

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 507

By: Branan and Laughlin of
the Senate

3
4 and

Thompson of the House

5
6
7 (torts - volunteer liability - firearms -
8 codification -

9 effective date)

10
11
12 AUTHORS: Remove Thompson as principal House author and substitute
13 Johnson (Rob) as principal House author and show Sullivan
14 as first coauthor and add the following House coauthors:
15 Dank, Derby, DeWitt, Enns, Faught, Hickman, Joyner, Kern,
Martin (Scott), McCullough, McDaniel (Randy), McNiel,
Miller, Murphey, Reynolds, Schwartz, Shannon, Thomsen,
Tibbs, Wesselhoft, Worthen and Wright

16 AUTHOR: Add the following Senate Coauthor: Williamson

17 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
18 entire bill and insert

19 "An Act relating to civil procedure; requiring
20 appointment of attorney for specified purpose;
21 providing for award of certain fees; requiring
22 plaintiff to attach certain affidavit in civil
23 action for negligence; providing requirements for
24 Oklahoma Uniform Jury Instructions; amending 12 O.S.
2001, Section 588, which relates to general and
specific findings; modifying procedure; amending 12
O.S. 2001, Section 684, as amended by Section 4,
Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006,
Section 684), which relates to dismissal; modifying

1 procedure for dismissal without court order;
2 providing for dismissal of action under certain
3 circumstances; stating requirements for expert
4 opinions; allowing for extension under certain
5 circumstances; requiring plaintiff to provide
6 certain information; amending Section 7, Chapter
7 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section
8 727.1), which relates to interest on judgments;
9 modifying time of accrual of prejudgment interest on
10 certain actions; modifying method of computing
11 interest; amending 12 O.S. 2001, Sections 990.4, as
12 last amended by Section 6, Chapter 1, O.S.L. 2005,
13 2004, as amended by Section 7, Chapter 402, O.S.L.
14 2002, 2011, as amended by Section 10, Chapter 368,
15 O.S.L. 2004, Section 1, Chapter 370, O.S.L. 2004,
16 2023 and 2702 (12 O.S. Supp. 2006, Sections 990.4,
17 2004, 2011 and 2011.1), which relate to stays of
18 enforcement, the Oklahoma Pleading Code, frivolous
19 claims or defenses, class actions and expert
20 testimony; modifying certain appeal bond procedures;
21 modifying time limit for service of process;
22 modifying definitions; providing procedure for
23 summary judgment; requiring potential class members
24 to request inclusion in the class; providing
procedure for summary judgment; providing
requirements for expert testimony; providing role of
the court; providing for interpretation; amending 23
O.S. 2001, Sections 9.1, as amended by Section 1,
Chapter 462, O.S.L. 2002, and Section 18, Chapter
368, O.S.L. 2004 and 61 (23 O.S. Supp. 2006,
Sections 9.1 and 15), which relate to punitive
damages, joint and several liability and obligations
not arising from contract; providing for punitive
damage awards for certain actions; providing for
periodic payment of certain damages; modifying
exceptions to severability; providing limits of
liability for noneconomic damages for certain
actions; requiring certain adjustment; defining
term; requiring admission of evidence of certain
compensation; limiting award of certain damages;
providing exception; defining term; providing that
proof of certain losses must be in the form of a net
loss after reduction for income tax payments or
unpaid tax liability; amending 47 O.S. 2001, Section
11-1112, as last amended by Section 1, Chapter 361,
O.S.L. 2005 (47 O.S. Supp. 2006, Section 11-1112),
which relates to child passenger restraint systems;

1 eliminating prohibitions against admissibility of
2 certain evidence in civil actions; amending Section
3 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2006,
4 Section 1-1708.1G), which relates to prejudgment
5 interest for medical liability actions; providing
6 time that prejudgment interest accrues; amending 63
7 O.S. 2001, Section 1-1709.1, as last amended by
8 Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp.
9 2006, Section 1-1709.1), which relates to peer
10 review information; providing that certain
11 information is not subject to discovery or
12 admissible at trial; requiring certain findings for
13 certain information to be admissible; stating
14 legislative findings; defining terms; providing for
15 confidentiality of certain records; prohibiting
16 certain testimony; limiting liability of certain
17 persons; prohibiting submission of certain
18 information into evidence; creating the School
19 Protection Act; providing short title; stating
20 purpose of the act; making it unlawful to make a
21 false criminal report against an education employee;
22 providing punishment; limiting application for
23 statements against certain persons; providing for
24 effect on other laws; providing that existence of
liability insurance is not a waiver of any defense;
providing for the applicability of other laws;
amending 51 O.S. 2001, Section 155, as last amended
by Section 1, Chapter 381, O.S.L. 2004 (51 O.S.
Supp. 2006, Section 155), which relates to
exemptions from liability; adding certain
exemptions; amending 76 O.S. 2001, Sections 5.5, 25
and 31 and Section 34, Chapter 368, O.S.L. 2004 (76
O.S. Supp. 2006, Section 32), which relate to
limitations for certain actions, professional review
bodies, civil immunity for volunteers, charitable
organizations, not-for-profit corporations and
volunteer medical professionals; establishing a
statute of repose for certain actions; providing
that peer review information is private,
confidential and privileged; providing exception;
providing notice requirement; providing that certain
information is not subject to discovery or
admissible at trial; prohibiting testimony by
certain persons; modifying definition; expanding
immunity for volunteer medical professionals;
creating the Common Sense Consumption Act; providing
short title; stating legislative intent; defining

1 terms; providing immunity from civil liability for
2 certain claims; providing exception; providing
3 pleading requirements; providing for stay of
4 discovery and other proceedings in certain
5 circumstances; providing scope of claims covered;
6 stating legislative findings; limiting liability of
7 certain manufacturers; limiting liability of certain
8 associations; clarifying applicability of certain
9 provisions; repealing 47 O.S. 2001, Section 12-420,
10 as amended by Section 13, Chapter 50, O.S.L. 2005
11 (47 O.S. Supp. 2006, Section 12-420), which relates
12 to inadmissibility of evidence in civil actions of
13 failure to use seatbelt; repealing Section 6,
14 Chapter 390, O.S.L. 2003, as amended by Section 21,
15 Chapter 368, O.S.L. 2004 and Section 22, Chapter
16 368, O.S.L. 2004 (63 O.S. Supp. 2006, Sections 1-
17 1708.1F and 1-1708.1F-1), which relate to limits on
18 noneconomic damages in medical liability actions;
19 providing for codification; and providing an
20 effective date.

21
22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. NEW LAW A new section of law to be codified
24 in the Oklahoma Statutes as Section 7.2 of Title 5, unless there is
created a duplication in numbering, reads as follows:

In class actions, if a request for an award of attorney fees is
made, the court shall appoint an attorney to represent the class
upon request by any members of the class in a hearing on the issue
of the amount of attorney fees only. Said attorney shall be
independent of the attorney or attorneys seeking attorney fees in
the class action, and said independent attorney shall be awarded
reasonable fees by the court on an hourly basis out of the proceeds
awarded to the class.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 191 of Title 12, unless there is
3 created a duplication in numbering, reads as follows:

4 A. 1. In any action not arising out of contract, wherein the
5 party intends or is required by law to use a qualified expert to
6 prove liability, except as provided in subsection B of this section,
7 the party shall file within sixty (60) days of filing the petition
8 an affidavit attesting that:

9 a. the party has consulted and reviewed the facts of the
10 claim with a qualified expert,

11 b. the party has obtained a written opinion from a
12 qualified expert that clearly identifies the party and
13 includes the expert's determination that, based upon a
14 review of the pertinent records, facts or other
15 relevant material, a reasonable interpretation of the
16 facts supports a finding of liability of the adverse
17 party against whom the action is brought, and

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

21 2. If the civil action is filed:

22 a. without an affidavit being attached to the petition,
23 as required in paragraph 1 of this subsection, and
24

1 b. no extension of time is subsequently granted by the
2 court, pursuant to subsection B of this section,
3 the court shall, upon motion of the adverse party, dismiss the
4 action.

5 3. The written opinion from the qualified expert shall state
6 the acts or omissions of the adverse party or parties that the
7 expert then believes establish liability and shall include reasons
8 explaining why the acts or omissions establish such liability.

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

15 2. If on the expiration of an extension period described in
16 paragraph 1 of this subsection, the party has failed to file in the
17 action an affidavit as described above, the court shall, upon motion
18 of the adverse party, unless good cause is shown for such failure,
19 dismiss the action without prejudice to its refiling.

20 C. 1. Upon written request of any adverse party in any action
21 not arising out of contract, the party shall, within ten (10)
22 business days after receipt of such request, provide the adverse
23 party with:

24

- 1 a. a copy of the written opinion of a qualified expert
2 mentioned in an affidavit filed pursuant to subsection
3 A or B of this section, and
- 4 b. an authorization from the party in a form that
5 complies with applicable state and federal laws,
6 including the Health Insurance Portability and
7 Accountability Act of 1996, for the release of any and
8 all medical records and bills related to the party for
9 a period commencing ten (10) years prior to the
10 incident that is at issue.

11 2. If the party fails to comply with paragraph 1 of this
12 subsection, the court shall, upon motion of the adverse party,
13 unless good cause is shown for such failure, dismiss the action.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 577.4 of Title 12, unless there
16 is created a duplication in numbering, reads as follows:

17 The Oklahoma Uniform Jury Instructions (OUJI) applicable in a
18 civil case shall include an instruction notifying the jury that no
19 part of an award for damages for personal injury or wrongful death
20 is subject to federal or state income tax. Any amount that the jury
21 determines to be proper compensation for personal injury or wrongful
22 death should not be increased or decreased by any consideration for
23 income taxes.

1 SECTION 4. AMENDATORY 12 O.S. 2001, Section 588, is
2 amended to read as follows:

3 Section 588. In all cases the jury shall render a general
4 verdict, ~~and the court may in any case at the request of~~ unless the
5 parties thereto, or either of them shall have requested, in addition
6 to the general verdict, ~~direct that~~ the jury to find upon particular
7 questions of fact, to be stated in writing by the party or parties
8 requesting the same. Upon receipt of a request for a finding upon
9 particular questions of fact, the court shall so direct the jury.

10 SECTION 5. AMENDATORY 12 O.S. 2001, Section 684, as
11 amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006,
12 Section 684), is amended to read as follows:

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

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

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

11 ~~C. When an action is dismissed after a jury in the action is~~
12 ~~empanelled and the case is subsequently refiled, the court, at the~~
13 ~~conclusion of the subsequent action, may assess costs and attorney~~
14 ~~fees incurred in the previous action by the defendants subsequent to~~
15 ~~the jury being empanelled service by the adverse party of an answer~~
16 ~~or of a motion for summary judgment, whichever first occurs, or by~~
17 ~~filing a stipulation for dismissal signed by all parties who have~~
18 ~~appeared in the action; provided, if a plaintiff files a notice of~~
19 ~~dismissal after discovery has commenced, any such action shall not~~
20 ~~be dismissed without prejudice without the consent of the defendant.~~
21 ~~Unless otherwise stated in the notice of dismissal or stipulation,~~
22 ~~the dismissal is without prejudice, except that a notice of~~
23 ~~dismissal operates as an adjudication upon the merits when filed by~~

1 a plaintiff who has once dismissed in any court of the United States
2 or of any state an action based on or including the same claim.

3 B. Except as provided in subsection A of this section, an
4 action shall not be dismissed at the plaintiff's instance except
5 upon order of the court and upon such terms and conditions as the
6 court deems proper. If a counterclaim has been pleaded by a
7 defendant prior to the service upon the defendant of the plaintiff's
8 motion to dismiss, the action shall not be dismissed against the
9 defendant's objection unless the counterclaims can remain pending
10 for independent adjudication by the court. Unless otherwise
11 specified in the order, a dismissal under this subsection is without
12 prejudice.

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

21 D. The provisions of this section apply to the dismissal of any
22 counterclaim, cross-claim, or third-party claim. A voluntary
23 dismissal by the claimant alone pursuant to subsection A of this
24 section shall be made before a responsive pleading is served or, if

1 there is none, before the introduction of evidence at the trial or
2 hearing.

3 If a plaintiff who has once dismissed an action in any court
4 commences an action based upon or including the same claim against
5 the same defendant, the court may make such order for the payment of
6 costs of the action previously dismissed as it may deem proper and
7 may stay the proceedings in the action until the plaintiff has
8 complied with the order. If an action is refiled and the plaintiff
9 does not comply with the time limits for service required by
10 subsection I of Section 2004 of this title, the action shall be
11 dismissed with prejudice.

