

THE HOUSE OF REPRESENTATIVES
Thursday, March 8, 2007

**Committee Substitute for
House Bill No. 1886**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1886 - By: SULLIVAN, DERBY, COOKSEY, SHANNON AND MCCULLOUGH of the House and WILLIAMSON of the Senate.

An Act relating to tort reform; providing for determination of attorney fees in class actions; requiring plaintiffs to sign representation agreements; providing method of calculating attorney fees for class action cases; providing for judicial discretion to modify the fee award; requiring attorney fees to include noncash benefits in certain circumstances; defining terms; establishing a statute of repose for product liability actions; amending Section 2, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 130) and 12 O.S. 2001, Sections 134 and 137, which relate to venue; modifying venue for certain actions; authorizing the court to decline to exercise jurisdiction under the doctrine of forum non conveniens; providing factors that the court shall consider; providing that improper venue does not toll statute of limitations; requiring each plaintiff to establish venue in cases in which there are multiple plaintiffs; providing for interlocutory appeal; requiring certain affidavits in civil actions for professional negligence; providing consequence for noncompliance; providing for contents of written opinion of qualified expert; providing for extensions of time to file affidavits; requiring plaintiff to provide certain information to defendant; providing for dismissal of action for failure to comply; amending 12 O.S. 2001, Sections 683 and 684, as amended by Sections 3 and 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2005, Sections 683 and 684), which relate to dismissal; modifying procedure for and effect of dismissal without court order; amending Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2005, Section 727.1), which relates to interest on judgments; limiting applicability of prejudgment interest to actions filed prior to a certain date; amending 12 O.S. 2001, Section 832, which relates to contribution; providing for contractual or statutory right of indemnity; amending 12 O.S. 2001, Section 990.4, as last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp. 2005, Section

990.4), which relates to stay of enforcement of judgments, decrees and final orders; providing maximum amount for bond; modifying court authority to lower amount of bond; requiring the court to enter certain orders to prevent dissipation or diversion; defining term; amending 12 O.S. 2001, Section 993, which relates to interlocutory appeals from certain orders; modifying grounds for interlocutory appeals; providing standard for making certain determination; requiring the Supreme Court to make certain determination within certain time; providing that action in the trial court is stayed in certain circumstances; amending 12 O.S. 2001, Section 1101, which relates to offer of judgment; clarifying language; amending 12 O.S. 2001, Sections 2004, as amended by Section 7, Chapter 402, O.S.L. 2002, 2008, 2009 and 2011, as amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2005, Sections 2004 and 2011), which relate to the Oklahoma Pleading Code; modifying time limit for service; modifying monetary threshold for which amount of damages is not specified; limiting the amount of damages that may be recovered under certain circumstances; modifying procedure for petition for special damages; modifying definition; amending Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp. 2005, Section 2011.1), which relates to frivolous claims or defenses; modifying definition; providing for pretrial conferences; providing monetary requirement; limiting amount of damages that may be recovered; providing for certain remittance; amending 12 O.S. 2001, Section 2023, which relates to class actions; requiring the court to hear and rule on certain motions before making a determination on certifying a class; providing effect of interlocutory appeal in certain circumstances; requiring potential class members to request inclusion in the class; providing procedure for summary judgment; providing that evidence of remarriage or social position of a surviving spouse is admissible in wrongful death actions; amending 12 O.S. 2001, Section 2702, which relates to testimony by experts; providing requirements for lay and expert testimony; providing role of the court; providing for interpretation; providing severability; providing cases to which provisions apply; amending 12 O.S. 2001, Section 3226, as last amended by Section 3, Chapter 519, O.S.L. 2004 (12 O.S. Supp. 2005, Section 3226), which relates to discovery; eliminating requirement that a party produce certain agreement; requiring certain disclosures prior to discovery request; providing legislative intent in construing the Consumer Protection Act; amending 15 O.S. 2001, Sections 754 and 761.1, which relate to liability under the Consumer Protection Act; modifying exclusions from the Consumer Protection Act; requiring actual damages incurred by person bringing private action;

amending 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2005, Section 9.1), which relates to punitive damages; modifying factors to be considered in awarding punitive damages; requiring presentation of prima facie evidence for punitive damages claims prior to certain discovery; prohibiting punitive damages in product liability actions under certain conditions; providing restrictions and procedures for punitive damages in medical liability actions; amending Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2005, Section 15), which relates to joint and several liability; modifying exceptions to severability; providing exception; providing for reduction of damages if the plaintiff has settled with one or more persons; requiring certain written notice in medical liability actions; amending 23 O.S. 2001, Section 61, which relates to the measure of damages for the breach of obligations not arising from contract; providing that compensation from collateral sources shall be admitted into evidence and may be deducted from damages awarded; providing proof of certain losses must be in the form of a net loss after reduction for income tax payments or unpaid tax liability; providing limits of liability for noneconomic damages for certain actions; defining term; amending 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; eliminating prohibitions against admissibility of certain evidence in civil actions; amending 47 O.S. 2001, Section 12-420, which relates to use of seat belts; making evidence of use or nonuse of seat belts admissible evidence; amending 47 O.S. 2001, Section 230.30, which relates to liability and cargo insurance or bond; providing when certain actions may be maintained; prohibiting certain actions; amending Sections 4 and 7, Chapter 390, O.S.L. 2003 and Section 24, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2005, Sections 1-1708.1D, 1-1708.1G and 1-1708.1I), which relate to the Affordable Access to Health Care Act; requiring receipt of compensation for injury be admitted into evidence for certain purposes; limiting recovery for payment of medical bills; removing courts right to make certain determination; providing limits of liability in certain civil actions against hospitals, hospital systems and certain persons, with exceptions; requiring written acknowledgment; limiting applicability of prejudgment interest to medical liability actions filed prior to a certain date; mandating certain qualifications for expert witnesses; modifying criteria for determining if an expert is qualified to offer expert testimony; defining terms; providing for payment of future losses in medical liability actions; amending 63 O.S. 2001, Section 1-1709.1, as last amended by Section 2, Chapter 558,

O.S.L. 2004 (63 O.S. Supp. 2005, Section 1-1709.1), which relates to peer review information; providing that certain information, recommendations and actions are not subject to discovery; amending 76 O.S. 2001, Section 18, as amended by Section 4, Chapter 462, O.S.L. 2002 (76 O.S. Supp. 2006, Section 18), which relates to a statute of limitations for certain actions; establishing a statute of repose for certain actions; amending 76 O.S. 2001, Section 25, which relates to professional review bodies; providing that certain information is not subject to discovery; prohibiting testimony by certain persons; amending 76 O.S. 2001, Section 31 and Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2005, Section 32), which relate to civil immunity for volunteers, charitable organizations, not-for-profit corporations and volunteer medical professionals; modifying definition; expanding immunity for volunteer medical professionals; creating the Common Sense Consumption Act; providing short title; stating legislative intent; defining terms; providing immunity from civil liability for certain claims; providing exception; providing pleading requirements; providing for stay of discovery and other proceedings in certain circumstances; providing scope of claims covered; creating the Product Liability Act; providing short title; defining terms; providing that a manufacturer or seller shall not be liable for inherently unsafe products; providing procedures and requirements in actions alleging design defect; providing elements a claimant must prove in certain actions against manufacturers or sellers of firearms or ammunition; limiting liability of nonmanufacturing sellers; providing rebuttable presumption in actions relating to pharmaceutical products; providing rebuttable presumption concerning compliance with government standards; defining term; making evidence regarding measures taken after injury inadmissible; requiring filing of certain affidavit and procedures therefor; creating the Asbestos and Silica Claims Priorities Act; providing legislative findings; stating purposes; defining terms; providing elements of proof and proceedings for asbestos or silica claims; providing that certain evidence does not create a presumption; providing that certain evidence is inadmissible; providing for discovery; providing for consolidation of claims; authorizing the court to decline to exercise jurisdiction in certain circumstances; providing for venue; providing a statute of limitations; establishing two-disease rule; providing scope of applicability of the Asbestos and Silica Claims Priorities Act; providing procedure and certain requirement for civil actions for professional negligence; repealing Section 9, Chapter 150, O.S.L. 2004 (12 O.S. Supp. 2006, Section 150), which relates to summons in medical liability actions; repealing Section 8, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2005,

Section 832.1), which relates to indemnification product liability actions; repealing 23 O.S. 2001, Section 103, which relates to personal injury actions asserted in bad faith; repealing Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004, and Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2005, Sections 1-1708.1F and 1-1708.1F-1), which relate to limits on noneconomic damages in medical liability actions; providing for codification; and providing an effective date.

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

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

4 A. In class actions, if an award of attorney fees is available, the trial court shall use
5 the Lodestar Rule to calculate the amount of fees to be awarded to class counsel. The
6 court may increase or decrease the fee award calculated by using the Lodestar method by
7 no more than three times based on specified factors in subsection C of this section.

8 B. If any portion of the benefits recovered for the class are in the form of coupons or
9 other noncash common benefits, the attorney fees awarded in the class action shall be in
10 cash and noncash amounts in the same proportion as the recovery for the class.

11 C. As used in this section, “Lodestar Rule” means the number of hours reasonably
12 expended multiplied by the prevailing hourly rate in the community and then adjusted
13 for other factors. In arriving at just compensation, the court shall consider the following
14 factors:

- 1 1. Time and labor required;
- 2 2. The novelty and difficulty of the case;
- 3 3. The skill required to perform the legal service properly;
- 4 4. The preclusion of other employment by the attorney due to acceptance of the
- 5 case;
- 6 5. The customary fee;
- 7 6. Time limitations imposed by the client or the circumstances;
- 8 7. The amount in controversy and the results obtained;
- 9 8. The experience, reputation and ability of the attorney;
- 10 9. Whether or not the case is an undesirable case;
- 11 10. The nature and length of the professional relationship with the client; and
- 12 11. Awards in similar cases, excluding settlements or agreed upon judgments.

