

CS for SB 1874

THE STATE SENATE
Monday, February 27, 2006

Committee Substitute for
Senate Bill No. 1874

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1874 - By: LASTER of the Senate and BRADDOCK of the House.

An Act relating to civil procedure; creating the Lawsuit Responsibility Act of 2006; providing short title; requiring scheduling of trial within specified time period; providing exceptions; requiring certain conferences; requiring certain signatures on specified requests; authorizing court to require participation in certain programs; defining term; authorizing certain sanctions; establishing procedures for summary judgment; requiring court to prepare certain plan; authorizing certain sanctions; urging Supreme Court to promulgate certain rules; exempting certain persons from personal liability under specified circumstances; providing exception; limiting liability of physicians under specified circumstances; providing exception; defining terms; providing immunity from civil liability for certain claims; providing exceptions; providing pleading requirements; providing for stay of discovery and other proceedings in certain circumstances; amending 28 O.S. 2001, Section 152.1, as last amended by Section 21, Chapter 5, O.S.L. 2004 (28 O.S. Supp. 2005, Section 152.1), which relates to civil actions; prohibiting court from requiring payment of certain fee at specified time; 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 "Lawsuit Responsibility Act of 2006".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2005.3 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The court shall schedule a trial on the merits within six
5 (6) months after service of process or entry of appearance by the
6 defendant, whichever occurs first, unless the court determines that
7 the demands of the case and its complexity make such a trial date
8 incompatible with serving the ends of justice, or that the trial
9 cannot reasonably be held within such time frame because of the
10 number or complexity of pending cases.

11 B. The court shall monitor the progress of a case through a
12 case management conference or a series of such conferences at which
13 the court shall:

14 1. Explore the parties' receptivity to, and the propriety of,
15 settlement or proceeding with the litigation;

16 2. Monitor the progress of the parties with respect to the
17 discovery schedule established pursuant to Section 4 of this act;
18 and

19 3. Set, at the earliest practicable time, deadlines for filing
20 motions and a time framework for their disposition.

21 C. All requests for extensions of deadlines for completion of
22 discovery or for postponement of any trial shall be signed by both
23 the attorney and the party making the request.

1 D. The court shall have the authority to require parties to
2 participate in alternative dispute resolution programs that have
3 been designated for use by the court including, but not limited to,
4 mediation, minitrial, or early neutral evaluation. For purposes of
5 this section, an "early neutral evaluation" is a program for the
6 presentation of the legal and factual basis of a case to a neutral
7 person selected by the court at a nonbinding conference conducted
8 early in the litigation. The court shall also have the authority to
9 sanction any party or attorney for failing to obey the court's order
10 to participate in good faith in alternative dispute resolution.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 682.1 of Title 12, unless there
13 is created a duplication in numbering, reads as follows:

14 A. 1. A party may move for summary judgment on any cause of
15 action or summary disposition on any claim or defense or, in a civil
16 action for personal injury, on the issue of the liability of one or
17 more defendants, on the ground that the evidentiary material filed
18 with the motion or subsequently filed with leave of court show that
19 there is no substantial controversy as to any material fact.

20 2. The motion shall be accompanied by a concise written
21 statement of the material facts as to which the movant contends no
22 genuine issue exists and a statement of argument and authority
23 demonstrating that summary judgment or summary disposition of any

1 issues should be granted. Reference shall be made in the statement
2 to the pages and paragraphs or lines of the evidentiary materials
3 that are pertinent to the motion. Unless otherwise ordered by the
4 court, a copy of the material relied on shall be attached to the
5 statement.

6 3. The motion may be served at any time after the filing of the
7 action, except that, if the action has been set for trial, the
8 motion shall be served at least twenty (20) days before the trial
9 date unless an applicable scheduling order establishes an earlier
10 deadline. The motion shall be served on all parties and filed with
11 the court clerk.

12 B. Any party opposing summary judgment or summary disposition
13 of issues shall file with the court clerk within twenty-one (21)
14 days after service of the motion a concise written statement of the
15 material facts as to which a genuine issue exists and the reasons
16 for denying the motion; provided, however, that a responsive
17 statement shall not be due from a party earlier than forty-five (45)
18 days after service of the first summons by, or upon, that party.
19 Unless otherwise ordered by the court, the adverse party shall
20 attach to the statement evidentiary material justifying the
21 opposition to the motion, but may incorporate by reference material
22 attached to the papers of another party. In the statement, the
23 adverse party or parties shall set forth and number each specific

1 material fact which is claimed to be in controversy and reference
2 shall be made to the pages and paragraphs or lines of the
3 evidentiary materials. All material facts set forth in the
4 statement of the movant which are supported by acceptable
5 evidentiary material shall be deemed admitted for the purpose of
6 summary judgment or summary disposition unless specifically
7 controverted by the statement of the adverse party which is
8 supported by acceptable evidentiary material. If the motion for
9 summary judgment or summary disposition is granted, the party or
10 parties opposing the motion cannot on appeal rely on any fact or
11 material that is not referred to or included in the statement in
12 order to show that a substantial controversy exists.

