punitive or exemplary damages.

D. When the amount awarded to or settled upon multiple claimants exceeds the limitations of this section, any party may apply to the district court which has jurisdiction of the cause to apportion to each claimant the claimant's proper share of the total amount as limited herein. The share apportioned to each claimant

shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims against the state or its political subdivisions arising out of the occurrence. When the amount of the aggregate losses presented by a single claimant exceeds the limits of paragraph 1 or 2 of subsection A of this section, each person suffering a loss shall be entitled to that person's proportionate share.

E. The total liability of resident physicians and interns while participating in a graduate medical education program of the University of Oklahoma College of Medicine, its affiliated institutions and the Oklahoma College of Osteopathic Medicine and Surgery shall not exceed One Hundred Thousand Dollars (\$100,000.00).

F. The total liability of any entity who is contracting with the Department of Mental Health and Substance Abuse Services to conduct initial examinations of individuals for the purpose of determining whether the individual meets the criteria for emergency detention as defined in Section 5-206 of Title 43A of the Oklahoma Statutes shall not exceed Two Hundred Thousand Dollars (\$200,000.00).

G. The state or a political subdivision may petition the court that all parties and actions arising out of a single accident or occurrence shall be joined as provided by law, and upon order of the court the proceedings upon good cause shown shall be continued for a reasonable time or until such joinder has been completed. The state or political subdivision shall be allowed to interplead in any action which may impose on it any duty or liability pursuant to this act.

~~G.~~ H. The liability of the state or political subdivision under The Governmental Tort Claims Act shall be several from that of any other person or entity, and the state or political subdivision shall only be liable for that percentage of total damages that corresponds to its percentage of total negligence. Nothing in this section

shall be construed as increasing the liability limits imposed on the state or political subdivision under The Governmental Tort Claims Act.

SECTION 35. AMENDATORY Section 4, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2004, Section 1-1708.1D), is amended to read as follows:

Section 1-1708.1D A. In any medical liability action, if the plaintiff receives compensation or is to receive compensation in the future 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 shall be deducted from the amount of damages that the plaintiff recovers from the defendant.

B. In every medical liability action, the court shall admit evidence of payments of medical bills made to the injured party, unless the court makes the finding described in paragraph B of this section. Recovery for payment of medical bills shall be limited to the amount actually paid, not the amount billed. In case of unreimbursed care, payment shall be paid according to current reimbursement rates, as determined by the court.

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

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

A. Except as provided in subsection B of this section, in any civil action brought against a hospital or hospital system, or its employees, officers, directors, or volunteers, for damages based on an act or omission by the hospital or hospital system, or its employees, officers, directors, or volunteers, the liability of the hospital or hospital system is limited to money damages in a maximum amount of Five Hundred Thousand Dollars (\$500,000.00) for any act or omission resulting in damage or injury to a patient if the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient, signs a written statement that acknowledges:

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

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

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

SECTION 37. AMENDATORY Section 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2004, Section 1-1708.1G), is amended to read as follows:

Section 1-1708.1G Notwithstanding the provisions of Section 727 of Title 12 of the Oklahoma Statutes or any other provision of the Oklahoma Statutes to the contrary, prejudgment interest in a medical liability action 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. Prejudgment interest shall be applicable only to actions filed prior to November 1, 2005.

SECTION 38. AMENDATORY Section 24, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2004, Section 1-1708.1I), is amended to read as follows:

Section 1-1708.1I A. The court shall apply the criteria specified in subsection B of this section and in Section 2702 of Title 12 of the Oklahoma Statutes in determining whether an expert is qualified to offer expert testimony on the issue of whether the defendant health care provider departed from accepted standards of health care but may depart from those criteria if, under the circumstances, the court determines that there is good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

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

1. ~~Is licensed to practice medicine~~ 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 ~~any~~ the area of health care relevant to the claim, and

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

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

SECTION 39. 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. 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. The court shall order that medical, health care, or custodial services awarded in a medical liability action be paid in periodic payments rather than by a lump-sum payment subject to supervision by the court, unless both parties agree to a lump-sum payment of all or part of the award.

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 subject to supervision by the court.

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 shall 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 shall 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 40. 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. 2004, 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 41. 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 41 through 49 of this act shall be known and may be cited as the "Education Quality and Protection Act".