13 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
14 Statutes as Section 95.1 of Title 12, unless there is created a duplication in numbering,
15 reads as follows:

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

- 22 1. Injury or damage to or loss of real or personal property;

- 1 2. Personal injury;
- 2 3. Wrongful death;
- 3 4. Economic loss; or
- 4 5. Declaratory, injunctive, or other equitable relief.

5 B. Except as provided by subsections C, D and E of this section, a plaintiff must
6 commence a product liability action against a manufacturer or seller of a product before
7 the end of ten (10) years after the date of the sale of the product by the defendant.

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

12 D. This section shall not apply to a product liability action seeking damages for
13 personal injury or wrongful death in which the claimant alleges:

14 1. The plaintiff was exposed to the product that is the subject of the action before
15 the end of ten (10) years after the date the product was first sold;

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

17 3. The symptoms of the disease did not, before the end of ten (10) years after the
18 date of the first sale of the product by the defendant, manifest themselves to a degree
19 and for a duration that would put a reasonable person on notice that the person suffered
20 some injury.

1 E. This section shall not reduce a limitations period for a cause of action described
2 by subsection D of this section that accrues before the end of the limitations period under
3 this section.

4 F. This section shall not extend the limitations period within which a products
5 liability action involving the product may be commenced under any other law.

6 G. This section applies only to the sale and not to the lease of a product.

7 H. This section shall not apply to any claim to which the General Aviation
8 Revitalization Act of 1994 (Pub. L. No. 103-298, 108 Stat. 1552) (1994), 49 U.S.C., Section
9 40101 or its exceptions are applicable.

10 SECTION 3. AMENDATORY Section 2, Chapter 368, O.S.L. 2004 (12 O.S.
11 Supp. 2006, Section 130), is amended to read as follows:

12 Section 130. The venue of civil actions for damages brought pursuant to the
13 Affordable Access to Health Care Act, Section 1-1708.1A et seq. of Title 63 of the
14 Oklahoma Statutes, shall be in a county where the cause of action or any portion thereof
15 arose, or in any county in which any of the defendants reside, or in the case of a
16 corporation, in a county in which it is situated, or has its principal office or place of
17 business, ~~or in any county where a codefendant of such corporation may be sued.~~ Upon a
18 finding of lack of venue, the court shall transfer or dismiss the action; provided, however,
19 that if the court finds lack of venue and that a dismissal would operate as a dismissal
20 with prejudice, the court shall transfer the action.

21 SECTION 4. AMENDATORY 12 O.S. 2001, Section 134, is amended to read as
22 follows:

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 Section 134. An action, other than one of those mentioned in ~~first three sections of~~
2 ~~this article~~ Section 131, 132 or 133 of this title, against a corporation created by the laws
3 of this state, may be brought in the county in which it is situated, or has its principal
4 office or place of business, or in which any of the principal officers thereof may reside, ~~or~~
5 ~~be summoned~~, or in the county where the cause of action or some part thereof arose, ~~or in~~
6 ~~any county where a codefendant of such corporation created by the laws of this state may~~
7 ~~properly be sued.~~

8 SECTION 5. AMENDATORY 12 O.S. 2001, Section 137, is amended to read as
9 follows:

10 Section 137. A. In addition to the other counties in which an action may be brought
11 against a nonresident of this state, ~~or other than~~ a foreign corporation, such action may
12 be brought in any county in which there may be property of or debts owing to such
13 defendant, or where such defendant may be found, ~~or in any county where a codefendant~~
14 ~~may properly be sued; if.~~

15 B. An action may be brought against a foreign corporation in the county in which
16 the corporation has its principal office or place of business or in which any of the
17 principal officers thereof reside, or where such company has a service agent.

18 C. If such defendant ~~be~~ is a foreign insurance company the action may be brought
19 in any county ~~where such cause of action, or any part thereof, arose, or where the~~
20 ~~plaintiff resides or where such company has an~~ its principal office or place of business or
21 in which any of the principal officers thereof reside, or where such company has a service
22 agent.

1 SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 140.1 of Title 12, unless there is created a duplication in numbering,
3 reads as follows:

4 A. If the court, upon motion by a party or on the court's own motion, finds that, in
5 the interest of justice and for the convenience of the parties, a claim or action would be
6 more properly heard in another forum either in this state or outside this state, the court
7 shall decline to exercise jurisdiction under the doctrine of forum non conveniens and
8 shall stay or dismiss the claim or action.

9 B. In determining whether to grant a motion to stay or dismiss an action pursuant
10 to this section, the court shall consider:

11 1. Whether an alternate forum exists in which the claim or action may be tried;

12 2. Whether the alternate forum provides an adequate remedy;

13 3. Whether maintenance of the claim in the court in which the case is filed would
14 work a substantial injustice to the moving party;

15 4. Whether the alternate forum can exercise jurisdiction over all the defendants
16 properly joined in the claim of the plaintiff;

17 5. Whether the balance of the private interests of the parties and the public
18 interest of the state predominate in favor of the claim or action being brought in an
19 alternate forum; and

20 6. Whether the stay or dismissal would prevent unreasonable duplication or
21 proliferation of litigation.

1 SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 140.2 of Title 12, unless there is created a duplication in numbering,
3 reads as follows:

4 An action brought in a county in which venue does not lie does not toll the statute of
5 limitations.

6 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 144 of Title 12, unless there is created a duplication in numbering,
8 reads as follows:

9 A. In a suit in which there is more than one plaintiff, whether the plaintiffs are
10 included by joinder, by intervention, because the lawsuit was begun by more than one
11 plaintiff, or otherwise, each plaintiff shall, independently of every other plaintiff,
12 establish proper venue. If a plaintiff cannot independently establish proper venue, that
13 plaintiff's part of the suit, including all of that plaintiff's claims and causes of action,
14 shall be transferred to a county of proper venue or dismissed, as is appropriate, unless
15 that plaintiff, independently of every other plaintiff, establishes that:

- 16 1. Joinder of that plaintiff or intervention in the suit by that plaintiff is proper
17 under Oklahoma law and applicable court rules;
- 18 2. Maintaining venue as to that plaintiff in the county of suit does not unfairly
19 prejudice another party to the suit;
- 20 3. There is an essential need to have that plaintiff's claim tried in the county in
21 which the suit is pending; and

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

8 C. The court of appeals shall:

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

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

14 SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma
15 Statutes as Section 191 of Title 12, unless there is created a duplication in numbering,
16 reads as follows:

17 A. 1. In any civil action for professional negligence, except as provided in
18 subsection B of this section, the plaintiff shall attach to the petition an affidavit attesting
19 that:

20 a. the plaintiff has consulted and reviewed the facts of the claim with a
21 qualified expert,

1 b. the plaintiff has obtained a written opinion from a qualified expert
2 that clearly identifies the plaintiff and includes the expert's
3 determination that, based upon a review of the pertinent records, facts
4 or other relevant material, a reasonable interpretation of the facts
5 supports a finding that the acts or omissions of the defendant against
6 whom the action is brought constituted professional negligence, and
7 c. on the basis of the qualified expert's review and consultation, the
8 plaintiff has concluded that the claim is meritorious and based on good
9 cause.

10 2. If the civil action for professional negligence is filed:

11 a. without an affidavit being attached to the petition, as required in
12 paragraph 1 of this subsection, and
13 b. no extension of time is subsequently granted by the court, pursuant to
14 subsection B of this section, the court shall, upon motion of the
15 defendant, dismiss the action without prejudice to its refiling.

16 3. The written opinion from the qualified expert shall state the acts or omissions of
17 the defendant or defendants that the expert then believes constituted professional
18 negligence and shall include reasons explaining why the acts or omissions constituted
19 professional negligence. The written opinion from the qualified expert shall not be
20 admissible at trial for any purpose nor shall any inquiry be permitted with regard to the
21 written opinion for any purpose either in discovery or at trial.

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

6 2. If on the expiration of an extension period described in paragraph 1 of this
7 subsection, the plaintiff has failed to file in the action an affidavit as described above, the
8 court shall, upon motion of the defendant, unless good cause is shown for such failure,
9 dismiss the action without prejudice to its refiling.

10 C. 1. Upon written request of any defendant in a civil action for professional
11 negligence, the plaintiff shall, within ten (10) business days after receipt of such request,
12 provide the defendant with:

- 13 a. a copy of the written opinion of a qualified expert mentioned in an
14 affidavit filed pursuant to subsection A or B of this section, and
15 b. an authorization from the plaintiff in a form that complies with
16 applicable state and federal laws, including the Health Insurance
17 Portability and Accountability Act of 1996, for the release of any and
18 all medical records related to the plaintiff for a period commencing five
19 (5) years prior to the incident that is at issue in the civil action for
20 professional negligence.

1 2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court
2 shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss
3 the action without prejudice to its refiling.

4 SECTION 10. AMENDATORY 12 O.S. 2001, Section 683, as amended by
5 Section 3, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 683), is amended to
6 read as follows:

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

9 1. By the plaintiff, before the final submission of the case to the jury, or to the
10 court, where the trial is by the court;

11 2. By the court, where the plaintiff fails to appear on the trial;

12 3. By the court, for the want of necessary parties;

13 4. By the court, on the application of some of the defendants, where there are
14 others whom the plaintiff fails to prosecute with diligence;

15 5. By the court, for disobedience by the plaintiff of an order concerning the
16 proceedings in the action; and

17 6. In all other cases, upon the trial of the action, the decision must be upon the
18 merits.