12 SECTION 6. AMENDATORY Section 7, Chapter 368, O.S.L.
13 2004 (12 O.S. Supp. 2006, Section 727.1), is amended to read as
14 follows:

15 Section 727.1

16 POSTJUDGMENT INTEREST

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

21 2. Costs and attorney fees allowed by the court shall bear
22 interest from the earlier of the date the judgment or order is
23 pronounced, if expressly stated in the written judgment or order
24

1 awarding the costs and attorney fees, or the date the judgment or
2 order is filed with the court clerk.

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

16 C. The postjudgment interest authorized by subsection A or
17 subsection B of this section shall accrue from the earlier of the
18 date the judgment is rendered as expressly stated in the judgment,
19 or the date the judgment is filed with the court clerk, and shall
20 initially accrue at the rate in effect for the calendar year during
21 which the judgment is rendered until the end of the calendar year in
22 which the judgment was rendered, or until the judgment is paid,
23 whichever first occurs. Beginning on January 1 of the next
24 succeeding calendar year until the end of that calendar year, or

1 until the judgment is paid, whichever first occurs, the judgment,
2 together with postjudgment interest previously accrued, shall bear
3 interest at the rate in effect for judgments rendered during that
4 calendar year as certified by the Administrative Director of the
5 Courts pursuant to subsection I of this section. For each
6 succeeding calendar year, or part of a calendar year, during which a
7 judgment remains unpaid, the judgment, together with postjudgment
8 interest previously accrued, shall bear interest at the rate in
9 effect for judgments rendered during that calendar year as certified
10 by the Administrative Director of the Courts pursuant to subsection
11 I of this section. A separate computation using the interest rate
12 in effect for judgments as provided by subsection I of this section
13 shall be made for each calendar year, or part of a calendar year,
14 during which the judgment remains unpaid in order to determine the
15 total amount of interest for which the judgment debtor is liable.
16 The postjudgment interest rate for each calendar year or part of a
17 calendar year a judgment remains unpaid shall be multiplied by the
18 original amount of the judgment, including any prejudgment interest,
19 together with postjudgment interest previously accrued. Interest
20 shall accrue on a judgment in the manner prescribed by this
21 subsection until the judgment is satisfied or released.

22 D. If a rate of interest is specified in a contract, the rate
23 specified shall apply and be stated in the journal entry of
24 judgment. The rate of interest shall not exceed the lawful rate for

1 that obligation. Postjudgment interest shall be calculated and
2 accrued in the same manner as prescribed in subsection C of this
3 section.

4 PREJUDGMENT INTEREST

5 E. Except as provided by subsection F of this section ~~or~~
6 ~~Section 1-1708.1G of Title 63 of the Oklahoma Statutes, beginning~~
7 November 1, 2007, if a verdict for damages by reason of personal
8 injuries or injury to personal rights including, but not limited to,
9 injury resulting from bodily restraint, personal insult, defamation,
10 invasion of privacy, injury to personal relations, or detriment due
11 to an act or omission of another is accepted by the trial court, the
12 court in rendering judgment shall add interest on the verdict at a
13 rate prescribed pursuant to subsection I of this section from the
14 date which is thirty-six (36) months after the suit resulting in the
15 judgment was commenced to the earlier of the date the verdict is
16 accepted by the trial court as expressly stated in the judgment, or
17 the date the judgment is filed with the court clerk. No prejudgment
18 interest shall begin to accrue until thirty-six (36) months after
19 the suit resulting in the judgment was commenced. The interest rate
20 for computation of prejudgment interest shall begin with the rate
21 prescribed by subsection I of this section which is in effect for
22 the calendar year ~~in~~ which is thirty-six (36) months after the suit
23 resulting in the judgment ~~is~~ was commenced. This rate shall be in
24 effect until the end of the calendar year in which ~~the suit~~

1 ~~resulting in judgment was filed~~ interest begins to accrue or until
2 the date judgment is filed, whichever first occurs. Beginning on
3 January 1 of the next succeeding calendar year until the end of that
4 calendar year, or until the date the judgment is filed, whichever
5 first occurs, and for each succeeding calendar year thereafter, the
6 prejudgment interest rate shall be the rate in effect for judgments
7 rendered during each calendar year as certified by the
8 Administrative Director of the Courts pursuant to subsection I of
9 this section. After the computation of all prejudgment interest has
10 been completed, the total amount of prejudgment interest shall be
11 added to the amount of the judgment rendered pursuant to the trial
12 of the action, and the total amount of the resulting judgment shall
13 become the amount upon which postjudgment interest is computed
14 pursuant to subsection A of this section.

15 F. If a verdict of the type described by subsection E of this
16 section is rendered against this state or its political
17 subdivisions, including counties, municipalities, school districts,
18 and public trusts of which this state or a political subdivision of
19 this state is a beneficiary, the judgment shall bear interest at the
20 rate prescribed pursuant to subsection I of this section from the
21 date the suit was commenced to the earlier of the date the verdict
22 is accepted by the trial court as expressly stated in the judgment
23 or the date the judgment is filed with the court clerk. The
24 interest rate for computation of prejudgment interest shall begin

1 with the rate prescribed by subsection I of this section which is in
2 effect for the calendar year in which the suit resulting in the
3 judgment is commenced. This rate shall be in effect until the end
4 of the calendar year in which the suit resulting in judgment was
5 filed or until the date the judgment is rendered as expressly stated
6 in the judgment, whichever first occurs. Beginning on January 1 of
7 the next succeeding calendar year until the end of that calendar
8 year, or until the date judgment is rendered, whichever first
9 occurs, and for each succeeding calendar year thereafter, the
10 prejudgment interest rate shall be the rate in effect for judgments
11 rendered during each calendar year as certified by the
12 Administrative Director of the Courts pursuant to subsection I of
13 this section. After the computation of prejudgment interest has
14 been completed, the amount shall be added to the amount of the
15 judgment rendered pursuant to the trial of the action, and the total
16 amount of the resulting judgment shall become the amount upon which
17 postjudgment interest is computed pursuant to subsection B of this
18 section. No award of prejudgment interest against this state or its
19 political subdivisions, including counties, municipalities, school
20 districts, and public trusts of which this state or a political
21 subdivision of this state is a beneficiary, including the amount of
22 the judgment awarded pursuant to trial of the action, shall exceed
23 the total amount of liability of the governmental entity pursuant to
24 The Governmental Tort Claims Act.

1 G. If exemplary or punitive damages are awarded in an action
2 for personal injury or injury to personal rights including, but not
3 limited to, injury resulting from bodily restraint, personal insult,
4 defamation, invasion of privacy, injury to personal relations, or
5 detriment due to an act or omission of another, the interest on
6 that award shall begin to accrue from the earlier of the date the
7 judgment is rendered as expressly stated in the judgment, or the
8 date the judgment is filed with the court clerk.

9 H. If a judgment is rendered establishing the existence of a
10 lien against property and no rate of interest exists, the court
11 shall allow prejudgment interest at a rate prescribed pursuant to
12 subsection I of this section from the date the lien is filed to the
13 date of verdict.

14 I. For purposes of computing either postjudgment interest or
15 prejudgment interest as authorized by this section, interest shall
16 ~~be the prime rate, as listed in the first edition of the Wall Street~~
17 ~~Journal published for each calendar year and as certified to the~~
18 ~~Administrative Director of the Courts by the State Treasurer on the~~
19 ~~first regular business day following publication in January of each~~
20 ~~year, plus two percent (2%)~~ determined using a rate equal to the
21 average United States Treasury Bill rate of the preceding calendar
22 year as certified to the Administrative Director of the Courts by
23 the State Treasurer on the first regular business day in January of
24 each year.

1 J. For purposes of computing postjudgment interest, the
2 provisions of this section shall be applicable to all judgments of
3 the district courts rendered on or after January 1, ~~2005~~ 2008.
4 Effective January 1, ~~2005~~ 2008, the method for computing
5 postjudgment interest prescribed by this section shall be applicable
6 to all judgments remaining unpaid rendered prior to January 1, ~~2005~~
7 2008.

8 K. For purposes of computing prejudgment interest, the
9 provisions of this section shall be applicable to all actions which
10 are filed in the district courts on or after January 1, ~~2005~~ 2008,
11 for which an award of prejudgment interest is authorized by the
12 provisions of this section.

13 SECTION 7. AMENDATORY 12 O.S. 2001, Section 990.4, as
14 last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp.
15 2006, Section 990.4), is amended to read as follows:

16 Section 990.4 A. Except as provided in subsection C of this
17 section, a party may obtain a stay of the enforcement of a judgment,
18 decree or final order:

- 19 1. While a post-trial motion is pending;
- 20 2. During the time in which an appeal may be commenced in any
21 court in or outside of this state; or
- 22 3. While an appeal is pending in any court in or outside of
23 this state.

24

1 Such stay may be obtained by filing with the court clerk a written
2 undertaking and the posting of a supersedeas bond or other security
3 as provided in this section. In the undertaking the appellant shall
4 agree to satisfy the judgment, decree or final order, and pay the
5 costs and interest on appeal, if it is affirmed. The undertaking
6 and supersedeas bond or security may be given at any time. The stay
7 is effective when the bond and the sufficiency of the sureties are
8 approved by the trial court or the security is deposited with the
9 court clerk. The enforcement of the judgment, decree or order shall
10 no longer be stayed, and the judgment, decree or order may be
11 enforced against any surety on the bond or other security:

12 1. If neither a post-trial motion nor a petition in error is
13 filed, and the time for appeal has expired;

14 2. If a post-trial motion is no longer pending, no petition in
15 error has been filed, and the time for appeal has expired; or

16 3. If an appeal is no longer pending.

17 B. The amount of the bond or other security shall be as
18 follows:

19 1. When the judgment, decree or final order is for payment of
20 money:

21 a. subject to the limitations hereinafter provided, the
22 bond shall be double the amount of the judgment,
23 decree or final order, unless the bond is executed or
24 guaranteed by a surety as hereinafter provided. The

1 bond shall be for the amount of the judgment, decree
2 or order including costs and interest on appeal where
3 it is executed or guaranteed by an entity with
4 suretyship powers as provided by the laws of Oklahoma.
5 In no case shall the bond exceed Twenty-five Million
6 Dollars (\$25,000,000.00). If the party posting the
7 supersedeas bond is an individual or a business with
8 two hundred fifty (250) employees or less on the date
9 of the judgment, the supersedeas bond shall not exceed
10 One Million Dollars (\$1,000,000.00). On a showing by
11 the judgment debtor that the judgment debtor is likely
12 to suffer substantial economic harm if required to
13 post bond in the amount required by this paragraph,
14 the court shall balance the likely substantial
15 economic harm to the judgment debtor with the ability
16 of the judgment creditor to collect the judgment in
17 the event the judgment is affirmed on appeal and may
18 lower the bond accordingly. "Substantial economic
19 harm" means insolvency or creating a significant risk
20 of insolvency. ~~The court shall not lower a bond as~~
21 ~~provided in this paragraph to the extent there is in~~
22 ~~effect an insurance policy, or agreement under which a~~
23 ~~third party is liable to satisfy part or all of the~~
24 ~~judgment entered and such party is required to post~~

1 ~~all or part of the bond. Upon lowering the bond as~~
2 ~~provided in this paragraph, the court shall enter an~~
3 ~~order enjoining a judgment debtor from dissipating or~~
4 ~~transferring assets to avoid satisfaction of the~~
5 ~~judgment, but the court shall not make any order that~~
6 ~~interferes with the judgment debtor's use of assets in~~
7 ~~the normal course of business~~ If it is proved by a
8 preponderance of the evidence that the appellant for
9 whom the bond has been limited pursuant to this
10 subparagraph is intentionally dissipating or diverting
11 assets outside of the ordinary course of its business
12 for the purpose of avoiding payment of the judgment,
13 the court shall enter such orders as are necessary to
14 prevent dissipation or diversion including, but not
15 limited to, requiring that a bond be posted equal to
16 the full amount of security required pursuant to this
17 section, and

- 18 b. instead of filing a supersedeas bond, the appellant
19 may obtain a stay by depositing cash with the court
20 clerk in the amount of the judgment or order plus an
21 amount that the court determines will cover costs and
22 interest on appeal. The court shall have discretion
23 to accept United States Treasury notes or general
24 obligation bonds of the State of Oklahoma in lieu of

1 cash. If the court accepts such notes or bonds, it
2 shall make appropriate orders for their safekeeping
3 and maintenance during the stay;

4 2. When the judgment, decree or final order directs execution
5 of a conveyance or other instrument, the amount of the bond shall be
6 determined by the court. Instead of posting a supersedeas bond or
7 other security, the appellant may execute the conveyance or other
8 instrument and deliver it to the clerk of the court for deposit with
9 a public or private entity for safekeeping, as directed by the court
10 in writing;