13 C. 1. The affidavits that are filed by either party shall be
14 made on personal knowledge, shall show that the affiant is competent
15 to testify as to the matters stated therein, and shall set forth
16 matters that would be admissible in evidence at trial. The
17 admissibility of other evidentiary material filed by either party
18 shall be governed by the rules of evidence.

19 2. If there is a dispute regarding the authenticity of a
20 document or admissibility of any submitted evidentiary material, the
21 court may rule on the admissibility of the challenged material
22 before disposing of the motion for summary judgment or summary
23 disposition. A party challenging the admissibility of any

1 evidentiary material submitted by another party may raise the issue
2 expressly by written objection or motion to strike such material.
3 Evidentiary material that does not appear to be convertible to
4 admissible evidence at trial shall be challenged by objection or
5 motion to strike, or the objection shall be deemed waived for the
6 purpose of the decision on the motion for summary judgment or
7 summary disposition. If a trial of factual issues is required after
8 proceedings on a motion for summary judgment or summary disposition,
9 evidentiary rulings in the context of the summary procedure shall be
10 treated as rulings in limine.

11 D. Should it appear from an affidavit of a party opposing the
12 motion that for reasons stated the party cannot present evidentiary
13 material sufficient to support the opposition, the court may deny
14 the motion for summary judgment or summary disposition without
15 prejudice or may order a continuance to permit affidavits to be
16 obtained or depositions to be taken or discovery to be had or may
17 make such other order as is just. A motion filed pursuant to this
18 subsection shall not be deemed a consent to the exercise by the
19 court of jurisdiction over the party, or a waiver of the right to
20 file a motion to dismiss the action.

21 E. 1. In determining whether a substantial controversy as to
22 the material facts exist, the court shall accept the evidence
23 presented by the non-movant, and all reasonable inferences which may

1 be drawn therefrom, as true and shall disregard all conflicting
2 evidence presented by the movant.

3 2. If the court finds that the admissible evidence shows that
4 there is no substantial controversy as to the material facts and
5 that the moving party is entitled to a judgment as a matter of law,
6 the court shall render judgment for the movant.

7 3. If the court finds that the admissible evidence shows that
8 there is no substantial controversy as to certain facts or claims
9 and that the moving party is entitled as a matter of law to partial
10 adjudication on such facts or claims, the court may enter an order
11 granting partial adjudication on such claims or specifying the facts
12 which are not in controversy and direct that the action proceed for
13 a determination of the remaining facts or claims.

14 4. An order denying either summary judgment or summary
15 disposition is interlocutory and is not reviewable on appeal prior
16 to final judgment.

17 F. The serving of a motion for either a summary judgment or
18 summary disposition of issues before a responsive pleading is served
19 where a responsive pleading is permitted does not preclude the
20 opposing party from amending the pleading without leave of court.
21 If a motion for either a summary judgment or summary disposition is
22 served after the case is at issue, the hearing on the motion and the
23 pretrial conference may, at the discretion of the court, be held at

1 one time. A court may decide a motion for either a summary judgment
2 or summary disposition without a hearing, and where this is done,
3 the court shall notify the parties of its ruling by mail.

4 G. The pleadings or the pretrial conference order may be
5 amended either before or during the hearing on a motion for either
6 summary judgment or summary disposition under this rule, and the
7 court may continue the hearing to a subsequent time. After a court
8 grants a judgment under this rule, neither the pleadings nor the
9 pretrial conference order may be amended by the addition of
10 allegations in regard to any fact which was known to the party and
11 which could have been presented at the hearing on the motion, and a
12 motion for a rehearing or for a new trial on the ground of newly
13 discovered evidence must comply with the provisions of Section 655
14 of this title.