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

1 Section 684. A. ~~Except as provided in Section 5 of this act, an~~ An action may be
2 dismissed ~~on the payment of costs and by the plaintiff~~ without an order of court by the
3 ~~plaintiff filing a notice of dismissal~~ at any time before a ~~petition of intervention or~~
4 ~~answer praying for affirmative relief against the plaintiff is filed in the action.~~ A
5 ~~plaintiff may, at any time before the trial is commenced, on payment of the costs and~~
6 ~~without any order of court, dismiss the action after the filing of a petition of intervention~~
7 ~~or answer praying for affirmative relief, but such dismissal shall not prejudice the right~~
8 ~~of the intervenor or defendant to proceed with the action. Any defendant or intervenor~~
9 ~~may, in like manner, dismiss an action against the plaintiff, without an order of court, at~~
10 ~~any time before the trial is begun, on payment of the costs made on the claim filed by the~~
11 ~~defendant or intervenor. All parties to a civil action may at any time before trial, without~~
12 ~~an order of court, and on payment of costs, by agreement, dismiss the action.~~

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

17 C. ~~When an action is dismissed after a jury in the action is empanelled and the case~~
18 ~~is subsequently refiled, the court, at the conclusion of the subsequent action, may assess~~
19 ~~costs and attorney fees incurred in the previous action by the defendants subsequent to~~
20 ~~the jury being empanelled~~ service by the adverse party of an answer or of a motion for
21 summary judgment, whichever first occurs, or by filing a stipulation for dismissal signed
22 by all parties who have appeared in the action; provided, if a plaintiff files a notice of

1 dismissal after discovery has commenced, any such action shall not be dismissed without
2 prejudice without the consent of the defendant. Unless otherwise stated in the notice of
3 dismissal or stipulation, the dismissal is without prejudice, except that a notice of
4 dismissal operates as an adjudication upon the merits when filed by a plaintiff who has
5 once dismissed in any court of the United States or of any state an action based on or
6 including the same claim.

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

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

20 D. The provisions of this section apply to the dismissal of any counterclaim, cross-
21 claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to

1 subsection A of this section shall be made before a responsive pleading is served or, if
2 there is none, before the introduction of evidence at the trial or hearing.

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

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

12 Section 727.1

13 POSTJUDGMENT INTEREST

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

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

21 B. Judgments, including costs and attorney fees authorized by statute or otherwise
22 and allowed by the court, against this state or its political subdivisions, including

1 counties, municipalities, school districts, and public trusts of which this state or a
2 political subdivision of this state is a beneficiary, shall bear interest during the term of
3 judgment at a rate prescribed pursuant to this section from the date of rendition. No
4 judgment against this state or its political subdivisions, including counties,
5 municipalities, school districts, and public trusts of which this state or a political
6 subdivision of this state is a beneficiary, inclusive of postjudgment interest, shall exceed
7 the total amount of liability of the governmental entity pursuant to The Governmental
8 Tort Claims Act.

9 C. The postjudgment interest authorized by subsection A or subsection B of this
10 section shall accrue from the earlier of the date the judgment is rendered as expressly
11 stated in the judgment, or the date the judgment is filed with the court clerk, and shall
12 initially accrue at the rate in effect for the calendar year during which the judgment is
13 rendered until the end of the calendar year in which the judgment was rendered, or until
14 the judgment is paid, whichever first occurs. Beginning on January 1 of the next
15 succeeding calendar year until the end of that calendar year, or until the judgment is
16 paid, whichever first occurs, the judgment, together with postjudgment interest
17 previously accrued, shall bear interest at the rate in effect for judgments rendered during
18 that calendar year as certified by the Administrative Director of the Courts pursuant to
19 subsection I of this section. For each succeeding calendar year, or part of a calendar
20 year, during which a judgment remains unpaid, the judgment, together with
21 postjudgment interest previously accrued, shall bear interest at the rate in effect for
22 judgments rendered during that calendar year as certified by the Administrative

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

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

14 PREJUDGMENT INTEREST

15 E. Except as provided by subsection F of this section or Section 1-1708.1G of Title
16 63 of the Oklahoma Statutes, in actions filed before November 1, 2007, if a verdict for
17 damages by reason of personal injuries or injury to personal rights including, but not
18 limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of
19 privacy, injury to personal relations, or detriment due to an act or omission of another is
20 accepted by the trial court, the court in rendering judgment shall add interest on the
21 verdict at a rate prescribed pursuant to subsection I of this section from the date the suit
22 resulting in the judgment was commenced to the earlier of the date the verdict is

1 accepted by the trial court as expressly stated in the judgment, or the date the judgment
2 is filed with the court clerk. The interest rate for computation of prejudgment interest
3 shall begin with the rate prescribed by subsection I of this section which is in effect for
4 the calendar year in which the suit resulting in the judgment is commenced. ~~This rate
5 shall be in effect until the end of the calendar year in which the suit resulting in
6 judgment was filed or until the date judgment is filed, whichever first occurs. Beginning
7 on January 1 of the next succeeding calendar year until the end of that calendar year, or
8 until the date the judgment is filed, whichever first occurs, and for each succeeding
9 calendar year thereafter, the prejudgment interest rate shall be the rate in effect for
10 judgments rendered during each 2007 calendar year as certified by the Administrative
11 Director of the Courts pursuant to subsection I of this section. After the computation of
12 all prejudgment interest has been completed, the total amount of prejudgment interest
13 shall be added to the amount of the judgment rendered pursuant to the trial of the
14 action, and the total amount of the resulting judgment shall become the amount upon
15 which postjudgment interest is computed pursuant to subsection A of this section.~~

16 F. If, for an action filed prior to November 1, 2007, a verdict of the type described
17 by subsection E of this section is rendered against this state or its political subdivisions,
18 including counties, municipalities, school districts, and public trusts of which this state
19 or a political subdivision of this state is a beneficiary, the judgment shall bear interest at
20 the rate prescribed pursuant to subsection I of this section from the date the suit was
21 commenced to the earlier of the date the verdict is accepted by the trial court as
22 expressly stated in the judgment or the date the judgment is filed with the court clerk.

1 The interest rate for computation of prejudgment interest shall ~~begin with~~ be the rate
2 prescribed by subsection I of this section which is in effect for the 2007 calendar year ~~in~~
3 ~~which the suit resulting in the judgment is commenced. This rate shall be in effect until~~
4 ~~the end of the calendar year in which the suit resulting in judgment was filed or until the~~
5 ~~date the judgment is rendered as expressly stated in the judgment, whichever first~~
6 ~~occurs. Beginning on January 1 of the next succeeding calendar year until the end of~~
7 ~~that calendar year, or until the date judgment is rendered, whichever first occurs, and for~~
8 ~~each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate~~
9 ~~in effect for judgments rendered during each calendar year as certified by the~~
10 Administrative Director of the Courts pursuant to subsection I of this section. After the
11 computation of prejudgment interest has been completed, the amount shall be added to
12 the amount of the judgment rendered pursuant to the trial of the action, and the total
13 amount of the resulting judgment shall become the amount upon which postjudgment
14 interest is computed pursuant to subsection B of this section. No award of prejudgment
15 interest against this state or its political subdivisions, including counties, municipalities,
16 school districts, and public trusts of which this state or a political subdivision of this
17 state is a beneficiary, including the amount of the judgment awarded pursuant to trial of
18 the action, shall exceed the total amount of liability of the governmental entity pursuant
19 to The Governmental Tort Claims Act.

20 G. If exemplary or punitive damages are awarded in an action for personal injury
21 or injury to personal rights including, but not limited to, injury resulting from bodily
22 restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or

1 detriment due to an act or omission of another, the interest on that award shall begin to
2 accrue from the earlier of the date the judgment is rendered as expressly stated in the
3 judgment, or the date the judgment is filed with the court clerk.

4 H. If, for an action filed prior to November 1, 2007, a judgment is rendered
5 establishing the existence of a lien against property and no rate of interest exists, the
6 court shall allow prejudgment interest at a rate prescribed pursuant to subsection I of
7 this section from the date the lien is filed to the date of verdict.

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

13 J. For purposes of computing postjudgment interest, the provisions of this section
14 shall be applicable to all judgments of the district courts rendered on or after January 1,
15 2005. Effective January 1, 2005, the method for computing postjudgment interest
16 prescribed by this section shall be applicable to all judgments remaining unpaid rendered
17 prior to January 1, 2005.

18 K. For purposes of computing prejudgment interest, the provisions of this section
19 shall be applicable to all actions which are filed in the district courts on or after January
20 1, 2005, and prior to November 1, 2007, for which an award of prejudgment interest is
21 authorized by the provisions of this section. Prejudgment interest shall not be applicable
22 to any action filed on or after November 1, 2007.

1 SECTION 13. AMENDATORY 12 O.S. 2001, Section 832, is amended to read
2 as follows:

3 Section 832. A. When two or more persons become jointly ~~or severally~~ liable in tort
4 for the same injury to person or property or for the same wrongful death, there is a right
5 of contribution among them even though judgment has not been recovered against all or
6 any of them except as provided in this section.

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

12 C. There is no right of contribution in favor of any tortfeasor who has intentionally
13 caused or contributed to the injury or wrongful death.

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

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

1 F. This ~~act~~ section does not impair any contractual or statutory right of indemnity
2 under existing law. When one tortfeasor is entitled to contractual or statutory indemnity
3 from another, the right of the indemnity obligee is for indemnity and not contribution,
4 and the indemnity obligor is not entitled to contribution from the obligee for any portion
5 of the indemnity obligation.

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

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

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

14 2. It discharges the tortfeasor to whom it is given from all liability for contribution
15 to any other tortfeasor.

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

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

21 1. While a post-trial motion is pending;

22 2. During the time in which an appeal may be commenced; or

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

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

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

15 3. If an appeal is no longer pending.