11 3. When the judgment, decree or final order directs the
12 delivery of possession of real or personal property, the bond shall
13 be in an amount, to be determined by the court, that will protect
14 the interests of the parties. The court may consider the value of
15 the use of the property, any waste that may be committed on or to
16 the property during the pendency of the stay, the value of the
17 property, and all costs. When the judgment, decree or final order
18 is for the sale of mortgaged premises and the payment of a
19 deficiency arising from the sale, the bond must also provide for the
20 payment of the deficiency;

21 4. When the judgment or final order directs the assignment or
22 delivery of documents, they may be placed in the custody of the
23 clerk of the court in which the judgment or order was rendered, for
24 deposit with a public or private entity for safekeeping during the

1 pendency of the stay, as directed by the court in writing, or the
2 bond shall be in such sum as may be prescribed by the court; or

3 5. In order to protect any monies payable to the Tobacco
4 Settlement Fund as set forth in Section 50 of Title 62 of the
5 Oklahoma Statutes, the bond in any action or litigation brought
6 under any legal theory involving a signatory, successor of a
7 signatory or an affiliate of a signatory to the Master Settlement
8 Agreement dated November 23, 1998, or a signatory, successor of a
9 signatory or an affiliate of a signatory to the Smokeless Tobacco
10 Master Settlement Agreement, also dated November 23, 1998, shall be
11 in an amount not to exceed one hundred percent (100%) of the
12 judgment, exclusive of interest and costs, ten percent (10%) of the
13 net worth of the judgment debtor, or Twenty-five Million Dollars
14 (\$25,000,000.00), whichever is less. However, if it is proved by a
15 preponderance of the evidence that the appellant for whom the bond
16 has been limited pursuant to this paragraph is intentionally
17 dissipating or diverting assets outside of the ordinary course of
18 its business for the purpose of avoiding payment of the judgment,
19 the court shall enter such orders as are necessary to prevent
20 dissipation or diversion, including, but not limited to, requiring
21 that a bond be posted equal to the full amount of security required
22 pursuant to this section. For purposes of this paragraph, "Master
23 Settlement Agreement" shall have the same meaning as that term is
24 defined in paragraph 5 of Section 600.22 of Title 37 of the Oklahoma

1 Statutes, and "Smokeless Tobacco Master Settlement Agreement" means
2 the settlement agreement and related documents entered into on
3 November 23, 1998, by this state and leading United States smokeless
4 tobacco product manufacturers.

5 C. Subsections A and B of this section shall not apply in
6 actions involving temporary or permanent injunctions, actions for
7 divorce, separate maintenance, annulment, paternity, custody,
8 adoption, or termination of parental rights, or in juvenile matters,
9 post-decree matrimonial proceedings or habeas corpus proceedings.
10 The trial or appellate court, in its discretion, may stay the
11 enforcement of any provision in a judgment, decree or final order in
12 any of the types of actions or proceedings listed in this subsection
13 during the pendency of the appeal or while any post-trial motion is
14 pending upon such terms as to bond or otherwise as it considers
15 proper for the security of the rights of the parties. If a
16 temporary or permanent injunction is denied or dissolved, the trial
17 or appellate court, in its discretion, may restore or grant an
18 injunction during the pendency of the appeal and while any post-
19 trial motions are pending upon such terms as to bond or otherwise as
20 it considers proper for the security of the rights of the parties.

21 D. In any action not provided for in ~~subsections~~ subsection A,
22 B or C of this section, the court may stay the enforcement of any
23 judgment, decree or final order during the pendency of the appeal or
24 while any post-trial motion is pending upon such terms as to bond or

1 otherwise as it considers proper for the security of the rights of
2 the parties.

3 E. The trial court shall have continuing jurisdiction during
4 the pendency of any post-trial motion and appeal to modify any order
5 it has entered regarding security or other conditions in connection
6 with a stay.

7 F. The execution of a supersedeas bond shall not be a condition
8 for the granting of a stay of judgment, decree or final order of any
9 judicial tribunal against any county, municipality, or other
10 political subdivision of the State of Oklahoma.

11 G. Executors, administrators and guardians who have given bond
12 in this state, with sureties, according to law, are not required to
13 provide a supersedeas bond if they are granted a stay of enforcement
14 of a judgment, decree or final order.

15 H. After an appeal has been decided, but before the mandate has
16 issued, a party whose trial court judgment has been affirmed, may
17 move the appellate court to order judgment on the bond or other
18 security in the amount of the judgment plus interest, appeals costs
19 and allowable appeal-related attorney fees. After mandate has
20 issued, a party who has posted a bond or other security may move for
21 exoneration of the bond or other security only in the trial court;
22 and all motions concerning the bond or other security must be
23 addressed to the trial court.

24

1 final judgment shall grant the relief to which the party in whose
2 favor it is rendered is entitled, even if the party has not demanded
3 such relief in his or her pleadings.

4 C. BY WHOM SERVED: PERSON TO BE SERVED.

5 1. SERVICE BY PERSONAL DELIVERY.

6 a. At the election of the plaintiff, process, other than
7 a subpoena, shall be served by a sheriff or deputy
8 sheriff, a person licensed to make service of process
9 in civil cases, or a person specially appointed for
10 that purpose. The court shall freely make special
11 appointments to serve all process, other than a
12 subpoena, under this paragraph.

13 b. A summons to be served by the sheriff or deputy
14 sheriff shall be delivered to the sheriff by the court
15 clerk or an attorney of record for the plaintiff.
16 When a summons, subpoena, or other process is to be
17 served by the sheriff or deputy sheriff of another
18 county, the court clerk shall mail it, together with
19 his voucher for the fees collected for the service, to
20 the sheriff of that county. The sheriff shall deposit
21 the voucher in the Sheriff's Service Fee Account
22 created pursuant to Section 514.1 of Title 19 of the
23 Oklahoma Statutes. The sheriff or deputy sheriff
24 shall serve the process in the manner that other

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

7 c. Service shall be made as follows:

8 (1) Upon an individual other than an infant who is
9 less than fifteen (15) years of age or an
10 incompetent person, by delivering a copy of the
11 summons and of the petition personally or by
12 leaving copies thereof at the person's dwelling
13 house or usual place of abode with some person
14 then residing therein who is fifteen (15) years
15 of age or older or by delivering a copy of the
16 summons and of the petition to an agent
17 authorized by appointment or by law to receive
18 service of process;

19 (2) Upon an infant who is less than fifteen (15)
20 years of age, by serving the summons and petition
21 personally and upon either of the infant's
22 parents or guardian, or if they cannot be found,
23 then upon the person having the care or control
24 of the infant or with whom the infant lives; and

1 upon an incompetent person by serving the summons
2 and petition personally and upon the incompetent
3 person's guardian;

4 (3) Upon a domestic or foreign corporation or upon a
5 partnership or other unincorporated association
6 which is subject to suit under a common name, by
7 delivering a copy of the summons and of the
8 petition to an officer, a managing or general
9 agent, or to any other agent authorized by
10 appointment or by law to receive service of
11 process and, if the agent is one authorized by
12 statute to receive service and the statute so
13 requires, by also mailing a copy to the
14 defendant;

15 (4) Upon the United States or an officer or agency
16 thereof in the manner specified by Federal Rule
17 of Civil Procedure 4;

18 (5) Upon a state, county, school district, public
19 trust or municipal corporation or other
20 governmental organization thereof subject to
21 suit, by delivering a copy of the summons and of
22 the petition to the officer or individual
23 designated by specific statute; however, if there
24 is no statute, then upon the chief executive

1 officer or a clerk, secretary, or other official
2 whose duty it is to maintain the official records
3 of the organization; and

4 (6) Upon an inmate incarcerated in an institution
5 under the jurisdiction and control of the
6 Department of Corrections, by delivering a copy
7 of the summons and of the petition to the warden
8 or superintendent or the designee of the warden
9 or superintendent of the institution where the
10 inmate is housed. It shall be the duty of the
11 receiving warden or superintendent or a designee
12 to promptly deliver the summons and petition to
13 the inmate named therein. The warden or
14 superintendent or his or her designee shall
15 reject service of process for any inmate who is
16 not actually present in said institution.

17 2. SERVICE BY MAIL.

18 a. At the election of the plaintiff, a summons and
19 petition may be served by mail by the plaintiff's
20 attorney, any person authorized to serve process
21 pursuant to subparagraph a of paragraph 1 of this
22 subsection, or by the court clerk upon a defendant of
23 any class referred to in division (1), (3), or (5) of
24 subparagraph c of paragraph 1 of this subsection.

1 Service by mail shall be effective on the date of
2 receipt or if refused, on the date of refusal of the
3 summons and petition by the defendant.

4 b. Service by mail shall be accomplished by mailing a
5 copy of the summons and petition by certified mail,
6 return receipt requested and delivery restricted to
7 the addressee. When there is more than one defendant,
8 the summons and a copy of the petition or order shall
9 be mailed in a separate envelope to each defendant.
10 If the summons is to be served by mail by the court
11 clerk, the court clerk shall enclose the summons and a
12 copy of the petition or order of the court to be
13 served in an envelope, prepared by the plaintiff,
14 addressed to the defendant, or to the resident service
15 agent if one has been appointed. The court clerk
16 shall prepay the postage and mail the envelope to the
17 defendant, or service agent, by certified mail, return
18 receipt requested and delivery restricted to the
19 addressee. The return receipt shall be prepared by
20 the plaintiff. Service by mail to a garnishee shall
21 be accomplished by mailing a copy of the summons and
22 notice by certified mail, return receipt requested,
23 and at the election of the judgment creditor by
24 restricted delivery, to the addressee.

1 c. Service by mail shall not be the basis for the entry
2 of a default or a judgment by default unless the
3 record contains a return receipt showing acceptance by
4 the defendant or a returned envelope showing refusal
5 of the process by the defendant. Acceptance or
6 refusal of service by mail by a person who is fifteen
7 (15) years of age or older who resides at the
8 defendant's dwelling house or usual place of abode
9 shall constitute acceptance or refusal by the party
10 addressed. In the case of an entity described in
11 division (3) of subparagraph c of paragraph 1 of this
12 subsection, acceptance or refusal by any officer or by
13 any employee of the registered office or principal
14 place of business who is authorized to or who
15 regularly receives certified mail shall constitute
16 acceptance or refusal by the party addressed. A
17 return receipt signed at such registered office or
18 principal place of business shall be presumed to have
19 been signed by an employee authorized to receive
20 certified mail. In the case of a state municipal
21 corporation, or other governmental organization
22 thereof subject to suit, acceptance or refusal by an
23 employee of the office of the officials specified in
24 division (5) of subparagraph c of paragraph 1 of this

1 subsection who is authorized to or who regularly
2 receives certified mail shall constitute acceptance or
3 refusal by the party addressed. If delivery of the
4 process is refused, upon the receipt of notice of such
5 refusal and at least ten (10) days before applying for
6 entry of default, the person elected by plaintiff
7 pursuant to subparagraph a of this paragraph to serve
8 the process shall mail to the defendant by first-class
9 mail a copy of the summons and petition and a notice
10 prepared by the plaintiff that despite such refusal
11 the case will proceed and that judgment by default
12 will be rendered against him unless he appears to
13 defend the suit. Any default or judgment by default
14 shall be set aside upon motion of the defendant in the
15 manner prescribed in Section 1031.1 of this title, or
16 upon petition of the defendant in the manner
17 prescribed in Section 1033 of this title if the
18 defendant demonstrates to the court that the return
19 receipt was signed or delivery was refused by an
20 unauthorized person. A petition shall be filed within
21 one (1) year after the defendant has notice of the
22 default or judgment by default but in no event more
23 than two (2) years after the filing of the judgment.

24 3. SERVICE BY PUBLICATION.

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

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

18 (1) whether a person named as defendant is living or
19 dead, and, if dead, the names or whereabouts of
20 the person's successors, if any,

21 (2) the names or whereabouts of the unknown
22 successors, if any, of a named decedent,

23 (3) whether a partnership, corporation, or other
24 association named as a defendant continues to

1 have legal existence or not; or the names or
2 whereabouts of its officers or successors,

3 (4) whether any person designated in a record as a
4 trustee continues to be the trustee; or the names
5 or whereabouts of the successors of the trustee,
6 or

7 (5) the names or whereabouts of the owners or holders
8 of special assessment or improvement bonds, or
9 any other bonds, sewer warrants or tax bills.