SECTION 42. 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 43. 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 44. 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 45. 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 46. 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 47. 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 48. 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 49. 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 50. 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 51. 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 52. AMENDATORY Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2004, 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, 2004.

SECTION 53. 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 53 through 62 of this act shall be known and may be cited as the "Product Liability Act".

SECTION 54. 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 55. 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. 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.

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

A. In a product liability action brought against a 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 58. 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 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 59. 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. 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 only rebut the presumption provided for in subsection A of this section as to each defendant by establishing that:

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

2. The pharmaceutical product 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, and
b. The product was used as prescribed, and

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

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

SECTION 60. 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 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 59 of this act.

SECTION 61. 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:

In a product liability action, if measures are taken which, if taken previously, would have made an event less likely to occur, evidence of the subsequent measures is not admissible to prove a defect in a product, negligence, or culpable conduct in connection

with the event. In a product liability action brought under any theory or doctrine, if the feasibility of a design or change in warnings is not controverted, then a subsequent design change or change in warnings shall not be admissible into evidence. This section shall not require the exclusion of evidence of subsequent measures when offered for another purpose such as proving ownership, control, or impeachment.

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. In any product liability action in which the plaintiff seeks damages for bodily injuries or death, the attorney for the plaintiff or the plaintiff, if the plaintiff is proceeding pro se, shall file an affidavit, attached to the original and all copies of the complaint, declaring one of the following:

1. That the plaintiff or attorney has consulted and reviewed the facts of the case with a qualified expert, as defined in subsection C of this section, who has determined in a written report, after examination of the product or a review of literature pertaining to the product, that:

- a. in any action based on strict tort liability, the product contained specific identifiable defects having a potential for injury beyond that which would be contemplated by the ordinary user of the product and was unreasonably dangerous and in a defective condition when it left the control of the manufacturer, or
- b. in any other action, those acts or omissions would give rise to fault, and
- c. in any action based on any theory or doctrine, the defective condition of the product or other fault was a proximate cause of the plaintiff's injury; or

2. That the plaintiff or attorney was unable to obtain a consultation required by paragraph 1 of this subsection because a statute of limitations would impair the action and the consultation required could not be obtained before the expiration of the statute of limitations. If an affidavit is executed pursuant to this paragraph, the affidavit required by this subsection shall be filed within ninety (90) days after the filing of the complaint. The defendant shall be excused from answering or otherwise pleading until thirty (30) days after being served with an affidavit required by this subsection. No plaintiff shall be afforded the ninety-day extension of time provided by this paragraph if the plaintiff has voluntarily dismissed an action and has subsequently commenced a new action.

B. If the defective condition referred to in the written report required by paragraph 1 of subsection A of this section is based on a design defect, the plaintiff or attorney shall further state that the qualified expert has identified in the written report either:

1. A feasible alternative design that existed at the time the product left the control of the manufacturer; or

2. An applicable government or industry standard to which the product did not conform.

C. A "qualified expert", for the purposes of this section, means someone who possesses scientific, technical, or other specialized knowledge regarding the product at issue or similar products and who is qualified to prepare the report required by this section.

D. A copy of the written report required by this section shall be attached to the original and all copies of the complaint.

E. The failure to file an affidavit required by this section shall be grounds for dismissal.

F. This section shall apply to any cause of action filed on or after November 1, 2005.

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 71 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

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

- a. property damage caused by the installation, presence, or removal of asbestos,
- b. the health effects of exposure to asbestos, including any claim for:
 - (1) personal injury or death,
 - (2) mental or emotional injury,
 - (3) risk of disease or other injury, or
 - (4) the costs of medical monitoring or surveillance, and
- c. any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person;

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

- a. a domestic corporation organized under the laws of this state, or
- b. a foreign corporation organized under laws other than the laws of this state;

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

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

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

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

B. 1. The limitations in subsection C of this section shall apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor, or which is 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 shall include intangible assets.

3. Total gross assets shall 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 64. REPEALER Section 8, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2004, Section 832.1), is hereby repealed.

SECTION 65. REPEALER 23 O.S. 2001, Section 103, is hereby repealed.

SECTION 66. REPEALER 47 O.S. 2001, Section 12-420, is hereby repealed.

SECTION 67. 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. 2004, Sections 1-1708.1F and 1-1708.1F-1), are hereby repealed.

SECTION 68. This act shall become effective November 1, 2005.

Passed the House of Representatives the 9th day of March, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2005.

Presiding Officer of the Senate