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

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

18 a. subject to the limitations hereinafter provided, the bond shall be
19 double the amount of the judgment, decree or final order, unless the
20 bond is executed or guaranteed by a surety as hereinafter provided.
21 ~~The~~ Subject to the limitations hereinafter provided, the bond shall be
22 for the amount of the judgment, decree or order including costs and

1 interest on appeal where it is executed or guaranteed by an entity with
2 suretyship powers as provided by the laws of Oklahoma. In no case
3 shall the bond exceed Twenty-five Million Dollars (\$25,000,000.00). If
4 the party posting the supersedeas bond is a small business within the
5 terms of Oklahoma law, the supersedeas bond shall not exceed One
6 Million Dollars (\$1,000,000.00) regardless of the value of the judgment.
7 On a showing by the judgment debtor that the judgment debtor is
8 likely to suffer substantial economic harm if required to post bond in
9 the amount required by this paragraph, the court shall balance the
10 likely substantial economic harm to the judgment debtor with the
11 ability of the judgment creditor to collect the judgment in the event the
12 judgment is affirmed on appeal and may lower the bond accordingly.
13 “Substantial economic harm” means insolvency or creating a
14 significant risk of insolvency. ~~The court shall not lower a bond as~~
15 ~~provided in this paragraph to the extent there is in effect an insurance~~
16 ~~policy, or agreement under which a third party is liable to satisfy part~~
17 ~~or all of the judgment entered and such party is required to post all or~~
18 ~~part of the bond. Upon lowering the bond as provided in this~~
19 ~~paragraph, the court shall enter an order enjoining a judgment debtor~~
20 ~~from dissipating or transferring assets to avoid satisfaction of the~~
21 ~~judgment, but the court shall not make any order that interferes with~~
22 ~~the judgment debtor’s use of assets in the normal course of business~~ If

1 it is proved by a preponderance of the evidence to a court that the
2 appellant for whom the bond has been limited pursuant to this
3 subparagraph is intentionally dissipating or diverting assets outside of
4 the ordinary course of its business for the purpose of avoiding payment
5 of the judgment, the court shall enter such orders as are necessary to
6 prevent dissipation or diversion, including, but not limited to,
7 requiring that a bond be posted equal to the full amount of security
8 required pursuant to this section. For the purposes of this paragraph,
9 dissipation of assets shall not include expenditures, including
10 payments to the owners of a business, of the kind that the appellant
11 made in the regular course of business prior to the entry of the
12 judgment being appealed, and

13 b. instead of filing a supersedeas bond, the appellant may obtain a stay
14 by depositing cash with the court clerk in the amount of the judgment
15 or order plus an amount that the court determines will cover costs and
16 interest on appeal. The court shall have discretion to accept United
17 States Treasury notes or general obligation bonds of the State of
18 Oklahoma in lieu of cash. If the court accepts such notes or bonds, it
19 shall make appropriate orders for their safekeeping and maintenance
20 during the stay;

21 2. When the judgment, decree or final order directs execution of a conveyance or
22 other instrument, the amount of the bond shall be determined by the court, but in no

1 case shall the bond exceed Twenty-five Million Dollars (\$25,000,000.00). Instead of
2 posting a supersedeas bond or other security, the appellant may execute the conveyance
3 or other instrument and deliver it to the clerk of the court for deposit with a public or
4 private entity for safekeeping, as directed by the court in writing;

5 3. When the judgment, decree or final order directs the delivery of possession of
6 real or personal property, the bond shall be in an amount, to be determined by the court,
7 that will protect the interests of the parties, but in no case shall the bond exceed Twenty-
8 five Million Dollars (\$25,000,000.00). The court may consider the value of the use of the
9 property, any waste that may be committed on or to the property during the pendency of
10 the stay, the value of the property, and all costs. When the judgment, decree or final
11 order is for the sale of mortgaged premises and the payment of a deficiency arising from
12 the sale, the bond must also provide for the payment of the deficiency;

13 4. When the judgment or final order directs the assignment or delivery of
14 documents, they may be placed in the custody of the clerk of the court in which the
15 judgment or order was rendered, for deposit with a public or private entity for
16 safekeeping during the pendency of the stay, as directed by the court in writing, or the
17 bond shall be in such sum as may be prescribed by the court; or

18 5. In order to protect any monies payable to the Tobacco Settlement Fund as set
19 forth in Section 50 of Title 62 of the Oklahoma Statutes, the bond in any action or
20 litigation brought under any legal theory involving a signatory, successor of a signatory
21 or an affiliate of a signatory to the Master Settlement Agreement dated November 23,
22 1998, or a signatory, successor of a signatory or an affiliate of a signatory to the

1 Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall
2 be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of
3 interest and costs, or Twenty-five Million Dollars (\$25,000,000.00), whichever is less.
4 However, if it is proved by a preponderance of the evidence that the appellant for whom
5 the bond has been limited pursuant to this paragraph is intentionally dissipating or
6 diverting assets outside of the ordinary course of its business for the purpose of avoiding
7 payment of the judgment, the court shall enter such orders as are necessary to prevent
8 dissipation or diversion, including, but not limited to, requiring that a bond be posted
9 equal to the full amount of security required pursuant to this section. For purposes of
10 this paragraph, "Master Settlement Agreement" shall have the same meaning as that
11 term is defined in paragraph 5 of Section 600.22 of Title 37 of the Oklahoma Statutes,
12 and "Smokeless Tobacco Master Settlement Agreement" means the settlement
13 agreement and related documents entered into on November 23, 1998, by this state and
14 leading United States smokeless tobacco product manufacturers.

15 C. Subsections A and B of this section shall not apply in actions involving
16 temporary or permanent injunctions, actions for divorce, separate maintenance,
17 annulment, paternity, custody, adoption, or termination of parental rights, or in juvenile
18 matters, post-decree matrimonial proceedings or habeas corpus proceedings. The trial or
19 appellate court, in its discretion, may stay the enforcement of any provision in a
20 judgment, decree or final order in any of the types of actions or proceedings listed in this
21 subsection during the pendency of the appeal or while any post-trial motion is pending
22 upon such terms as to bond or otherwise as it considers proper for the security of the

1 rights of the parties. If a temporary or permanent injunction is denied or dissolved, the
2 trial or appellate court, in its discretion, may restore or grant an injunction during the
3 pendency of the appeal and while any post-trial motions are pending upon such terms as
4 to bond or otherwise as it considers proper for the security of the rights of the parties.

5 D. In any action not provided for in subsections A, B or C, the court may stay the
6 enforcement of any judgment, decree or final order during the pendency of the appeal or
7 while any post-trial motion is pending upon such terms as to bond or otherwise as it
8 considers proper for the security of the rights of the parties.

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

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

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

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

1 other security only in the trial court; and all motions concerning the bond or other
2 security must be addressed to the trial court.

3 I. As used in this section, “legal equitable or any other form of relief” means all
4 forms of relief including without limitation compensatory, special punitive, exemplary, or
5 other damages, injunctive relief, and any other form of relief.

6 SECTION 15. AMENDATORY 12 O.S. 2001, Section 993, is amended to read
7 as follows:

8 Section 993. A. When an order:

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

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

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

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

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

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

1 7. Denies a motion in a class action asserting lack of jurisdiction because an agency
2 of this state has exclusive or primary jurisdiction of the action or a part of the action, or
3 asserting that a party has failed to exhaust administrative remedies;

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

6 9. Grants a new trial or opens or vacates a judgment or order,
7 the party aggrieved thereby may appeal the order to the Supreme Court without
8 awaiting the final determination in said cause, by filing the petition in error and the
9 record on appeal with the Supreme Court within thirty (30) days after the order prepared
10 in conformance with Section 696.3 of this title, is filed with the court clerk. If the
11 appellant did not prepare the order, and Section 696.2 of this title required a copy of the
12 order to be mailed to the appellant, and the court records do not reflect the mailing of a
13 copy of the order to the appellant within three (3) days, exclusive of weekends and
14 holidays, after the filing of the order, the petition in error may be filed within thirty (30)
15 days after the earliest date on which the court records show that a copy of the order was
16 mailed to the appellant. The Supreme Court may extend the time for filing the record
17 upon good cause shown.

18 B. If the order discharges or modifies an attachment or temporary injunction and it
19 becomes operative, the undertaking given upon the allowance of an attachment or
20 temporary injunction shall stay the enforcement of said order and remain in full force
21 until final order of discharge shall take effect.

1 C. ~~Where~~ If a receiver shall be or has been appointed, upon the appellant filing an
2 appeal bond, with sufficient sureties, in such sum as may have been required of the
3 receiver by the court or a judge thereof, conditioned for the due prosecution of the appeal
4 and the payment of all costs or damages that may accrue to the state or any officer or
5 person by reason thereof, the authority of the receiver shall be suspended until the final
6 determination of the appeal, and if the receiver has taken possession of any property,
7 real or personal, it shall be returned and surrendered to the appellant upon the filing
8 and approval of the bonds.

9 D. If the order determines whether or not a plaintiff has established proper venue
10 pursuant to Section 8 of this act, the Supreme Court shall determine whether the order
11 of the trial court is proper based on an independent determination of the record and not
12 under either an abuse of discretion or substantial evidence standard and shall render
13 judgment within one hundred twenty (120) days after the date the appeal is perfected.

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

16 SECTION 16. AMENDATORY 12 O.S. 2001, Section 1101, is amended to read
17 as follows:

18 Section 1101. The defendant, in an action for the recovery of money only, may, at
19 any time before the trial, serve upon the plaintiff or ~~his~~ the attorney for the plaintiff an
20 offer, in writing, to allow judgment to be taken against ~~him~~ the defendant for the sum
21 specified therein. If the plaintiff ~~accept~~ accepts the offer and ~~give~~ gives notice thereof to
22 the defendant or ~~his~~ the attorney for the defendant, within five (5) days after the offer

1 was served, the offer, and an affidavit that the notice of acceptance was delivered within
2 the time limited, may be filed by the plaintiff, or the defendant may file the acceptance,
3 with a copy of the offer, verified by affidavit; and in either case, the offer and acceptance
4 shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of
5 acceptance be not given in the period limited, the offer shall be deemed withdrawn, and
6 shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain
7 judgment for more than was offered by the defendant, ~~he~~ the plaintiff shall pay the
8 defendant's costs from the time of the offer.