10 c. Service pursuant to this paragraph shall be made by
11 publication of a notice, signed by the court clerk,
12 one (1) day a week for three (3) consecutive weeks in
13 a newspaper authorized by law to publish legal notices
14 which is published in the county where the petition is
15 filed. If no newspaper authorized by law to publish
16 legal notices is published in such county, the notice
17 shall be published in some such newspaper of general
18 circulation which is published in an adjoining county.
19 All named parties and their unknown successors who may
20 be served by publication may be included in one
21 notice. The notice shall state the court in which the
22 petition is filed and the names of the plaintiff and
23 the parties served by publication, and shall designate
24 the parties whose unknown successors are being served.

1 The notice shall also state that the named defendants
2 and their unknown successors have been sued and must
3 answer the petition on or before a time to be stated
4 (which shall not be less than forty-one (41) days from
5 the date of the first publication), or judgment, the
6 nature of which shall be stated, will be rendered
7 accordingly. If jurisdiction of the court is based on
8 property, any real property subject to the
9 jurisdiction of the court and any property or debts to
10 be attached or garnished must be described in the
11 notice.

12 (1) When the recovery of money is sought, it is not
13 necessary for the publication notice to state the
14 separate items involved, but the total amount
15 that is claimed must be stated. When interest is
16 claimed, it is not necessary to state the rate of
17 interest, the date from which interest is
18 claimed, or that interest is claimed until the
19 obligation is paid.

20 (2) It is not necessary for the publication notice to
21 state that the judgment will include recovery of
22 costs in order for a judgment following the
23 publication notice to include costs of suit.
24

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

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

23 d. Service by publication is complete when made in the
24 manner and for the time prescribed in subparagraph c

1 of this paragraph. Service by publication shall be
2 proved by the affidavit of any person having knowledge
3 of the publication. No default judgment may be
4 entered on such service until proof of service by
5 publication is filed with and approved by the court.

6 e. Before entry of a default judgment or order against a
7 party who has been served solely by publication under
8 this paragraph, the court shall conduct an inquiry to
9 determine whether the plaintiff, or someone acting in
10 his behalf, made a distinct and meaningful search of
11 all reasonably available sources to ascertain the
12 whereabouts of any named parties who have been served
13 solely by publication under this paragraph. Before
14 entry of a default judgment or order against the
15 unknown successors of a named defendant, a named
16 decedent, or a dissolved partnership, corporation or
17 association, the court shall conduct an inquiry to
18 ascertain whether the requirements described in
19 subparagraph b of this paragraph have been satisfied.

20 f. A party against whom a default judgment or order has
21 been rendered, without other service than by
22 publication in a newspaper, may, at any time within
23 three (3) years after the filing of the judgment or
24 order, have the judgment or order set aside in the

1 manner prescribed in Sections 1031.1 and 1033 of this
2 title. Before the judgment or order is set aside, the
3 applicant shall notify the adverse party of the
4 intention to make an application and shall file a full
5 answer to the petition, pay all costs if the court
6 requires them to be paid, and satisfy the court by
7 affidavit or other evidence that during the pendency
8 of the action the applicant had no actual notice
9 thereof in time to appear in court and make a defense.
10 The title to any property which is the subject of and
11 which passes to a purchaser in good faith by or in
12 consequence of the judgment or order to be opened
13 shall not be affected by any proceedings under this
14 subparagraph. Nor shall proceedings under this
15 subparagraph affect the title of any property sold
16 before judgment under an attachment. The adverse
17 party, on the hearing of an application to open a
18 judgment or order as provided by this subparagraph,
19 shall be allowed to present evidence to show that
20 during the pendency of the action the applicant had
21 notice thereof in time to appear in court and make a
22 defense.

23 g. The term "successors" includes all heirs, executors,
24 administrators, devisees, trustees, and assigns,

1 immediate and remote, of a named individual,
2 partnership, corporation, or association.

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

9 4. SERVICE ON THE SECRETARY OF STATE.

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

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

15 or

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

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

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

1 Oklahoma Tax Commission, if any is listed there;
2 and

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

6 (3) the corporation's last address known to the
7 plaintiff.

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

13 c. Service on the Secretary of State shall be made by
14 filing two (2) copies of the summons and petition with
15 the Secretary of State, notifying the Secretary of
16 State that service is being made pursuant to the
17 provisions of this paragraph, and paying the Secretary
18 of State the fee prescribed in paragraph 7 of Section
19 1142 of Title 18 of the Oklahoma Statutes, which fee
20 shall be taxed as part of the costs of the action,
21 suit or proceeding if the plaintiff shall prevail
22 therein. If a registered agent for the corporation is
23 listed in the records of the Secretary of State, the
24 plaintiff must also furnish a certified copy of the

1 return showing that service on the registered agent
2 has been attempted either in person or by mail, and
3 that neither the registered agent nor an officer of
4 the corporation could be found at the registered
5 office of the corporation.

6 d. Within three (3) working days after receiving the
7 summons and petition, the Secretary of State shall
8 send notice by letter, certified mail, return receipt
9 requested, directed to the corporation at its
10 registered office or the last-known address found in
11 the office of the Secretary of State, or if no address
12 is found there, to the corporation's last-known
13 address provided by the plaintiff. The notice shall
14 enclose a copy of the summons and petition and any
15 other papers served upon the Secretary of State. The
16 corporation shall not be required to serve its answer
17 until forty (40) days after service of the summons and
18 petition on the Secretary of State.

19 e. Before entry of a default judgment or order against a
20 corporation that has been served by serving the
21 Secretary of State as its agent under this paragraph,
22 the court shall determine whether the requirements of
23 this paragraph have been satisfied. A default
24 judgment or order against a corporation that has been

1 served only by service on the Secretary of State may
2 be set aside upon motion of the corporation in the
3 manner prescribed in Section 1031.1 of this title, or
4 upon petition of the corporation in the manner
5 prescribed in Section 1033 of this title, if the
6 corporation demonstrates to the court that it had no
7 actual notice of the action in time to appear and make
8 its defense. A petition shall be filed within one (1)
9 year after the corporation has notice of the default
10 judgment or order but in no event more than two (2)
11 years after the filing of the default judgment or
12 order.

13 f. The Secretary of State shall maintain an alphabetical
14 record of service setting forth the name of the
15 plaintiff and defendant, the title, docket number, and
16 nature of the proceeding in which the process has been
17 served upon the defendant, the fact that service has
18 been effected pursuant to the provisions of this
19 paragraph, the return date thereof, and the date when
20 the service was made. The Secretary of State shall
21 not be required to retain this information for a
22 period longer than five (5) years from receipt of the
23 service of process.
24

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

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

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

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

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

1 person serving the summons shall state on the copy that is left with
2 the person served the date that service is made. This provision is
3 not jurisdictional, but if the failure to comply with it prejudices
4 the party served, the court, on motion of the party served, may
5 extend the time to answer or otherwise plead.

6 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

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

- 13 a. by personal delivery in the manner prescribed for
14 service within this state,
- 15 b. in the manner prescribed by the law of the place in
16 which the service is made for service in that place in
17 an action in any of its courts of general
18 jurisdiction,
- 19 c. in the manner prescribed by paragraph 2 of subsection
20 C of this section,
- 21 d. as directed by the foreign authority in response to a
22 letter rogatory,
- 23 e. in the manner prescribed by paragraph 3 of subsection
24 C of this section only when permitted by subparagraphs

1 a and b of paragraph 3 of subsection C of this
2 section, or

3 f. as directed by the court.

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

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

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

17 6. a. A court of this state may order service upon any
18 person who is domiciled or can be found within this
19 state of any document issued in connection with a
20 proceeding in a tribunal outside this state. The
21 order may be made upon application of any interested
22 person or in response to a letter rogatory issued by a
23 tribunal outside this state and shall direct the
24 manner of service.

1 b. Service in connection with a proceeding in a tribunal
2 outside this state may be made within this state
3 without an order of court.

4 c. Service under this paragraph does not, of itself,
5 require the recognition or enforcement of an order,
6 judgment, or decree rendered outside this state.

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

10 G. RETURN.

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

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

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

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

20 I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is
21 not made upon a defendant within ~~one hundred eighty (180)~~ one
22 hundred twenty (120) days after the filing of the petition and the
23 plaintiff cannot show good cause why such service was not made
24 within that period, the action ~~may~~ shall be deemed dismissed as to

1 that defendant without prejudice ~~upon the court's own initiative~~
2 ~~with notice to the plaintiff or upon motion.~~ The action shall not
3 be dismissed ~~where~~ if a summons was served on the defendant within
4 ~~one hundred eighty (180)~~ one hundred twenty (120) days after the
5 filing of the petition and a court later holds that the summons or
6 its service was invalid. After a court quashes a summons or its
7 service, a new summons may be served on the defendant within a time
8 specified by the judge. If the new summons is not served within the
9 specified time, the action shall be deemed to have been dismissed
10 without prejudice as to that defendant. This subsection shall not
11 apply with respect to a defendant who has been outside of this state
12 for ~~one hundred eighty (180)~~ one hundred twenty (120) days following
13 the filing of the petition.

14 SECTION 9. AMENDATORY 12 O.S. 2001, Section 2011, as
15 amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006,
16 Section 2011), is amended to read as follows:

17 Section 2011.

18 SIGNING OF PLEADINGS

19 A. SIGNATURE. Every pleading, written motion, and other paper
20 shall be signed by at least one attorney of record in ~~his~~ the
21 attorney's individual name, whose Oklahoma Bar Association
22 identification number shall be stated, or, if the party is not
23 represented by an attorney, shall be signed by the party. Each
24 paper shall state the address of the signer and telephone number, if

1 any. Except when otherwise specifically provided by rule or
2 statute, pleadings need not be verified or accompanied by affidavit.
3 An unsigned paper shall be stricken unless the omission of the
4 signature is corrected promptly after being called to the attention
5 of the attorney or party.

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

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

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

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

23

24

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

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

10 1. HOW INITIATED.

11 a. By Motion. A motion for sanctions under this rule
12 shall be made separately from other motions or
13 requests and shall describe the specific conduct
14 alleged to violate subsection B of this section. It
15 shall be served as provided in Section 2005 of this
16 title, but shall not be filed with or presented to the
17 court unless, within twenty-one (21) days after
18 service of the motion or such other period as the
19 court may prescribe, the challenged paper, claim,
20 defense, contention, allegation, or denial is not
21 withdrawn or appropriately corrected. If warranted,
22 the court may award to the party prevailing on the
23 motion the reasonable expenses and attorneys fees
24 incurred in presenting or opposing the motion. Absent

1 exceptional circumstances, a law firm shall be held
2 jointly responsible for violations committed by its
3 partners, associates, and employees.

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

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

20 a. Monetary sanctions shall not be awarded against a
21 represented party for a violation of paragraph 2 of
22 subsection B of this section.

23 b. Monetary sanctions shall not be awarded on the court's
24 initiative unless the court issues its order to show

1 cause before a voluntary dismissal or settlement of
2 the claims made by or against the party which is, or
3 whose attorneys are, to be sanctioned.

4 c. Monetary sanctions shall be awarded for any violations
5 of paragraph 1 of subsection B of this section. The
6 sanctions shall consist of an order directing payment
7 of reasonable costs, including attorney fees, incurred
8 by the movant with respect to the conduct for which
9 the sanctions are imposed. In addition, the court may
10 impose any other sanctions authorized by this
11 paragraph.

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

15 D. INAPPLICABILITY TO DISCOVERY. This section does not apply
16 to disclosures and discovery requests, responses, objections, and
17 motions that are subject to the provisions of Sections 3226 through
18 3237 of this title.

19 E. DEFINITION. As used in this section, "frivolous" means the
20 action or pleading was knowingly asserted in bad faith, ~~was~~
21 ~~unsupported by any credible evidence, was not grounded in fact, or~~
22 ~~was unwarranted by existing law or a good faith argument for the~~
23 ~~extension, modification, or reversal of existing law or the~~
24

1 ~~establishment of new law~~ or without any rational argument based in
2 law or facts to support the position of the litigant.

3 SECTION 10. AMENDATORY Section 1, Chapter 370, O.S.L.
4 2004 (12 O.S. Supp. 2006, Section 2011.1), is amended to read as
5 follows:

6 Section 2011.1 In any action not arising out of contract, the
7 court shall, upon granting a motion to dismiss an action or a motion
8 for summary judgment or subsequent to adjudication on the merits,
9 determine whether a claim or defense asserted in the action by a
10 nonprevailing party was frivolous. As used in this section,
11 "frivolous" means the action was knowingly asserted in bad faith,
12 ~~was unsupported by any credible evidence, was not grounded in fact,~~
13 ~~or was unwarranted by existing law or a good faith argument for the~~
14 ~~extension, modification, or reversal of existing law or the~~
15 ~~establishment of new law~~ or without any rational argument based in
16 law or facts to support the position of the litigant. Upon so
17 finding, the court shall enter a judgment ordering such
18 nonprevailing party to reimburse the prevailing party for reasonable
19 costs, including attorney fees, incurred with respect to such claim
20 or defense. In addition, the court may impose any sanction
21 authorized by Section 2011 of ~~Title 12 of the Oklahoma Statutes~~ this
22 title.