15 H. Judgments entered on motion for summary judgment or
16 appealable summary disposition are subject to accelerated appellate
17 review pursuant to Rule 1.36 of the Oklahoma Supreme Court Rules.
18 The record on appeal will be limited to:

19 1. The memorialized entry of judgment; in multi-party or multi-
20 claim cases the judgment or dismissal order must either (a) dispose
21 of all claims and all parties, or (b) entirely dispose of at least
22 one claim or one party and contain the express determination that

1 there is no just reason for delay with the express direction by the
2 trial judge that the judgment be filed;

3 2. Pleadings proper as defined pursuant to subsection A of
4 Section 2007 of this title;

5 3. Applicable instruments on file, including the motion and
6 response with supporting briefs and materials filed by the parties
7 pursuant to subsections A and B of this section;

8 4. Any other item on file, which, according to some recitation
9 in the trial court's written journal entry or in some other order,
10 was considered in its decision;

11 5. Any other order dismissing the claim or determining the
12 issues as to some but not all parties or claims;

13 6. Any transcripts of the hearing on the motion; and

14 7. Any motions, along with supporting and responsive briefs,
15 for new trial (reexamination) of summary judgment or appealable
16 summary disposition process.

17 I. If the court denies all or part of a motion for either
18 summary judgment or summary disposition, the court shall grant the
19 party opposing the motion the reasonable attorney fees and costs,
20 pursuant to Section 942 of this title, which are shown to have been
21 incurred in opposing the motion, or in opposing the portion thereof
22 upon which the party prevailed.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3225.1 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

4 As soon as is practicable after setting a trial date pursuant to
5 Section 2 of this act, the court shall prepare a discovery schedule
6 and plan consistent with any time limits that the court may set for
7 the completion of discovery. Such discovery plan shall require
8 cost-effective discovery through good faith exchange of information
9 among litigants and their attorneys and through the use of
10 cooperative discovery devices and shall conserve judicial resources
11 by prohibiting the consideration of discovery motions unless
12 accompanied by a certification that the moving party has made a
13 reasonable and good faith effort to reach agreement with opposing
14 counsel on the matters set forth in the motion. The court may also
15 implement procedures to identify and limit the volume of discovery
16 available to avoid unnecessary or unduly burdensome or expensive
17 discovery and to phase discovery into two or more phases. The court
18 may sanction any party not participating in good faith with the
19 discovery schedule and plan; such sanctions may include sanctioning
20 of the offending lawyer or law firm and the granting of default
21 judgment.

22 SECTION 5. NEW LAW A new section of law not to be
23 codified in the Oklahoma Statutes reads as follows:

1 Advertising related to the professional services of attorneys
2 should be motivated by a desire to educate the public to an
3 awareness of legal needs and to provide information relevant to the
4 selection of appropriate counsel. Information communicated in such
5 advertising should be disseminated in an objective and
6 understandable fashion and should be relevant to a prospective
7 client's ability to choose a lawyer, without enticing the public to
8 engage in non-meritorious litigation. The Oklahoma Legislature
9 urges the Supreme Court to promulgate rules requiring all attorney
10 advertising to uphold the dignity and integrity of the legal
11 profession to the fullest extent allowed under the constitution of
12 this state and the United States.

13 SECTION 6. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-1708.1F-2 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 A. No physician shall be personally liable for any amount over
17 Two Million Dollars (\$2,000,000.00) of a judgment in excess of such
18 amount if, in a subsequent proceeding, the court finds:

19 1. In the twelve (12) months prior to the act or acts that gave
20 rise to the medical liability action, fifty percent (50%) or more of
21 the physician's gross income from his or her medical practice came
22 from Medicaid, Medicare, or a combination of both; and

1 2. The physician carries a minimum of Two Million Dollars
2 (\$2,000,000.00) in malpractice coverage that will apply and be
3 payable on such judgment if the judgment becomes final.

4 B. For the provisions of this section to apply, the physician
5 shall plead entitlement to the benefits provided for in subsection A
6 of this section in accordance with the Oklahoma Pleading Code.

7 C. The provisions of this section shall not apply in a medical
8 liability action if it is adjudicated in such action that the
9 physician caused the damages by his or her intentional, willful or
10 wanton conduct.

11 SECTION 7. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 42 of Title 76, unless there is
13 created a duplication in numbering, reads as follows:

14 In a product liability action alleging that an injury was caused
15 by a defective pharmaceutical product, a physician shall not be
16 liable solely for prescribing the product if, at the time of the
17 prescription, the product was approved by the United States Food and
18 Drug Administration for the specific purpose for which the product
19 was prescribed. Nothing contained in this section shall limit a
20 physician's liability for his or her negligent conduct.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 41 of Title 76, unless there is
23 created a duplication in numbering, reads as follows:

1 A. As used in this section:

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

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

13 3. "Knowing and willful" violation means that:

14 a. the conduct constituting the violation was committed
15 with the intent to deceive or injure consumers or with
16 actual knowledge that such conduct was injurious to
17 consumers, and

18 b. the conduct constituting the violation was not
19 required by regulations, orders, rules or other
20 pronouncement of, or any statute administered by, a
21 federal, state, or local government agency.