9 SECTION 17. AMENDATORY 12 O.S. 2001, Section 2004, as amended by
10 Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2006, Section 2004), is amended to
11 read as follows:

12 Section 2004.

13 PROCESS

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

17 B. SUMMONS: FORM.

18 1. The summons shall be signed by the clerk, be under the seal of the court, contain
19 the name of the court and the names of the parties, be directed to the defendant, state
20 the name and address of the plaintiff's attorney, if any, otherwise, the plaintiff's address,
21 and the time within which these rules require the defendant to appear and defend, and

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 shall notify the defendant that in case of failure to appear, judgment by default will be
2 rendered against the defendant for the relief demanded in the petition.

3 2. A judgment by default shall not be different in kind from or exceed in amount
4 that prayed for in either the demand for judgment or in cases not sounding in contract in
5 a notice which has been given the party against whom default judgment is sought.

6 Except as to a party against whom a judgment is entered by default, every final
7 judgment shall grant the relief to which the party in whose favor it is rendered is
8 entitled, even if the party has not demanded such relief in his or her pleadings.

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

10 1. SERVICE BY PERSONAL DELIVERY.

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

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

1 Section 514.1 of Title 19 of the Oklahoma Statutes. The sheriff or
2 deputy sheriff shall serve the process in the manner that other process
3 issued out of the court of the sheriff's own county is served. A
4 summons to be served by a person licensed to make service of process
5 in civil cases or by a person specially appointed for that purpose shall
6 be delivered by an attorney of record for the plaintiff to such person.

7 c. Service shall be made as follows:

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

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

- 1 (3) Upon a domestic or foreign corporation or upon a partnership or
2 other unincorporated association which is subject to suit under a
3 common name, by delivering a copy of the summons and of the
4 petition to an officer, a managing or general agent, or to any
5 other agent authorized by appointment or by law to receive
6 service of process and, if the agent is one authorized by statute
7 to receive service and the statute so requires, by also mailing a
8 copy to the defendant;
- 9 (4) Upon the United States or an officer or agency thereof in the
10 manner specified by Federal Rule of Civil Procedure 4;
- 11 (5) Upon a state, county, school district, public trust or municipal
12 corporation or other governmental organization thereof subject
13 to suit, by delivering a copy of the summons and of the petition
14 to the officer or individual designated by specific statute;
15 however, if there is no statute, then upon the chief executive
16 officer or a clerk, secretary, or other official whose duty it is to
17 maintain the official records of the organization; and
- 18 (6) Upon an inmate incarcerated in an institution under the
19 jurisdiction and control of the Department of Corrections, by
20 delivering a copy of the summons and of the petition to the
21 warden or superintendent or the designee of the warden or
22 superintendent of the institution where the inmate is housed. It

1 shall be the duty of the receiving warden or superintendent or a
2 designee to promptly deliver the summons and petition to the
3 inmate named therein. The warden or superintendent or his or
4 her designee shall reject service of process for any inmate who is
5 not actually present in said institution.

6 2. SERVICE BY MAIL.

- 7 a. At the election of the plaintiff, a summons and petition may be served
8 by mail by the plaintiff's attorney, any person authorized to serve
9 process pursuant to subparagraph a of paragraph 1 of this subsection,
10 or by the court clerk upon a defendant of any class referred to in
11 division (1), (3), or (5) of subparagraph c of paragraph 1 of this
12 subsection. Service by mail shall be effective on the date of receipt or if
13 refused, on the date of refusal of the summons and petition by the
14 defendant.
- 15 b. Service by mail shall be accomplished by mailing a copy of the
16 summons and petition by certified mail, return receipt requested and
17 delivery restricted to the addressee. When there is more than one
18 defendant, the summons and a copy of the petition or order shall be
19 mailed in a separate envelope to each defendant. If the summons is to
20 be served by mail by the court clerk, the court clerk shall enclose the
21 summons and a copy of the petition or order of the court to be served in
22 an envelope, prepared by the plaintiff, addressed to the defendant, or

1 to the resident service agent if one has been appointed. The court clerk
2 shall prepay the postage and mail the envelope to the defendant, or
3 service agent, by certified mail, return receipt requested and delivery
4 restricted to the addressee. The return receipt shall be prepared by
5 the plaintiff. Service by mail to a garnishee shall be accomplished by
6 mailing a copy of the summons and notice by certified mail, return
7 receipt requested, and at the election of the judgment creditor by
8 restricted delivery, to the addressee.

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

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

22 3. SERVICE BY PUBLICATION.

- 1 a. Service of summons upon a named defendant may be made by
2 publication when it is stated in the petition, verified by the plaintiff or
3 the plaintiff's attorney, or in a separate affidavit by the plaintiff or the
4 plaintiff's attorney filed with the court, that with due diligence service
5 cannot be made upon the defendant by any other method.
- 6 b. Service of summons upon the unknown successors of a named
7 defendant, a named decedent, or a dissolved partnership, corporation,
8 or other association may be made by publication when it is stated in a
9 petition, verified by the plaintiff or the plaintiff's attorney, or in a
10 separate affidavit by the plaintiff or the plaintiff's attorney filed with
11 the court, that the person who verified the petition or the affidavit does
12 not know and with due diligence cannot ascertain the following:
- 13 (1) whether a person named as defendant is living or dead, and, if
14 dead, the names or whereabouts of the person's successors, if
15 any,
- 16 (2) the names or whereabouts of the unknown successors, if any, of
17 a named decedent,
- 18 (3) whether a partnership, corporation, or other association named
19 as a defendant continues to have legal existence or not; or the
20 names or whereabouts of its officers or successors,

1 (4) whether any person designated in a record as a trustee
2 continues to be the trustee; or the names or whereabouts of the
3 successors of the trustee, or
4 (5) the names or whereabouts of the owners or holders of special
5 assessment or improvement bonds, or any other bonds, sewer
6 warrants or tax bills.

7 c. Service pursuant to this paragraph shall be made by publication of a
8 notice, signed by the court clerk, one (1) day a week for three (3)
9 consecutive weeks in a newspaper authorized by law to publish legal
10 notices which is published in the county where the petition is filed. If
11 no newspaper authorized by law to publish legal notices is published in
12 such county, the notice shall be published in some such newspaper of
13 general circulation which is published in an adjoining county. All
14 named parties and their unknown successors who may be served by
15 publication may be included in one notice. The notice shall state the
16 court in which the petition is filed and the names of the plaintiff and
17 the parties served by publication, and shall designate the parties
18 whose unknown successors are being served. The notice shall also
19 state that the named defendants and their unknown successors have
20 been sued and must answer the petition on or before a time to be
21 stated (which shall not be less than forty-one (41) days from the date of
22 the first publication), or judgment, the nature of which shall be stated,

1 will be rendered accordingly. If jurisdiction of the court is based on
2 property, any real property subject to the jurisdiction of the court and
3 any property or debts to be attached or garnished must be described in
4 the notice.

5 (1) When the recovery of money is sought, it is not necessary for the
6 publication notice to state the separate items involved, but the
7 total amount that is claimed must be stated. When interest is
8 claimed, it is not necessary to state the rate of interest, the date
9 from which interest is claimed, or that interest is claimed until
10 the obligation is paid.

11 (2) It is not necessary for the publication notice to state that the
12 judgment will include recovery of costs in order for a judgment
13 following the publication notice to include costs of suit.

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

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

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

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

1 conduct an inquiry to ascertain whether the requirements described in
2 subparagraph b of this paragraph have been satisfied.

3 f. A party against whom a default judgment or order has been rendered,
4 without other service than by publication in a newspaper, may, at any
5 time within three (3) years after the filing of the judgment or order,
6 have the judgment or order set aside in the manner prescribed in
7 Sections 1031.1 and 1033 of this title. Before the judgment or order is
8 set aside, the applicant shall notify the adverse party of the intention
9 to make an application and shall file a full answer to the petition, pay
10 all costs if the court requires them to be paid, and satisfy the court by
11 affidavit or other evidence that during the pendency of the action the
12 applicant had no actual notice thereof in time to appear in court and
13 make a defense. The title to any property which is the subject of and
14 which passes to a purchaser in good faith by or in consequence of the
15 judgment or order to be opened shall not be affected by any
16 proceedings under this subparagraph. Nor shall proceedings under
17 this subparagraph affect the title of any property sold before judgment
18 under an attachment. The adverse party, on the hearing of an
19 application to open a judgment or order as provided by this
20 subparagraph, shall be allowed to present evidence to show that
21 during the pendency of the action the applicant had notice thereof in
22 time to appear in court and make a defense.

- 1 g. The term "successors" includes all heirs, executors, administrators,
2 devisees, trustees, and assigns, immediate and remote, of a named
3 individual, partnership, corporation, or association.
- 4 h. Service outside of the state does not give the court in personal
5 jurisdiction over a defendant who is not subject to the jurisdiction of
6 the courts of this state or who has not, either in person or through an
7 agent, submitted to the jurisdiction of the courts of this state.

8 4. SERVICE ON THE SECRETARY OF STATE.

- 9 a. Service of process on a domestic or foreign corporation may be made by
10 serving the Secretary of State as the corporation's agent, if:
- 11 (1) there is no registered agent for the corporation listed in the
12 records of the Secretary of State; or
- 13 (2) neither the registered agent nor an officer of the corporation
14 could be found at the registered office of the corporation, when
15 service of process was attempted.
- 16 b. Before resorting to service on the Secretary of State the plaintiff must
17 have attempted service either in person or by mail on the corporation
18 at:
- 19 (1) the corporation's last-known address shown on the records of the
20 Franchise Tax Division of the Oklahoma Tax Commission, if any
21 is listed there; and

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

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

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

8 c. Service on the Secretary of State shall be made by filing two (2) copies
9 of the summons and petition with the Secretary of State, notifying the
10 Secretary of State that service is being made pursuant to the
11 provisions of this paragraph, and paying the Secretary of State the fee
12 prescribed in paragraph 7 of Section 1142 of Title 18 of the Oklahoma
13 Statutes, which fee shall be taxed as part of the costs of the action, suit
14 or proceeding if the plaintiff shall prevail therein. If a registered agent
15 for the corporation is listed in the records of the Secretary of State, the
16 plaintiff must also furnish a certified copy of the return showing that
17 service on the registered agent has been attempted either in person or
18 by mail, and that neither the registered agent nor an officer of the
19 corporation could be found at the registered office of the corporation.