23 SECTION 11. AMENDATORY 12 O.S. 2001, Section 2023, is
24 amended to read as follows:

1 Section 2023.

2 CLASS ACTIONS

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

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

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

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

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

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

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

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

22 b. adjudications with respect to individual members of
23 the class which would as a practical matter be
24 dispositive of the interests of the other members not

1 parties to the adjudications or substantially impair
2 or impede their ability to protect their interests; or

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

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

- 12 a. the interest of members of the class in individually
13 controlling the prosecution or defense of separate
14 actions,
- 15 b. the extent and nature of any litigation concerning the
16 controversy already commenced by or against members of
17 the class,
- 18 c. the desirability or undesirability of concentrating
19 the litigation of the claims in the particular forum,
20 and
- 21 d. the difficulties likely to be encountered in the
22 management of a class action.

1 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE
2 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS
3 ACTIONS.

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

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

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

1 ~~Where~~ If the class contains more than five hundred (500)
2 potential members who can be identified through reasonable effort,
3 it shall not be necessary to direct individual notice to more than
4 five hundred (500) potential members, but the potential members to
5 whom individual notice is not directed shall be given notice in such
6 manner as the court shall direct, which may include publishing
7 notice in newspapers, magazines, trade journals or other
8 publications, posting it in appropriate places, and taking other
9 steps that are reasonably calculated to bring the notice to the
10 attention of such members; provided, that the cost of giving such
11 notice shall be reasonable in view of the amounts that may be
12 recovered by the class ~~members who are being notified.~~ ~~Members~~
13 Potential members to whom individual notice was not directed may
14 request ~~exclusion from~~ inclusion in the class at any time before the
15 issue of liability is determined, ~~and;~~ provided, commencing an
16 individual action before the issue of liability is determined in the
17 class action shall ~~be the equivalent of requesting~~ result in
18 exclusion from the class.

19 3. The judgment in an action maintained as a class action under
20 ~~paragraphs~~ paragraph 1 or 2 of subsection B of this section, whether
21 or not favorable to the class, shall include and describe those whom
22 the court finds to be members of the class. The judgment in an
23 action maintained as a class action under paragraph 3 of subsection
24 B of this section, whether or not favorable to the class, shall

1 include and specify or describe those to whom the notice provided in
2 paragraph 2 of this subsection ~~C of this section~~ was directed, and
3 who have ~~not~~ requested ~~exclusion~~ inclusion, and whom the court finds
4 to be members of the class.

5 4. When appropriate:

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

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

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

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

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

24

1 3. Upon certification of a class, requiring for the sole
2 purpose of class notice, parties to the action provide such names
3 and addresses of potential members of the class as they possess;

4 4. Imposing conditions on the representative parties or on
5 intervenors;

6 ~~4.~~ 5. Requiring that the pleadings be amended to eliminate
7 therefrom allegations as to representation of absent persons, and
8 that the action proceed accordingly; and

9 ~~5.~~ 6. Dealing with similar procedural matters.

10 The orders may be combined with an order under Section ~~46~~ 2016 of
11 this ~~act~~ title and may be altered or amended as may be desirable
12 from time to time.

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

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

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

1 for a summary judgment in the party's favor upon all or any part
2 thereof.

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

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

19 D. NOT FULLY ADJUDICATED ON MOTION. If, on motion under this
20 section, judgment is not rendered upon the whole case or for all the
21 relief asked and a trial is necessary, the court at the hearing of
22 the motion, by examining the pleadings and the evidence before it
23 and by interrogating counsel, shall ascertain, if practicable, what
24 material facts exist without substantial controversy and what

1 material facts are actually and in good faith controverted. It
2 shall make thereupon an order specifying the facts that appear
3 without substantial controversy, including the extent to which the
4 amount of damages or other relief is not in controversy, and
5 directing such further proceedings in the action as are just. Upon
6 the trial of the action, the facts so specified shall be deemed
7 established, and the trial shall be conducted accordingly.

8 E. FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED.

9 Supporting and opposing affidavits shall be made on personal
10 knowledge, shall set forth such facts as would be admissible in
11 evidence, and shall show affirmatively that the affiant is competent
12 to testify to the matters stated therein. Sworn or certified copies
13 of all papers or parts thereof referred to in an affidavit shall be
14 attached thereto or served therewith. The court may permit
15 affidavits to be supplemented or opposed by depositions, answers to
16 interrogatories, or further affidavits. When a motion for summary
17 judgment is made and supported as provided in this rule, a party may
18 not rest upon the mere allegations or denials of the party's
19 pleading, but the party's response, by affidavits or as otherwise
20 provided in this rule, must set forth specific facts showing that
21 there is a genuine issue for trial or no genuine issue for trial, as
22 appropriate. The adverse party has the burden of producing evidence
23 on any issue raised in the motion on which the adverse party would
24 have the burden of persuasion at trial. If the adverse party does

1 not so respond, summary judgment, if otherwise appropriate
2 hereunder, shall be entered against the adverse party.

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

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

21 H. STANDARD OF PROOF. Summary judgment shall be granted in
22 favor of a party only where there is no genuine issue as to any
23 material fact and that the moving party is entitled to a judgment as
24 a matter of law. If a standard of proof beyond a preponderance of

1 the evidence applies at trial, the heightened standard shall be
2 taken into account by the court in ruling on a motion for summary
3 judgment.

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

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

11 SECTION 13. AMENDATORY 12 O.S. 2001, Section 2702, is
12 amended to read as follows:

13 Section 2702. A. OPINION TESTIMONY BY LAY WITNESSES. If the
14 witness is not testifying as an expert, the witness' testimony in
15 the form of opinions or inferences is limited to those opinions or
16 inferences which are:

- 17 1. Rationally based on the perception of the witness;
18 2. Helpful to a clear understanding of the witness' testimony
19 or the determination of a fact in issue; and
20 3. Not based on scientific, technical, or other specialized
21 knowledge within the scope of subsection B of this section.

22 B. TESTIMONY BY EXPERTS. If scientific, technical or other
23 specialized knowledge will assist the trier of fact to understand
24 the evidence or to determine a fact in issue, a witness qualified as

1 an expert by knowledge, skill, experience, training or education may
2 testify in the form of an opinion or otherwise, if:

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

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

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

8 C. BASES OF EXPERT OPINION TESTIMONY. The facts or data in the
9 particular case upon which an expert bases an opinion or inference
10 may be those perceived by or made known to the expert at or before
11 the hearing. If of a type reasonably relied upon by experts in the
12 particular field in forming opinions or inferences upon the subject,
13 the facts or data need not be admissible in evidence in order for
14 the opinion or inference to be admitted. Facts or data that are
15 otherwise inadmissible shall not be disclosed to the jury by the
16 proponent of the opinion or inference unless the court determines
17 that their probative value in assisting the jury to evaluate the
18 expert's opinion substantially outweighs their prejudicial effect.

19 D. BARS TO EXPERT TESTIMONY.

20 1. A witness qualified as an expert by knowledge, skill,
21 experience, training, or education may only offer expert testimony
22 with respect to a particular field in which the expert is qualified.

23 2. An expert witness may receive a reasonable and customary fee
24 for the rendering of professional services; provided, that the

1 testimony of an expert witness shall not be admitted if any such
2 compensation is contingent on the outcome of any claim or case with
3 respect to which the testimony is being offered and said contingency
4 contract shall be null and void as against public policy.

5 E. MANDATORY PRETRIAL HEARING. If the witness is testifying as
6 an expert, then upon motion of a party, the court shall hold a
7 pretrial hearing to determine whether the witness qualifies as an
8 expert and whether the expert's testimony satisfies the requirements
9 of subsections B through D of this section. The court shall allow
10 sufficient time for a hearing and shall rule on the qualifications
11 of the witness to testify as an expert and whether or not the
12 testimony satisfies the requirements of subsections B through D of
13 this section. Such hearing and ruling shall be completed no later
14 than the Final Pretrial Hearing. Upon request, the trial court's
15 ruling shall set forth the findings of fact and conclusions of law
16 upon which the order to admit or exclude expert evidence is based.

17 F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

18 1. Whether or not any party elects to request a pretrial
19 hearing contemplated in subsection E of this section, all parties
20 shall disclose to other parties the identity of any person who may
21 be used at trial to present expert evidence.

22 2. Except as otherwise stipulated or directed by the court,
23 this disclosure shall, with respect to a witness who is retained or
24 specially employed to provide expert testimony in the case or whose

1 duties as an employee of the party regularly involve giving expert
2 testimony, be accompanied by a written report prepared and signed by
3 the witness. The report shall contain a complete statement of all
4 opinions to be expressed and the basis and reasons therefor; the
5 data or other information relied upon by the witness in forming the
6 opinions; any exhibits to be used as a summary of or support for the
7 opinions; the qualifications of the witness, including a list of all
8 publications authored by the witness within the preceding ten (10)
9 years; the compensation to be paid for the study and testimony; and
10 a listing of any other cases in which the witness has testified as
11 an expert at trial or by deposition within the preceding four (4)
12 years.

13 3. These disclosures shall be made at the times and in the
14 sequence directed by the court. In the absence of other directions
15 from the court or stipulation by the parties, the disclosures shall
16 be made at least ninety (90) days before the trial date or the date
17 the case is to be ready for trial or, if the evidence is intended
18 solely to contradict or rebut evidence on the same subject matter
19 identified by another party under paragraph 2 of this subsection,
20 within thirty (30) days after the disclosure made by the other
21 party.

22 4. A party may depose any person who has been identified as an
23 expert whose opinions may be presented at trial. If a report from
24 the expert is required under paragraph 2 of this subsection, the

1 deposition shall not be conducted until after the report is
2 provided.

3 G. INTERPRETATION. In interpreting and applying this section,
4 the courts of this state shall follow the opinions of the Supreme
5 Court of the United States in Daubert v. Merrell Dow
6 Pharmaceuticals, Inc., 509 U.S. 579 (1993), General Electric Co. v.
7 Joiner, 522 U.S. 136 (1997), Kuhmo Tire Co. Ltd. v. Carmichael, 526
8 U.S. 137 (1999), Weisgram v. Marley, 528 U.S. 440 (2000); moreover,
9 the courts of this state may draw from other precedents binding in
10 the federal courts of this state applying the standards announced by
11 the Supreme Court of the United States in the foregoing cases.

12 H. INTERLOCUTORY APPEAL. Interlocutory appeal of a ruling on
13 the admissibility of expert evidence shall be available at the
14 discretion of the appellate court. In deciding whether to grant the
15 interlocutory appeal, the court shall consider whether:

16 1. The ruling involved any challenge to the constitutionality
17 of this section;

18 2. The ruling will help prove or disprove criminal liability;
19 or

20 3. The ruling will help establish civil liability at or above
21 Seventy-five Thousand Dollars (\$75,000.00), where the testimony
22 could be outcome-determinative for establishing liability or
23 determining damages. Neither a party's failure to seek
24 interlocutory appeal or an appellate court's decision to deny a

1 motion for interlocutory appeal shall waive a party's right to
2 appeal a ruling on the admissibility of expert evidence after an
3 entry of judgment in the case.

4 I. STANDARD OF REVIEW.

5 1. As the proper construction of the expert evidence
6 admissibility framework prescribed by this section is a question of
7 law, the courts of appeals shall apply a de novo standard of review
8 in determining whether the trial court fully applied the proper
9 legal standard in considering the admissibility of expert evidence.

10 2. As the application of this section to determine the
11 admissibility of expert testimony is a question of fact, the courts
12 of appeals shall apply an abuse of discretion standard in
13 determining whether the trial court properly admitted or excluded
14 particular expert evidence.

15 J. SEVERABILITY CLAUSE. The provisions of this section are
16 severable. If any portion of this section is declared
17 unconstitutional or the application of any part of this section to
18 any person or circumstance is held invalid, the remaining portions
19 of the section and their applicability to any person or circumstance
20 shall remain valid and enforceable.

21 K. EFFECTIVE DATE. This section shall become effective upon
22 enactment and shall apply to all actions commenced on or after the
23 effective date and to all pending actions in which trial has not
24

1 been scheduled or in which trial has been scheduled in excess of
2 ninety (90) days after the effective date.