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

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

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

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

20 2. Any other material violation of federal or state law
21 applicable to the manufacturing, marketing, distribution,
22 advertising, labeling, or sale of food, provided that such violation

1 is knowing and willful, and the claimed injury was proximately
2 caused by such violation.

3 D. In any action exempted under paragraph 1 of subsection C of
4 this section, the complaint initiating such action shall state with
5 particularity the following: the statute, regulation or other law
6 of this state or of the United States that was allegedly violated;
7 the facts that are alleged to constitute a material violation of
8 such statute or regulation; and the facts alleged to demonstrate
9 that such violation proximately caused actual injury to the
10 plaintiff. In any action exempted under paragraph 2 of subsection C
11 of this section, in addition to the foregoing pleading requirements,
12 the complaint initiating such action shall state with particularity
13 facts sufficient to support a reasonable inference that the
14 violation was with intent to deceive or injure consumers or with the
15 actual knowledge that such violation was injurious to consumers.

16 E. In any action exempted under subsection C of this section,
17 all discovery and other proceedings shall be stayed, upon request of
18 the defendant, during the pendency of the defendant's initial motion
19 to dismiss, if any, unless the court finds upon the motion of any
20 party that particularized discovery is necessary to preserve
21 evidence or to prevent undue prejudice to that party. During the
22 pendency of any stay of discovery pursuant to this subsection,
23 unless otherwise ordered by the court, any party to the action with

1 actual notice of the allegations contained in the complaint shall
2 treat all documents, data compilations, including electronically
3 recorded or stored data, and tangible objects that are in the
4 custody or control of such party and that are relevant to the
5 allegations, as if they were the subject of a continuing request for
6 production of documents from an opposing party under Section 3234 of
7 Title 12 of the Oklahoma Statutes.

8 SECTION 9. AMENDATORY 28 O.S. 2001, Section 152.1, as
9 last amended by Section 21, Chapter 5, O.S.L. 2004 (28 O.S. Supp.
10 2005, Section 152.1), is amended to read as follows:

11 Section 152.1 A. In civil cases, the court clerk shall collect
12 and deposit in the court fund the following charges in addition to
13 the flat fee:

- 14 1. For posting notices and filing
15 certificates required by statute.....\$30.00
- 16 2. For the filing of any counterclaim or
17 setoff pursuant to Section 1758 of
18 Title 12 of the Oklahoma Statutes.....\$20.00
- 19 3. For mailing by any type of mail writs,
20 warrants, orders, process, command, or
21 notice for each person.....\$10.00
- 22 4. For the actual cost of all postage in
23 each case in excess of\$10.00

- 1 5. For serving or endeavoring to serve each
2 writ, warrant, order, process,
3 command, or notice for each person in
4 one or more counties.....\$50.00
5 provided that if more than one person
6 is served at the same address, one
7 flat fee of Fifty Dollars (\$50.00) may
8 be charged
- 9 6. For sheriff's fees on court-ordered
10 sales of real or personal property.....\$75.00
- 11 7. When a jury is requested.....\$349.00
- 12 8. For issuing each summons for each person.....\$ 5.00
- 13 9. For services of a court reporter at each
14 trial held in the case.....\$20.00
- 15 10. For filing a motion for summary
16 judgment or summary disposition of
17 issue(s).....\$50.00

18 The fees prescribed in paragraphs 5 and 6 of ~~subsection A of~~
19 this ~~section~~ subsection shall be paid by the court clerk into the
20 Sheriff's Service Fee Account, created pursuant to the provisions of
21 Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff
22 in the county where service is made or attempted or where the
23 sheriff's sale occurs. The court shall not require the fee

1 prescribed in paragraph 7 of this subsection to be paid more than
2 fourteen (14) days prior to trial. All other fees shall be
3 deposited into the local court fund in the county where collected.

4 B. Of the amounts collected pursuant to the provisions of
5 paragraphs 1, 2 and 7 of subsection A of this section, the sum of
6 Ten Dollars (\$10.00) shall be deposited to the credit of the Child
7 Abuse Multidisciplinary Account.

8 SECTION 10. This act shall become effective November 1, 2006.

9 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-21-06 - DO PASS,
10 As Amended and Coauthored.