20 d. Within three (3) working days after receiving the summons and
21 petition, the Secretary of State shall send notice by letter, certified
22 mail, return receipt requested, directed to the corporation at its

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

8 e. Before entry of a default judgment or order against a corporation that
9 has been served by serving the Secretary of State as its agent under
10 this paragraph, the court shall determine whether the requirements of
11 this paragraph have been satisfied. A default judgment or order
12 against a corporation that has been served only by service on the
13 Secretary of State may be set aside upon motion of the corporation in
14 the manner prescribed in Section 1031.1 of this title, or upon petition
15 of the corporation in the manner prescribed in Section 1033 of this
16 title, if the corporation demonstrates to the court that it had no actual
17 notice of the action in time to appear and make its defense. A petition
18 shall be filed within one (1) year after the corporation has notice of the
19 default judgment or order but in no event more than two (2) years after
20 the filing of the default judgment or order.

21 f. The Secretary of State shall maintain an alphabetical record of service
22 setting forth the name of the plaintiff and defendant, the title, docket

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

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

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

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

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

20 D. SUMMONS AND PETITION. The summons and petition shall be served
21 together. The plaintiff shall furnish the person making service with such copies as are
22 necessary. The failure to serve a copy of the petition with the summons is not a ground

1 for dismissal for insufficiency of service of process, but on motion of the party served, the
2 court may extend the time to answer or otherwise plead. If a summons and petition are
3 served by personal delivery, the person serving the summons shall state on the copy that
4 is left with the person served the date that service is made. This provision is not
5 jurisdictional, but if the failure to comply with it prejudices the party served, the court,
6 on motion of the party served, may extend the time to answer or otherwise plead.

7 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

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

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

1 f. as directed by the court.

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

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

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

12 6. a. A court of this state may order service upon any person who is
13 domiciled or can be found within this state of any document issued in
14 connection with a proceeding in a tribunal outside this state. The
15 order may be made upon application of any interested person or in
16 response to a letter rogatory issued by a tribunal outside this state and
17 shall direct the manner of service.

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

20 c. Service under this paragraph does not, of itself, require the recognition
21 or enforcement of an order, judgment, or decree rendered outside this
22 state.

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

4 G. RETURN.

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

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

15 3. If service was by mail, the person mailing the summons and petition shall
16 endorse on the copy of the summons or order of the court that is filed in the action the
17 date and place of mailing and the date when service was received or service was
18 rejected, and shall attach to the copy of the summons or order a copy of the return
19 receipt or returned envelope, if and when received, showing whether the mailing was
20 accepted, refused, or otherwise returned. If the mailing was refused, the return shall
21 also show the date and place of any subsequent mailing pursuant to paragraph 2 of
22 subsection C of this section. When the summons and petition are mailed by the court

1 clerk, the court clerk shall notify the plaintiff's attorney within three (3) days after
2 receipt of the returned card or envelope showing that the card or envelope has been
3 received.

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

8 I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is not made
9 upon a defendant within ~~one hundred eighty (180)~~ one hundred twenty (120) days after
10 the filing of the petition and the plaintiff cannot show good cause why such service was
11 not made within that period, the action ~~may~~ shall be dismissed as to that defendant
12 without prejudice ~~upon the court's own initiative with notice to the plaintiff or upon~~
13 ~~motion~~. The action shall not be dismissed ~~where~~ if a summons was served on the
14 defendant within ~~one hundred eighty (180)~~ one hundred twenty (120) days after the filing
15 of the petition and a court later holds that the summons or its service was invalid. After
16 a court quashes a summons or its service, a new summons may be served on the
17 defendant within a time specified by the judge. If the new summons is not served within
18 the specified time, the action shall be deemed to have been dismissed without prejudice
19 as to that defendant. This subsection shall not apply with respect to a defendant who
20 has been outside of this state for ~~one hundred eighty (180)~~ one hundred twenty (120)
21 days following the filing of the petition.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 18. AMENDATORY 12 O.S. 2001, Section 2008, is amended to read
2 as follows:

3 Section 2008.

4 GENERAL RULES OF PLEADING

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

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

9 2. A demand for judgment for the relief to which he deems himself entitled. Every
10 pleading demanding relief for damages in money in excess of ~~Ten Thousand Dollars~~
11 ~~(\$10,000.00)~~ the amount required for diversity jurisdiction pursuant to Section 1332 of
12 Title 28 of the United States Code shall, without demanding any specific amount of
13 money, set forth only that the amount sought as damages is in excess of ~~Ten Thousand~~
14 ~~Dollars (\$10,000.00)~~ the amount required for diversity jurisdiction pursuant to Section
15 1332 of Title 28 of the United States Code, except in actions sounding in contract. Every
16 pleading demanding relief for damages in money in an amount of ~~Ten Thousand Dollars~~
17 ~~(\$10,000.00)~~ that is required for diversity jurisdiction pursuant to Section 1332 of Title
18 28 of the United States Code or less shall specify the amount of such damages sought to
19 be recovered. If the amount of damages sought to be recovered is the same as the
20 amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the
21 United States Code or less, the amount of damages that may be recovered shall not
22 exceed the amount set forth in the pleadings.

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

2 B. DEFENSES; FORM OF DENIALS. A party shall state in short and plain terms
3 his defenses to each claim asserted and shall admit or deny the averments upon which
4 the adverse party relies. If he is without knowledge or information sufficient to form a
5 belief as to the truth of an averment, he shall so state and this statement has the effect of
6 a denial. Denials shall fairly meet the substance of the averments denied. When a
7 pleader intends in good faith to deny only a part or a qualification of an averment, he
8 shall specify so much of it as is true and material and shall deny only the remainder.
9 Unless the pleader intends in good faith to controvert all the averments of the preceding
10 pleading, he may make his denials as specific denials of designated averments or
11 paragraphs or he may generally deny all the averments except such designated
12 averments or paragraphs as he expressly admits; but, when he does so intend to
13 controvert all its averments, he may do so by general denial subject to the obligations set
14 forth in Section 2011 of this title.

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

- 17 1. Accord and satisfaction;
- 18 2. Arbitration and award;
- 19 3. Assumption of risk;
- 20 4. Contributory negligence;
- 21 5. Discharge in bankruptcy;
- 22 6. Duress;

- 1 7. Estoppel;
- 2 8. Failure of consideration;
- 3 9. Fraud;
- 4 10. Illegality;
- 5 11. Injury by fellow servant;
- 6 12. Laches;
- 7 13. License;
- 8 14. Payment;
- 9 15. Release;
- 10 16. Res judicata;
- 11 17. Statute of frauds;
- 12 18. Statute of limitations;
- 13 19. Waiver; and
- 14 20. Any other matter constituting an avoidance or affirmative defense.

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

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

22 E. PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

1 particulars as are peculiarly within the pleader's knowledge, and he shall have the
2 burden of proof on that issue.

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

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

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

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

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

20 G. SPECIAL DAMAGE. When items of special damage are claimed, their nature
21 shall be specifically stated. In actions where exemplary or punitive damages are sought,
22 the petition shall ~~not~~ state a specific dollar amount for damages sought to be recovered

1 but shall state whether the amount of damages sought to be recovered is in excess of or
2 not in excess of Ten Thousand Dollars (\$10,000.00). If the amount of damages sought to
3 be recovered is in excess of Ten Thousand Dollars (\$10,000.00) but less than the amount
4 required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United
5 States Code, the amount of damages that may be recovered shall not exceed the amount
6 set forth in the pleadings. Unless a good faith based change in circumstances arises, the
7 party may seek, by application to the court prior to the pretrial order, an amendment to
8 change the amount plead for good cause. If the amount sought exceeds the amount
9 required to satisfy diversity jurisdiction pursuant to Section 1332 of Title 28 of the
10 United States Code, the specific amount must be included in the petition.

11 SECTION 20. AMENDATORY 12 O.S. 2001, Section 2011, as amended by
12 Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 2011), is amended to
13 read as follows:

14 Section 2011.

15 SIGNING OF PLEADINGS

16 A. SIGNATURE. Every pleading, written motion, and other paper shall be signed
17 by at least one attorney of record in his individual name, whose Oklahoma Bar
18 Association identification number shall be stated, or, if the party is not represented by an
19 attorney, shall be signed by the party. Each paper shall state the address of the signer
20 and telephone number, if any. Except when otherwise specifically provided by rule or
21 statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper

1 shall be stricken unless the omission of the signature is corrected promptly after being
2 called to the attention of the attorney or party.

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

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

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

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

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

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

1 1. HOW INITIATED.

2 a. By Motion. A motion for sanctions under this rule shall be made
3 separately from other motions or requests and shall describe the
4 specific conduct alleged to violate subsection B of this section. It shall
5 be served as provided in Section 2005 of this title, but shall not be filed
6 with or presented to the court unless, within twenty-one (21) days after
7 service of the motion or such other period as the court may prescribe,
8 the challenged paper, claim, defense, contention, allegation, or denial
9 is not withdrawn or appropriately corrected. If warranted, the court
10 may award to the party prevailing on the motion the reasonable
11 expenses and attorneys fees incurred in presenting or opposing the
12 motion. Absent exceptional circumstances, a law firm shall be held
13 jointly responsible for violations committed by its partners, associates,
14 and employees.