3 SECTION 14. AMENDATORY 23 O.S. 2001, Section 9.1, as
4 amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2006,
5 Section 9.1), is amended to read as follows:

6 Section 9.1 A. In an action for the breach of an obligation
7 not arising from contract, the jury, in addition to actual damages,
8 may, subject to the provisions and limitations in subsections B, C
9 and D of this section and Section 15 of this act, award punitive
10 damages for the sake of example and by way of punishing the
11 defendant based upon the following factors:

- 12 1. The seriousness of the hazard to the public arising from the
13 defendant's misconduct;
- 14 2. The profitability of the misconduct to the defendant;
- 15 3. The duration of the misconduct and any concealment of it;
- 16 4. The degree of the defendant's awareness of the hazard and of
17 its excessiveness;
- 18 5. The attitude and conduct of the defendant upon discovery of
19 the misconduct or hazard;
- 20 6. In the case of a defendant which is a corporation or other
21 entity, the number and level of employees involved in causing or
22 concealing the misconduct; and
- 23 7. The financial condition of the defendant.

24

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

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

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

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

11 b. the amount of the actual damages awarded.

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

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

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

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

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

- 1 b. twice the amount of actual damages awarded, or
2 c. the increased financial benefit derived by the
3 defendant or insurer as a direct result of the conduct
4 causing the injury to the plaintiff and other persons
5 or entities.

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

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

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

18 2. An insurer has intentionally and with malice breached its
19 duty to deal fairly and act in good faith with its insured; and the
20 court finds, on the record and out of the presence of the jury, that
21 there is evidence beyond a reasonable doubt that the defendant or
22 insurer acted intentionally and with malice and engaged in conduct
23 life-threatening to humans,
24

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

8 E. In determining the amount, if any, of punitive damages to be
9 awarded under either subsection B, C or D of this section, the jury
10 shall make the award based upon the factors set forth in subsection
11 A of this section.

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

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

18 SECTION 15. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 9.2 of Title 23, unless there is
20 created a duplication in numbering, reads as follows:

21 A. Notwithstanding the provisions of Section 9.1 of Title 23 of
22 the Oklahoma Statutes or any other provision of the laws of this
23 state, in a professional liability action the jury may only award
24 punitive damages, in addition to actual damages, if the jury finds

1 by clear and convincing evidence that the defendant has been guilty
2 of intentional or gross negligence.

3 B. Any punitive damages shall be awarded in a separate
4 proceeding conducted after the jury has made the finding required by
5 subsection A of this section and has awarded actual damages.

6 SECTION 16. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 9.3 of Title 23, unless there is
8 created a duplication in numbering, reads as follows:

9 A. As used in this section:

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

- 12 a. medical, health care, or custodial care services,
- 13 b. physical pain and mental anguish, disfigurement, or
- 14 physical impairment,
- 15 c. loss of consortium, companionship, or society, or
- 16 d. loss of earnings;

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

- 19 a. loss of income, wages, or earning capacity and other
- 20 pecuniary losses, or
- 21 b. loss of inheritance; and

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

24

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

4 C. Upon request of a party, the court shall order that medical,
5 health care, or custodial services awarded in an action be paid in
6 whole or in part in periodic payments rather than by a lump-sum
7 payment. Upon request of a party, the court may order that future
8 damages other than medical, health care, or custodial services
9 awarded in a health care liability action be paid in whole or in
10 part in periodic payments rather than by a lump-sum payment.

11 D. The court shall make a specific finding of the dollar amount
12 of periodic payments that will compensate the plaintiff for the
13 future damages. The court shall specify in its judgment ordering
14 the payment of future damages by periodic payments the:

- 15 1. Recipient of the payments;
- 16 2. Dollar amount of the payments;
- 17 3. Interval between payments; and
- 18 4. Number of payments or the period of time over which payments
19 must be made.

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

23 F. As a condition to authorizing periodic payments of future
24 damages, the court shall require a defendant who is not adequately

1 insured to provide evidence of financial responsibility in an amount
2 adequate to assure full payment of damages awarded by the judgment.

3 The judgment shall provide for payments to be funded by:

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

7 2. An obligation of the United States;

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

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

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

15 H. On the death of the recipient, money damages awarded for
16 loss of future earnings shall continue to be paid to the estate of
17 the recipient of the award without reduction. Following the
18 satisfaction or termination of any obligations specified in the
19 judgment for periodic payments, any obligation of the defendant
20 health care provider to make further payments ends and any security
21 given reverts to the defendant.

22 I. For purposes of computing the award of attorney fees when
23 the plaintiff is awarded a recovery that will be paid in periodic
24 payments, the court shall place a total value on the payments based

1 on the plaintiff's projected life expectancy and reduce the amount
2 to present value.

3 SECTION 17. AMENDATORY Section 18, Chapter 368, O.S.L.
4 2004 (23 O.S. Supp. 2006, Section 15), is amended to read as
5 follows:

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

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

15 ~~C.~~ If at the time the incident which gave rise to the cause of
16 action occurred, ~~any a joint tortfeasors~~ tortfeasor acted with
17 willful and wanton conduct or with reckless disregard of the
18 consequences of the conduct and such conduct proximately caused the
19 damages legally recoverable by the plaintiff, the liability for
20 damages shall be joint and several as to any such tortfeasor.

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

24

1 ~~E.~~ C. The provisions of this section shall apply to all civil
2 actions based on fault and not arising out of contract that accrue
3 on or after November 1, ~~2004~~ 2007.

4 SECTION 18. AMENDATORY 23 O.S. 2001, Section 61, is
5 amended to read as follows:

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

11 B. For the breach of an obligation not arising from contract,
12 if the plaintiff receives compensation or is to receive compensation
13 in the future for the injuries or harm that gave rise to the cause
14 of action from a source wholly independent of the defendant, such
15 fact shall be admitted into evidence and the amount shall be
16 deducted from the amount of damages that the plaintiff recovers from
17 the defendant.

18 SECTION 19. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 61.2 of Title 23, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Except as provided in subsection B of this section, in any
22 action not arising out of contract, the amount of noneconomic
23 damages awarded shall not exceed Three Hundred Thousand Dollars
24 (\$300,000.00), regardless of the number of parties against whom the

1 action is brought or the number of actions brought with respect to
2 the personal injury. The dollar amount prescribed by this
3 subsection shall be adjusted annually based upon any positive
4 increase in the Consumer Price Index that measures the average
5 changes in prices of goods and services purchased by urban wage
6 earners and clerical workers' families and single workers living
7 alone (CPI-W) for the preceding calendar year. The adjustment
8 required by this subsection shall be made by the State Treasurer and
9 certified to the Administrative Director of the Courts on April 1 of
10 each year or not later than thirty (30) days after the date upon
11 which the Bureau of Labor Statistics releases the CPI-W inflationary
12 data for the preceding calendar year, whichever date first occurs.
13 No adjustment to the dollar amount prescribed by this subsection
14 shall be made for any year in which there is a decline in the
15 Consumer Price Index.

16 B. If the jury finds by clear and convincing evidence that the
17 acts of the party which caused the damages were grossly negligent or
18 committed intentionally or with malice toward others, and the court
19 finds, on the record and out of the presence of the jury that there
20 is evidence beyond a reasonable doubt that the defendant was grossly
21 negligent or acted intentionally or with malice toward others, the
22 jury in a separate proceeding, conducted after the jury has made
23 such a finding and awarded actual damages, may award noneconomic
24 damages in an amount the jury deems appropriate without regard to

1 the limitation set forth in subsection A of this section. Any award
2 of noneconomic damages under this subsection awarded in any manner
3 other than as required in this section shall be void and reversible.

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

11 D. Nothing in this section shall apply to an action brought for
12 wrongful death.

13 E. The provisions of this section shall apply only to actions
14 that accrue on or after November 1, 2007.

15 SECTION 20. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 61.3 of Title 23, unless there
17 is created a duplication in numbering, reads as follows:

18 A. If any plaintiff seeks recovery for loss of earnings, loss
19 of earning capacity, loss of contributions of a pecuniary value, or
20 loss of inheritance, evidence to prove the loss must be presented in
21 the form of a net loss after reduction for income tax payments or
22 unpaid tax liability pursuant to any state or federal income tax
23 law.

24

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

3 SECTION 21. AMENDATORY 47 O.S. 2001, Section 11-1112, as
4 last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp.
5 2006, Section 11-1112), is amended to read as follows:

6 Section 11-1112. A. Every driver, when transporting a child
7 under six (6) years of age in a motor vehicle operated on the
8 roadways, streets, or highways of this state, shall provide for the
9 protection of said child by properly using a child passenger
10 restraint system. For purposes of this section and Section 11-1113
11 of this title, "child passenger restraint system" means an infant or
12 child passenger restraint system which meets the federal standards
13 as set by 49 C.F.R., Section 571.213.

14 B. Children at least six (6) years of age but younger than
15 thirteen (13) years of age shall be protected by use of a child
16 passenger restraint system or a seat belt.

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

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

21 2. The driver of an ambulance or emergency vehicle;

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

24

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

3 5. The transportation of a child who weighs more than forty
4 (40) pounds and who is being transported in the back seat of a
5 vehicle while wearing only a lap safety belt when the back seat of
6 the vehicle is not equipped with combination lap and shoulder safety
7 belts, or when the combination lap and shoulder safety belts in the
8 back seat are being used by other children who weigh more than forty
9 (40) pounds. Provided, however, for purposes of this paragraph,
10 back seat shall include all seats located behind the front seat of a
11 vehicle operated by a licensed child care facility or church.

12 Provided further, there shall be a rebuttable presumption that a
13 child has met the weight requirements of this paragraph if at the
14 request of any law enforcement officer, the licensed child care
15 facility or church provides the officer with a written statement
16 verified by the parent or legal guardian that the child weighs more
17 than forty (40) pounds.

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

24

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

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

9 ~~G.~~ F. Any person convicted of violating subsection A or B of
10 this section shall be punished by a fine of Fifty Dollars (\$50.00)
11 and shall pay all court costs thereof. Revenue from such fine shall
12 be apportioned to the Department of Public Safety Revolving Fund and
13 used by the Oklahoma Highway Safety Office to promote the use of
14 child passenger restraint systems as provided in Section 11-1113 of
15 this title. This fine shall be suspended and the court costs
16 limited to a maximum of Fifteen Dollars (\$15.00) in the case of the
17 first offense upon proof of purchase or acquisition by loan of a
18 child passenger restraint system. Provided, the Department of
19 Public Safety shall not assess points to the driving record of any
20 person convicted of a violation of this section.

21 SECTION 22. AMENDATORY Section 7, Chapter 390, O.S.L.
22 2003 (63 O.S. Supp. 2006, Section 1-1708.1G), is amended to read as
23 follows:
24

1 Section 1-1708.1G Notwithstanding ~~the provisions of Section 727~~
2 ~~of Title 12 of the Oklahoma Statutes or~~ any other provision of the
3 Oklahoma Statutes to the contrary, prejudgment interest in a medical
4 liability action shall be determined using a rate equal to the
5 average United States Treasury Bill rate of the preceding calendar
6 year as certified to the Administrative Director of the Courts by
7 the State Treasurer on the first regular business day in January of
8 each year. Prejudgment interest shall accrue from the time provided
9 in subsection E of Section 727.1 of Title 12 of the Oklahoma
10 Statutes.

11 SECTION 23. AMENDATORY 63 O.S. 2001, Section 1-1709.1,
12 as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S.
13 Supp. 2006, Section 1-1709.1), is amended to read as follows:

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

15 1. "Credentialing or recredentialing data" means:

16 a. the application submitted by a health care
17 professional requesting appointment or reappointment
18 to the medical staff of a health care facility or
19 requesting clinical privileges or other permission to
20 provide health care services at a health care
21 facility,

22 b. any information submitted by the health care
23 professional in support of such application,
24

- 1 c. any information, unless otherwise privileged, obtained
2 by the health care facility during the credentialing
3 or recredentialing process regarding such application,
4 and
5 d. the decision made by the health care facility
6 regarding such application;

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

11 3. "Health care facility" means:

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

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

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

- 7 a. the medical records of a patient whose health care in
8 a health care facility is being reviewed,
- 9 b. incident reports and other like documents regarding
10 health care services being reviewed, regardless of how
11 the reports or documents are titled or captioned,
- 12 c. the identity of any individuals who have personal
13 knowledge regarding the facts and circumstances
14 surrounding the patient's health care in the health
15 care facility,
- 16 d. factual statements regarding the patient's health care
17 in the health care facility from any individuals who
18 have personal knowledge regarding the facts and
19 circumstances surrounding the patient's health care,
20 which factual statements were generated outside the
21 peer review process,
- 22 e. the identity of all documents and raw data previously
23 created elsewhere and considered during the peer
24 review process, or

1 f. copies of all documents and raw data previously
2 created elsewhere and considered during the peer
3 review process, whether available elsewhere or not, ~~or~~
4 ~~g. credentialing or recredentialing data regarding the~~
5 ~~health care professional who provided the health care~~
6 ~~services being reviewed or who is the subject of a~~
7 ~~credentialing or recredentialing process; and~~

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

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

16 ~~a.~~ except that a health care facility or county medical
17 society shall be permitted to provide relevant peer
18 review information to the state agency or board which
19 licensed the health care professional who provided the
20 health care services being reviewed in a peer review
21 process or who is the subject of a credentialing or
22 recredentialing process, with notice to the health
23 care professional, ~~and~~

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

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

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

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

21 ~~a. that~~

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

1 ~~b. that~~

2 2. That the health care facility was independently negligent as
3 a result of permitting the health care professional to provide
4 health care services to the patient in the health care facility,
5 the recommendations made and action taken as a result of any peer
6 review process utilized by such health care facility regarding the
7 health care professional prior to the date of the alleged negligence
8 shall not be subject to discovery pursuant to the Oklahoma Discovery
9 Code or admissible at trial.

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

11 ~~a. shall not be admissible as evidence until a judge or~~
12 ~~jury has found the health care professional to have~~
13 ~~been negligent in providing health care services to~~
14 ~~the patient in such health care facility, and~~

15 ~~b. shall not at any time include the identity or means by~~
16 ~~which to ascertain the identity of any other patient~~
17 ~~or health care professional.~~

18 E. Any information discovered pursuant to a claim of
19 independent negligence against a health care facility shall not be
20 admissible as evidence until a judge or jury has first found the
21 health care professional to have been negligent in providing health
22 care services to the patient in such health care facility.

23 F. No person involved in a peer review process may be permitted
24 or required to testify regarding the peer review process in any

1 civil proceeding or disclose by responses to written discovery
2 requests any peer review information.

3 SECTION 24. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1924.1 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 The Legislature finds that:

7 1. Skilled nursing facilities, as defined in 42 U.S.C., Section
8 1395i-3, participating in the Medicare program and nursing
9 facilities, as defined in 42 U.S.C., Section 1396r, participating in
10 the Medicaid program are required to establish and maintain quality
11 assessment and assurance committees to identify issues with respect
12 to which quality assessment and assurance activities are necessary
13 and to develop and implement appropriate plans of action to correct
14 identified quality deficiencies pursuant to 42 U.S.C., Sections
15 1395i-3 and 1396r and rules promulgated by the State Department of
16 Health;

17 2. The Centers for Medicare and Medicaid Services and the State
18 Department of Health have recognized the effectiveness of such
19 quality assessment and assurance programs to measure, monitor and
20 improve the quality of care furnished by skilled nursing facilities
21 and nursing facilities;

22 3. The threat of liability for private money damages or civil
23 money penalties under federal and state law unreasonably discourages
24 skilled nursing facilities, nursing facilities, health care

1 professionals and other health care providers from conducting or
2 participating in effective quality assessment and assurance
3 activities and medical error review activities;

4 4. There is an overriding national and state need to provide
5 incentives and protection for individuals and entities engaging in
6 quality assessment and assurance and medical error review
7 activities; and

8 5. The Minimum Data Set (MDS) contains clinical information
9 from the comprehensive assessments of persons residing in long-term
10 care facilities and is used by federal and state regulators for the
11 survey and certification of Medicare and Medicaid long-term care
12 facilities to study the effectiveness and quality of care given in
13 those facilities, and to support other regulatory, reimbursement,
14 policy and research functions.

15 SECTION 25. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1924.2 of Title 63, unless there
17 is created a duplication in numbering, reads as follows:

18 For purposes of Sections 24 through 28 of this act:

19 1. "Quality assessment and assurance activities" means
20 activities performed by a health care provider for the purpose of
21 evaluating matters relating to patient safety and quality of care,
22 or health resources management review and identification and
23 prevention of medical incidents and risks, and shall include without
24

1 limitation peer review activities, quality assessment and assurance
2 committee activities and patient care assessment;

3 2. "Quality assessment and assurance committee" means any
4 committee of a skilled nursing facility or a nursing facility which
5 conducts quality assessment and assurance activities;

6 3. "Quality assessment and assurance committee records" means
7 documents and other information in whatever form:

8 a. submitted to, reviewed or generated by, or produced at
9 the request of a quality assessment and assurance
10 committee for purposes of quality assessment,
11 assurance or improvement, including without limitation
12 proceedings, records, reports, statements, notes,
13 incident reports, memoranda, minutes, conclusions,
14 deliberations, findings, and internal working papers,
15 or

16 b. submitted or reported by a skilled nursing facility or
17 a nursing facility to an accredited organization,
18 trade association, or other entity for purposes of
19 improving quality of care in the skilled nursing
20 facility or the nursing facility industry;

21 4. "Statements of deficiencies" means information respecting
22 surveys and certifications made regarding a skilled nursing facility
23 or a nursing facility including, but not limited to, federal and
24 state survey reports, citation reports, statements of deficiencies,

1 plans of correction or similar findings of noncompliance with
2 statutory or regulatory requirements or standards; and

3 5. "Minimum Data Set (MDS) related documentation" means
4 documents and other information in whatever form related to the
5 reporting of resident assessment data by skilled nursing facilities
6 or nursing facilities for inclusion in the Minimum Data Set (MDS).

7 SECTION 26. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1924.3 of Title 63, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Quality assessment and assurance committee records shall be
11 confidential and privileged. Such records shall not be disclosed to
12 any person or entity and are privileged for purposes of state
13 judicial proceedings in civil matters and for purposes of state
14 administrative proceedings, including with respect to discovery and
15 subpoenas.

16 B. A person who reviews or creates quality assessment and
17 assurance committee records or who participates in any proceeding
18 that reviews or creates such records may not be permitted or
19 required to testify in any civil judicial or administrative
20 proceeding with respect to such records or with respect to any
21 finding, recommendation, evaluation, opinion, or action taken by
22 such person or body in connection with such records.

23

24

1 SECTION 27. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1924.4 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A quality assessment and assurance committee, any person
5 acting as a member of or staff to such committee, and any person who
6 participates with or assists such committee regarding its activities
7 shall not be liable in damages under any law of the state or
8 political subdivision thereof with respect to the quality assessment
9 and assurance activities of such quality assessment and assurance
10 committee.

11 B. Notwithstanding any other provision of law, no member of a
12 quality assessment and assurance committee or person providing
13 information to a quality assessment and assurance body shall be
14 held, by reason of participation in quality assessment and assurance
15 activities, liable in damages under any law of the state or
16 political subdivision thereof unless such individual provided false
17 information with the knowledge that such information was false.

18 SECTION 28. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1924.5 of Title 63, unless there
20 is created a duplication in numbering, reads as follows:

21 Statements of deficiencies issued by any federal or state entity
22 to a skilled nursing facility or a nursing facility and such
23 facility's Minimum Data Set (MDS) related documentation may not be
24

1 admitted into evidence in any state judicial or administrative
2 proceeding unless:

3 1. The deficiency determination is final, adjudicated and has
4 been appealed;

5 2. The deficiency determination or Minimum Data Set (MDS)
6 related documentation is otherwise admissible under the State Rules
7 of Civil Procedure, as applicable; and

8 3. The statements of deficiencies, plans of correction or
9 Minimum Data Set (MDS) related documentation are directly related to
10 the harm allegedly caused to the patient that is the subject of the
11 proceeding.

12 Statements of deficiencies, plans of correction and Minimum Data
13 Set (MDS) related documentation may not be admitted into evidence in
14 any judicial or administrative proceeding for purposes of
15 establishing a standard of care or negligence as a matter of law.

16 SECTION 29. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 24-206 of Title 70, unless there
18 is created a duplication in numbering, reads as follows:

19 Sections 29 through 33 of this act shall be known and may be
20 cited as the "School Protection Act".

21 SECTION 30. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 24-207 of Title 70, unless there
23 is created a duplication in numbering, reads as follows:

24

1 The purpose of the School Protection Act is to provide teachers,
2 principals, and other school professionals the tools they need to
3 undertake reasonable actions to maintain order, discipline, and an
4 appropriate educational environment.

5 SECTION 31. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 24-208 of Title 70, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Except as otherwise provided in this section, any person
9 eighteen (18) years of age or older who acts with specific intent in
10 making a false accusation of criminal activity against an education
11 employee to law enforcement authorities or school district
12 officials, or both, shall be guilty of a misdemeanor and, upon
13 conviction, punished by a fine of not more than Two Thousand Dollars
14 (\$2,000.00).

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

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

24

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

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

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

8 SECTION 32. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 24-209 of Title 70, unless there
10 is created a duplication in numbering, reads as follows:

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

16 SECTION 33. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 24-210 of Title 70, unless there
18 is created a duplication in numbering, reads as follows:

19 The School Protection Act shall be in addition to the
20 Governmental Tort Claims Act or any other applicable law.

21 SECTION 34. AMENDATORY 51 O.S. 2001, Section 155, as
22 last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp.
23 2006, Section 155), is amended to read as follows:

24

1 Section 155. The state or a political subdivision shall not be
2 liable if a loss or claim results from:

3 1. Legislative functions;

4 2. Judicial, quasi-judicial, or prosecutorial functions, other
5 than claims for wrongful criminal felony conviction resulting in
6 imprisonment provided for in Section 154 of this title;

7 3. Execution or enforcement of the lawful orders of any court;

8 4. Adoption or enforcement of or failure to adopt or enforce a
9 law, whether valid or invalid, including, but not limited to, any
10 statute, charter provision, ordinance, resolution, rule, regulation
11 or written policy;

12 5. Performance of or the failure to exercise or perform any act
13 or service which is in the discretion of the state or political
14 subdivision or its employees;

15 6. Civil disobedience, riot, insurrection or rebellion or the
16 failure to provide, or the method of providing, police, law
17 enforcement or fire protection;

18 7. Any claim based on the theory of attractive nuisance;

19 8. Snow or ice conditions or temporary or natural conditions on
20 any public way or other public place due to weather conditions,
21 unless the condition is affirmatively caused by the negligent act of
22 the state or a political subdivision;

23 9. Entry upon any property where that entry is expressly or
24 implied authorized by law;

1 10. Natural conditions of property of the state or political
2 subdivision;

3 11. Assessment or collection of taxes or special assessments,
4 license or registration fees, or other fees or charges imposed by
5 law;

6 12. Licensing powers or functions including, but not limited
7 to, the issuance, denial, suspension or revocation of or failure or
8 refusal to issue, deny, suspend or revoke any permit, license,
9 certificate, approval, order or similar authority;

10 13. Inspection powers or functions, including failure to make
11 an inspection, review or approval, or making an inadequate or
12 negligent inspection, review or approval of any property, real or
13 personal, to determine whether the property complies with or
14 violates any law or contains a hazard to health or safety, or fails
15 to conform to a recognized standard;

16 14. Any loss to any person covered by any workers' compensation
17 act or any employer's liability act;

18 15. Absence, condition, location or malfunction of any traffic
19 or road sign, signal or warning device unless the absence,
20 condition, location or malfunction is not corrected by the state or
21 political subdivision responsible within a reasonable time after
22 actual or constructive notice or the removal or destruction of such
23 signs, signals or warning devices by third parties, action of
24 weather elements or as a result of traffic collision except on

1 failure of the state or political subdivision to correct the same
2 within a reasonable time after actual or constructive notice.
3 Nothing herein shall give rise to liability arising from the failure
4 of the state or any political subdivision to initially place any of
5 the above signs, signals or warning devices. The signs, signals and
6 warning devices referred to herein are those used in connection with
7 hazards normally connected with the use of roadways or public ways
8 and do not apply to the duty to warn of special defects such as
9 excavations or roadway obstructions;

10 16. Any claim which is limited or barred by any other law;

11 17. Misrepresentation, if unintentional;

12 18. An act or omission of an independent contractor or
13 consultant or his or her employees, agents, subcontractors or
14 suppliers or of a person other than an employee of the state or
15 political subdivision at the time the act or omission occurred;

16 19. Theft by a third person of money in the custody of an
17 employee unless the loss was sustained because of the negligence or
18 wrongful act or omission of the employee;

19 20. Participation in or practice for any interscholastic or
20 other athletic contest sponsored or conducted by or on the property
21 of the state or a political subdivision;