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

20 2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for violation of
21 this section shall be limited to what is sufficient to deter repetition of such conduct or
22 comparable conduct by others similarly situated. Subject to the limitations in

1 subparagraphs a, b and c of this paragraph, the sanction may consist of, or include,
2 directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on
3 motion and warranted for effective deterrence, an order directing payment to the movant
4 of some or all of the reasonable attorneys fees and other expenses incurred as a direct
5 result of the violation.

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

8 b. Monetary sanctions shall not be awarded on the court's initiative
9 unless the court issues its order to show cause before a voluntary
10 dismissal or settlement of the claims made by or against the party
11 which is, or whose attorneys are, to be sanctioned.

12 c. Monetary sanctions shall be awarded for any violations of paragraph 1
13 of subsection B of this section. The sanctions shall consist of an order
14 directing payment of reasonable costs, including attorney fees,
15 incurred by the movant with respect to the conduct for which the
16 sanctions are imposed. In addition, the court may impose any other
17 sanctions authorized by this paragraph.

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

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

4 E. DEFINITION. As used in this section, “frivolous” means the action or pleading
5 was knowingly asserted in bad faith, ~~was unsupported by any credible evidence, was not~~
6 ~~grounded in fact, or was unwarranted by existing law or a good faith argument for the~~
7 ~~extension, modification, or reversal of existing law or the establishment of new law or~~
8 without any rational argument based in law or fact to support the position of the litigant.

9 SECTION 21. AMENDATORY Section 1, Chapter 370, O.S.L. 2004 (12 O.S.
10 Supp. 2005, Section 2011.1), is amended to read as follows:

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

1 impose any sanction authorized by Section 2011 of ~~Title 12 of the Oklahoma Statutes~~ this
2 title.

3 SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma
4 Statutes as Section 2016.1 of Title 12, unless there is created a duplication in numbering,
5 reads as follows:

6 PRETRIAL CONFERENCE

7 A. PRETRIAL ORDER. After any pretrial conference, a pretrial order shall be
8 entered reciting the action taken. This order shall control the subsequent course of
9 action unless modified by subsequent order. The order following a pretrial conference
10 shall be modified only to prevent manifest injustice.

11 B. COMPULSORY REQUIREMENTS. The pretrial order shall include, among
12 other things, a specific itemization of damages for each party claiming monetary
13 damages. The amount of damages that may be recovered shall not exceed the amount
14 set forth in the order. The trial court shall, by written order, remit any amounts that
15 exceed the itemized amounts contained in the pretrial order.

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

18 Section 2023.

19 CLASS ACTIONS

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

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

- 1 2. There are questions of law or fact common to the class;
- 2 3. The claims or defenses of the representative parties are typical of the claims or
- 3 defenses of the class; and
- 4 4. The representative parties will fairly and adequately protect the interests of the
- 5 class.
- 6 B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class
- 7 action if the prerequisites of subsection A of this section are satisfied and in addition:
- 8 1. The prosecution of separate actions by or against individual members of the class
- 9 would create a risk of:
- 10 a. inconsistent or varying adjudications with respect to individual
- 11 members of the class which would establish incompatible standards of
- 12 conduct for the party opposing the class, or
- 13 b. adjudications with respect to individual members of the class which
- 14 would as a practical matter be dispositive of the interests of the other
- 15 members not parties to the adjudications or substantially impair or
- 16 impede their ability to protect their interests; or
- 17 2. The party opposing the class has acted or refused to act on grounds generally
- 18 applicable to the class, thereby making appropriate final injunctive relief or
- 19 corresponding declaratory relief with respect to the class as a whole; or
- 20 3. The court finds that the questions of law or fact common to the members of the
- 21 class predominate over any questions affecting only individual members, and that a class

1 action is superior to other available methods for the fair and efficient adjudication of the
2 controversy. The matters pertinent to the findings include:

- 3 a. the interest of members of the class in individually controlling the
4 prosecution or defense of separate actions,
- 5 b. the extent and nature of any litigation concerning the controversy
6 already commenced by or against members of the class,
- 7 c. the desirability or undesirability of concentrating the litigation of the
8 claims in the particular forum, and
- 9 d. the difficulties likely to be encountered in the management of a class
10 action.

11 C. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY; STATE
12 AGENCY WITH EXCLUSIVE OR PRIMARY JURISDICTION.

13 Before hearing or deciding a motion to certify a class action, the court shall hear
14 and rule on all pending motions asserting lack of jurisdiction because an agency of this
15 state has exclusive or primary jurisdiction of the action or a part of the action, or
16 asserting that a party has failed to exhaust administrative remedies. The ruling of the
17 court shall be reflected in a written order. If a motion provided for in this subsection is
18 denied and a class is subsequently certified, a person may obtain appellate review of the
19 order denying the motion as part of an appeal of the order certifying the class action.

20 D. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE
21 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS
22 CLASS ACTIONS.

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

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

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

16 ~~Where~~ If the class contains more than five hundred (500) potential members who
17 can be identified through reasonable effort, it shall not be necessary to direct individual
18 notice to more than five hundred (500) potential members, but the potential members to
19 whom individual notice is not directed shall be given notice in such manner as the court
20 shall direct, which may include publishing notice in newspapers, magazines, trade
21 journals or other publications, posting it in appropriate places, and taking other steps
22 that are reasonably calculated to bring the notice to the attention of such members,

1 provided that the cost of giving such notice shall be reasonable in view of the amounts
2 that may be recovered by the class ~~members who are being notified~~. Members Potential
3 members to whom individual notice was not directed may request ~~exclusion from~~
4 inclusion in the class at any time before the issue of liability is determined, ~~and;~~
5 provided, commencing an individual action before the issue of liability is determined in
6 the class action shall be the equivalent of requesting result in exclusion from the class.

7 3. The judgment in an action maintained as a class action under paragraphs 1 or 2
8 of subsection B of this section, whether or not favorable to the class, shall include and
9 describe those whom the court finds to be members of the class. The judgment in an
10 action maintained as a class action under paragraph 3 of subsection B of this section,
11 whether or not favorable to the class, shall include and specify or describe those to whom
12 the notice provided in paragraph 2 of this subsection ~~C of this section~~ was directed, and
13 who have ~~not~~ requested ~~exclusion~~ inclusion, and whom the court finds to be members of
14 the class.

15 4. When appropriate:

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

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

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

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

3 2. Requiring, for the protection of the members of the class or otherwise for the fair
4 conduct of the action, that notice be given in such manner as the court may direct to
5 some or all of the members of any step in the action, or of the proposed extent of the
6 judgment, or of the opportunity of members to signify whether they consider the
7 representation fair and adequate, to intervene and present claims or defenses, or
8 otherwise to come into the action;

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

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

12 5. Dealing with similar procedural matters.

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

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

19 SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma
20 Statutes as Section 2056 of Title 12, unless there is created a duplication in numbering,
21 reads as follows:

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

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

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

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

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

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

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

21 F. WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the
22 affidavits of a party opposing the motion that the party cannot for reasons stated present

1 by affidavit facts essential to justify the party's opposition, the court may refuse the
2 application for judgment or may order a continuance to permit affidavits to be obtained
3 or depositions to be taken or discovery to be had or may make such other order as is just.
4 Upon request of a party opposing a motion for summary judgment, the court shall allow a
5 reasonable amount of time to conclude discovery sufficient to allow the party to
6 adequately respond to the motion for summary judgment.

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

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

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

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

3 SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma
4 Statutes as Section 2413 of Title 12, unless there is created a duplication in numbering,
5 reads as follows:

6 In an action to recover damages for injuries resulting in death, evidence of the
7 remarriage or social situation of the surviving spouse of the decedent is admissible.

8 SECTION 26. AMENDATORY 12 O.S. 2001, Section 2702, is amended to read
9 as follows:

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

13 1. Rationally based on the perception of the witness;

14 2. Helpful to a clear understanding of the witness' testimony or the determination
15 of a fact in issue; and

16 3. Not based on scientific, technical, or other specialized knowledge within the
17 scope of subsection B of this section.

18 B. TESTIMONY BY EXPERTS. If scientific, technical or other specialized
19 knowledge will assist the trier of fact to understand the evidence or to determine a fact in
20 issue, a witness qualified as an expert by knowledge, skill, experience, training or
21 education may testify in the form of an opinion or otherwise, if:

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

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

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

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

14 D. BARS TO EXPERT TESTIMONY.

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

18 2. An expert witness may receive a reasonable and customary fee for the rendering
19 of professional services, provided that the testimony of an expert witness shall not be
20 admitted if any such compensation is contingent on the outcome of any claim or case with
21 respect to which the testimony is being offered.

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

10 F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

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

14 2. Except as otherwise stipulated or directed by the court, this disclosure shall,
15 with respect to a witness who is retained or specially employed to provide expert
16 testimony in the case or whose duties as an employee of the party regularly involve
17 giving expert testimony, be accompanied by a written report prepared and signed by the
18 witness. The report shall contain a complete statement of all opinions to be expressed
19 and the basis and reasons therefor; the data or other information considered by the
20 witness in forming the opinions; any exhibits to be used as a summary of or support for
21 the opinions; the qualifications of the witness, including a list of all publications
22 authored by the witness within the preceding ten (10) years; the compensation to be paid

1 for the study and testimony; and a listing of any other cases in which the witness has
2 testified as an expert at trial or by deposition within the preceding four (4) years.

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

9 4. A party may depose any person who has been identified as an expert whose
10 opinions may be presented at trial. If a report from the expert is required under
11 paragraph 2 of this subsection, the deposition shall not be conducted until after the
12 report is provided.

13 G. INTERPRETATION. In interpreting and applying this section, the courts of
14 this state shall follow the opinions of the Supreme Court of the United States in Daubert
15 v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), General Electric Co. v. Joiner,
16 522 U.S. 136 (1997), Kuhmo Tire Co. Ltd. v. Carmichael, 526 U.S. 137 (1999), Weisgram
17 v. Marley, 528 U.S. 440 (2000), and their progeny; moreover, the courts of this state may
18 draw from other precedents binding in the federal courts of this state applying the
19 standard announced by the Supreme Court of the United States in the foregoing cases.