22 21. Participation in any activity approved by a local board of
23 education and held within a building or on the grounds of the school

24

1 district served by that local board of education before or after
2 normal school hours or on weekends;

3 22. Any court-ordered or Department of Corrections-approved
4 work release program; provided, however, this provision shall not
5 apply to claims from individuals not in the custody of the
6 Department of Corrections based on accidents involving motor
7 vehicles owned or operated by the Department of Corrections;

8 23. The activities of the National Guard, the militia or other
9 military organization administered by the Military Department of the
10 state when on duty pursuant to the lawful orders of competent
11 authority:

- 12 a. in an effort to quell a riot,
- 13 b. in response to a natural disaster or military attack,
- 14 or
- 15 c. if participating in a military mentor program ordered
16 by the court;

17 24. Provision, equipping, operation or maintenance of any
18 prison, jail or correctional facility, or injuries resulting from
19 the parole or escape of a prisoner or injuries by a prisoner to any
20 other prisoner; provided, however, this provision shall not apply to
21 claims from individuals not in the custody of the Department of
22 Corrections based on accidents involving motor vehicles owned or
23 operated by the Department of Corrections;

24

1 25. Provision, equipping, operation or maintenance of any
2 juvenile detention facility, or injuries resulting from the escape
3 of a juvenile detainee, or injuries by a juvenile detainee to any
4 other juvenile detainee;

5 26. Any claim or action based on the theory of manufacturer's
6 products liability or breach of warranty, either expressed or
7 implied;

8 27. Any claim or action based on the theory of indemnification
9 or subrogation;

10 28. Any claim based upon an act or omission of an employee in
11 the placement of children;

12 29. Acts or omissions done in conformance with then current
13 recognized standards;

14 30. Maintenance of the state highway system or any portion
15 thereof unless the claimant presents evidence which establishes
16 either that the state failed to warn of the unsafe condition or that
17 the loss would not have occurred but for a negligent affirmative act
18 of the state;

19 31. Any confirmation of the existence or nonexistence of any
20 effective financing statement on file in the office of the Secretary
21 of State made in good faith by an employee of the office of the
22 Secretary of State as required by the provisions of Section 1-9-
23 320.6 of Title 12A of the Oklahoma Statutes;

24 32. Any court-ordered community sentence; ~~or~~

1 33. Remedial action and any subsequent related maintenance of
2 property pursuant to and in compliance with an authorized
3 environmental remediation program, order, or requirement of a
4 federal or state environmental agency;

5 34. The use of necessary and reasonable force by a school
6 district employee to control and discipline a student during the
7 time the student is in attendance or in transit to and from the
8 school, or any other function authorized by the school district; or

9 35. Actions taken in good faith by a school district employee
10 for the out-of-school suspension of a student pursuant to applicable
11 Oklahoma Statutes.

12 SECTION 35. AMENDATORY 76 O.S. 2001, Section 5.5, is
13 amended to read as follows:

14 Section 5.5 A. Any claim filed herein shall be filed within
15 two (2) years of the date of injury, death or damage to property,
16 or, if applicable, within one (1) year of the date of a final
17 adjudication on any legal action taken by the claimant against any
18 person responsible for the injury, death or damage to property, or
19 be barred by limitations from recovery.

20 B. Any action for damages based in tort shall be brought within
21 eight (8) years from the date of the act or omission that gives rise
22 to the claim. This subsection is intended as a statute of repose
23 and any action which is not brought within eight (8) years after the
24 act or omission giving rise to the claim is time-barred.

1 SECTION 36. AMENDATORY 76 O.S. 2001, Section 25, is
2 amended to read as follows:

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

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

16 C. In any civil action in which a plaintiff or legal
17 representative of a plaintiff has alleged that the plaintiff has
18 suffered injuries resulting from the negligence of the professional
19 in providing professional services to the plaintiff, factual
20 statements, opinions and conclusions, presented during a peer review
21 process, shall not be subject to discovery or admissible at trial.

22 D. In any civil action in which a plaintiff or legal
23 representative of a plaintiff has alleged that the plaintiff has
24 suffered injuries resulting from the negligence of the professional

1 in providing professional services to the plaintiff, the
2 recommendations made and action taken as a result of any peer review
3 process shall not be subject to discovery or admissible at trial.

4 E. No person involved in a peer review process may testify
5 regarding the peer review process in any civil proceeding or
6 disclose by responses to written discovery requests any peer review
7 information.

8 SECTION 37. AMENDATORY 76 O.S. 2001, Section 31, is
9 amended to read as follows:

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

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

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

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

23 C. Any person who, in good faith and without compensation, or
24 expectation of compensation, donates or loans emergency service

1 equipment to a volunteer shall not be liable for damages resulting
2 from the use of such equipment by the volunteer, except when the
3 donor of the equipment knew or should have known that the equipment
4 was dangerous or faulty in a way which could result in bodily
5 injury, death or damage to property.

6 D. Definitions.

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

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

21 3. For the purposes of this section, the term "not-for-profit
22 corporation" means a corporation formed for a purpose not involving
23 pecuniary gain to its shareholders or members, paying no dividends
24

1 or other pecuniary remuneration, directly or indirectly, to its
2 shareholders or members as such, and having no capital stock.

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

7 F. The immunity from civil liability provided for by this
8 section shall extend only to the actions taken by a person rendering
9 the service, care, assistance, advice, or other benefit as a
10 volunteer, and does not confer any immunity to any person for
11 actions taken by the volunteer prior to or after the rendering of
12 the service, care, assistance, advice, or other benefit as a
13 volunteer.

14 G. This section shall apply to all civil actions filed after
15 ~~the effective date of this act~~ August 25, 1995.

16 SECTION 38. AMENDATORY Section 34, Chapter 368, O.S.L.
17 2004 (76 O.S. Supp. 2006, Section 32), is amended to read as
18 follows:

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

21 B. Any volunteer medical professional shall be immune from
22 liability in a civil action on the basis of any act or omission of
23 the volunteer medical professional resulting in damage or injury if:
24

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

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

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

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

13 5. Before the volunteer medical professional provides
14 professional medical services, the volunteer medical professional
15 and the person receiving the services or, if that person is a minor
16 or otherwise legally incapacitated, the person's parent,
17 conservator, legal guardian, or other person with legal
18 responsibility for the care of the person signs a written statement
19 that acknowledges:

20 a. that the volunteer medical professional providing
21 professional medical services has no expectation of
22 and will receive no compensation of any kind for
23 providing the professional medical services, and
24

1 b. an understanding of the limitations on the recovery of
2 damages from the volunteer medical professional in
3 exchange for receiving free professional medical
4 services.

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

10 1. The referred volunteer medical professional provides
11 services without receiving any compensation for the treatment;

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

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

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

20 5. Before the referred volunteer medical professional provides
21 professional services, the referred volunteer medical professional
22 and the person receiving the services or, if that person is a minor
23 or otherwise legally incapacitated, the person's parent,
24 conservator, legal guardian, or other person with legal

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

- 3 a. that the referred volunteer medical professional
4 providing professional medical services has no
5 expectation of and will receive no compensation of any
6 kind for providing the professional medical services,
7 and
- 8 b. an understanding of the limitations on the recovery of
9 damages from the volunteer medical professional in
10 exchange for receiving free professional medical
11 services.

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

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

24

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

- 7 1. Physician;
- 8 2. Physician's assistant;
- 9 3. Registered nurse;
- 10 4. Advanced nurse practitioner or vocational nurse;
- 11 5. Pharmacist;
- 12 6. Podiatrist;
- 13 7. Dentist or dental hygienist; or
- 14 8. Optometrist.

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

19 G. Any person participating in a Medical Reserve Corps and
20 assisting with emergency management, emergency operations, or hazard
21 mitigation in response to any emergency, man-made disaster, or
22 natural disaster, or participating in public health initiatives
23 endorsed by a city, county or state health department in the State
24

1 of Oklahoma, shall not be liable for civil damages on the basis of
2 any act or omission, if:

3 1. The person was acting in good faith and within the scope of
4 the official duties and functions of the Medical Reserve Corps; and

5 2. The acts or omissions were not caused from gross, willful,
6 or wanton acts of negligence.

7 H. This section shall apply to all civil actions filed on or
8 after November 1, ~~2004~~ 2007.

9 SECTION 39. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 33 of Title 76, unless there is
11 created a duplication in numbering, reads as follows:

12 Sections 39 through 42 of this act shall be known and may be
13 cited as the "Common Sense Consumption Act".

14 SECTION 40. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 34 of Title 76, unless there is
16 created a duplication in numbering, reads as follows:

17 The intent of the Common Sense Consumption Act is to prevent
18 frivolous lawsuits against manufacturers, packers, distributors,
19 carriers, holders, sellers, marketers or advertisers of food
20 products that comply with applicable statutory and regulatory
21 requirements.

22 SECTION 41. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 35 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

1 As used in the Common Sense Consumption Act:

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 SECTION 42. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 36 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

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

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

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

22 2. Any other material violation of federal or state law
23 applicable to the manufacturing, marketing, distribution,
24 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 C. In any action exempted under paragraph 1 of subsection B 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 B
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 For purposes of applying the Common Sense Consumption Act, the
17 foregoing pleading requirements are hereby deemed part of the
18 substantive law of this state and not merely in the nature of
19 procedural provisions.

20 D. In any action exempted under subsection B of this section,
21 all discovery and other proceedings shall be stayed during the
22 pendency of any motion to dismiss unless the court finds upon the
23 motion of any party that particularized discovery is necessary to
24 preserve evidence or to prevent undue prejudice to that party.

1 During the pendency of any stay of discovery pursuant to this
2 subsection, unless otherwise ordered by the court, any party to the
3 action with actual notice of the allegations contained in the
4 complaint shall treat all documents, data compilations, including
5 electronically recorded or stored data, and tangible objects that
6 are in the custody or control of such party and that are relevant to
7 the allegations, as if they were the subject of a continuing request
8 for production of documents from an opposing party under Section
9 3234 of Title 12 of the Oklahoma Statutes.

10 E. The provisions of the Common Sense Consumption Act shall
11 apply to all covered claims pending on November 1, 2007, and all
12 claims filed thereafter, regardless of when the claim arose.

13 SECTION 43. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 41 of Title 76, unless there is
15 created a duplication in numbering, reads as follows:

16 The Legislature finds that the unlawful use of firearms, rather
17 than their lawful manufacture, distribution, or sale, is the
18 proximate cause of any injury arising from their unlawful use.

19 SECTION 44. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 42 of Title 76, unless there is
21 created a duplication in numbering, reads as follows:

22 No firearm manufacturer, distributor, or seller who lawfully
23 manufactures, distributes, or sells a firearm is liable to any
24 person or entity, or to the estate, successors, or survivors of

1 either, for any injury suffered, including wrongful death and
2 property damage, because of use of such firearm by another.

3 SECTION 45. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 43 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

6 No association of persons who hold licenses under Section 923 of
7 Chapter 44 of Title 18, United States Code, as in effect on January
8 1, 1999, is liable to any person or entity, or to the estate,
9 successors or survivors of either, for any injury suffered,
10 including wrongful death and property damage, because of the use of
11 a firearm sold or manufactured by any licensee who is a member of
12 such association.

13 SECTION 46. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 44 of Title 76, unless there is
15 created a duplication in numbering, reads as follows:

16 The provisions of Sections 43 through 46 of this act do not
17 apply to actions for deceit, breach of contract, or expressed or
18 implied warranties, or for injuries resulting from failure of
19 firearms to operate in a normal or usual manner due to defects or
20 negligence in design or manufacture. The provisions of Sections 43
21 through 46 of this act do not apply to actions arising from the
22 unlawful sale or transfer of firearms, or to instances where the
23 transferor knew, or should have known, that the recipient would
24 engage in the unlawful sale or transfer of the firearm, or would

1 use, or purposely allow the use of, the firearm in an unlawful,
2 negligent, or improper fashion. For purposes of this section, the
3 potential of a firearm to cause serious injury, damage, or death as
4 a result of normal function does not constitute a defective
5 condition of the product. A firearm may not be deemed defective on
6 the basis of its potential to cause serious injury, damage, or death
7 when discharged.

8 SECTION 47. REPEALER 47 O.S. 2001, Section 12-420, as
9 amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2006,
10 Section 12-420), is hereby repealed.

11 SECTION 48. REPEALER Section 6, Chapter 390, O.S.L.
12 2003, as amended by Section 21, Chapter 368, O.S.L. 2004, and
13 Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2006, Sections
14 1-1708.1F and 1-1708.1F-1), are hereby repealed.

15 SECTION 49. This act shall become effective November 1, 2007."
16
17
18
19
20
21
22
23
24