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

1 1. The ruling involved any challenge to the constitutionality of this section;
2 2. The ruling will help prove or disprove criminal liability; or
3 3. The ruling will help establish civil liability at or above Seventy-five Thousand
4 Dollars (\$75,000.00), where the testimony could be outcome—determinative for
5 establishing liability or determining damages. Neither a party’s failure to seek
6 interlocutory appeal or an appellate court’s decision to deny a motion for interlocutory
7 appeal shall waive a party’s right to appeal a ruling on the admissibility of expert
8 evidence after an entry of judgment in the case.

9 I. STANDARD OF REVIEW.

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

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

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

1 K. EFFECTIVE DATE. This section shall apply to all actions commenced on or
2 after November 1, 2007, and to all pending actions in which trial has not been scheduled
3 or in which trial has been scheduled after February 1, 2008.

4 SECTION 27. AMENDATORY 12 O.S. 2001, Section 3226, as last amended by
5 Section 3, Chapter 519, O.S.L. 2004 (12 O.S. Supp. 2006, Section 3226), is amended to
6 read as follows:

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

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

16 1. IN GENERAL. Parties may obtain discovery regarding any matter, not
17 privileged, which is relevant to the subject matter involved in the pending action,
18 whether it relates to the claim or defense of the party seeking discovery or to the claim or
19 defense of any other party, including the existence, description, nature, custody,
20 condition and location of any books, documents or other tangible things and the identity
21 and location of persons having knowledge of any discoverable matter. It is not a ground
22 for objection that the information sought will be inadmissible at the trial if the

1 information sought appears reasonably calculated to lead to the discovery of admissible
2 evidence. ~~A party shall produce upon request pursuant to Section 3234 of this title, any~~
3 ~~insurance agreement under which any person carrying on an insurance business may be~~
4 ~~liable to satisfy part or all of a judgment which may be entered in the action or to~~
5 ~~indemnify or reimburse for payments made to satisfy the judgment. Information~~
6 ~~concerning the insurance agreement is not by reason of disclosure admissible in evidence~~
7 ~~at trial. For purposes of this section, an application for insurance shall not be treated as~~
8 ~~a part of an insurance agreement.~~

9 2. INITIAL DISCLOSURES.

- 10 a. Except in categories of proceedings specified in subparagraph b of this
11 paragraph, or to the extent otherwise stipulated or directed by order, a
12 party, without awaiting a discovery request, must provide to other
13 parties a computation of any category of damages claimed by the
14 disclosing party, making available for inspection and copying the
15 documents or other evidentiary material, not privileged or protected
16 from disclosure, on which such computation is based, including
17 materials bearing on the nature and extent of injuries suffered.
- 18 b. The following categories of proceedings are exempt from initial
19 disclosure under subparagraph a of this paragraph:
- 20 (1) an action for review on an administrative record,
21 (2) a petition for habeas corpus or other proceeding to challenge a
22 criminal conviction or sentence,

- 1 (3) an action brought without counsel by a person in custody of the
2 United States, a state, or a state subdivision,
- 3 (4) an action to enforce or quash an administrative summons or
4 subpoena,
- 5 (5) an action by the United States to recover benefit payments,
- 6 (6) an action by the United States to collect on a student loan
7 guaranteed by the United States,
- 8 (7) a proceeding ancillary to proceedings in other courts, and
- 9 (8) an action to enforce an arbitration award.

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

1 4. TRIAL PREPARATION: MATERIALS. Subject to the provisions of paragraph 3
2 5 of this subsection, discovery may be obtained of documents and tangible things
3 otherwise discoverable under paragraph 1 of this subsection and prepared in anticipation
4 of litigation or for trial by or for another party or by or for the representative of that
5 other party, including his attorney, consultant, surety, indemnitor, only upon a showing
6 that the party seeking discovery has substantial need of the materials in the preparation
7 of his case and that he is unable, without undue hardship, to obtain the substantial
8 equivalent of the materials by other means. In ordering discovery of such materials
9 when the required showing has been made, the court shall protect against disclosure of
10 the mental impressions, conclusions, opinions or legal theories of an attorney or other
11 representative of a party concerning the litigation.

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

- 19 a. A written statement signed or otherwise adopted or approved by the
20 person making it, or

1 b. A stenographic, mechanical, electrical, or other recording, or a
2 transcription thereof, which substantially recites an oral statement by
3 the person making it and contemporaneously recorded.

4 ~~3.~~ 5. TRIAL PREPARATION: EXPERTS.

5 a. Discovery of facts known and opinions held by experts, otherwise
6 discoverable under the provisions of paragraph 1 of this subsection and
7 acquired or developed in anticipation of litigation or for trial, may be
8 obtained only as follows:

9 (1) A party may, through interrogatories, require any other party to
10 identify each person whom that other party expects to call as an
11 expert witness at trial and give the address at which that expert
12 witness may be located.

13 (2) After disclosure of the names and addresses of the expert
14 witnesses, the other party expects to call as witnesses, the party,
15 who has requested disclosure, may depose any such expert
16 witnesses subject to scope of this section. Prior to taking the
17 deposition the party must give notice as required in subsections
18 A and C of Section 3230 of this title. If any documents are
19 provided to such disclosed expert witnesses, the documents shall
20 not be protected from disclosure by privilege or work product
21 protection and they may be obtained through discovery.

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

17 b. A party may discover facts known or opinions held by an expert who
18 has been retained or specially employed by another party in
19 anticipation of litigation or preparation for trial and who is not
20 expected to be called as a witness at trial, only upon motion, when the
21 court may order discovery as provided in Section 3235 of this title or
22 upon a showing of exceptional circumstances under which it is

1 impracticable for the party seeking discovery to obtain facts or
2 opinions on the same subject by any other means.

3 c. Unless manifest injustice would result:

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

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

13 ~~4. 6.~~ CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION

14 MATERIALS. When a party withholds information otherwise discoverable under the
15 Oklahoma Discovery Code by claiming that it is privileged or subject to protection as
16 trial preparation material, the party shall make the claim expressly and shall describe
17 the nature of the documents, communications, or things not produced or disclosed in a
18 manner that, without revealing information itself privileged or protected, will enable
19 other parties to assess the applicability of the privilege or protection.

20 C. PROTECTIVE ORDERS.

21 1. Upon motion by a party or by the person from whom discovery is sought,
22 accompanied by a certification that the movant has in good faith conferred or attempted

1 to confer, either in person or by telephone, with other affected parties in an effort to
2 resolve the dispute without court action, and for good cause shown, the court in which
3 the action is pending or on matters relating to a deposition, the district court in the
4 county where the deposition is to be taken may enter any order which justice requires to
5 protect a party or person from annoyance, harassment, embarrassment, oppression or
6 undue delay, burden or expense, including one or more of the following:

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

1 2. If the motion for a protective order is denied in whole or in part, the court may,
2 on such terms and conditions as are just, order that any party or person provide or
3 permit discovery. The provisions of paragraph 4 of subsection A of Section 3237 of this
4 title apply to the award of expenses incurred in relation to the motion. Any protective
5 order of the court which has the effect of removing any material obtained by discovery
6 from the public record shall contain the following:

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

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

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

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

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

5 7. When a case is filed in which a party intends to seek a protective order removing
6 material from the public record, the plaintiff(s) and defendant(s) shall be initially
7 designated on the petition under pseudonym such as "John or Jane Doe", or "Roe", and
8 the petition shall clearly indicate that the party designations are fictitious. The party
9 seeking confidentiality or other order removing the case, in whole or in part, from the
10 public record, shall immediately present application to the court, seeking instructions for
11 the conduct of the case, including confidentiality of the records.

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

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

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

- 1 2. A proposed plan and schedule of discovery;
- 2 3. Any limitations proposed to be placed on discovery;
- 3 4. Any other proposed orders with respect to discovery; and
- 4 5. A statement showing that the attorney making the motion has made a
- 5 reasonable effort to reach agreement with opposing attorneys on the matters set forth in
- 6 the motion.

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

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

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

21 G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS.

22 Every request for discovery, response or objection thereto made by a party represented by

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

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

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

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

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

20 SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 751A of Title 15, unless there is created a duplication in numbering,
22 reads as follows:

1 It is the intent of the Legislature that in construing the Consumer Protection Act,
2 courts shall be guided by the policies of the Federal Trade Commission and
3 interpretations given by the Federal Trade Commission and the federal courts to Section
4 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C., Section 45(a)(1), as from time to
5 time amended.

6 SECTION 29. AMENDATORY 15 O.S. 2001, Section 754, is amended to read
7 as follows:

8 Section 754. Nothing in ~~this act~~ the Consumer Protection Act shall apply to:

9 1. Publishers, broadcasters, printers, or other persons insofar as an unlawful
10 practice as defined in Section ~~3~~ 753 of this ~~act~~ title involves information that has been
11 disseminated or reproduced on behalf of others without knowledge that it is an unlawful
12 practice;

13 2. Actions or transactions otherwise permitted or regulated ~~under laws~~
14 ~~administered by~~ the Federal Trade Commission, the Corporation Commission, or any
15 other regulatory body or officer acting under statutory authority of this state or the
16 United States, or to acts done by retailers or other persons acting in good faith on the
17 basis of information or matter supplied by others and without knowledge of the deceptive
18 character of such information or matter; and

19 3. Claims seeking damages for conduct that results in bodily injury, death, or
20 damage to property other than the property that is the subject of the practice claimed to
21 be a violation of the Consumer Protection Act.

1 SECTION 30. AMENDATORY 15 O.S. 2001, Section 761.1, is amended to read
2 as follows:

3 Section 761.1 A. The commission of any act or practice declared to be a violation of
4 the Consumer Protection Act shall render the violator liable to the aggrieved consumer
5 who suffers an ascertainable loss of money or property, real or personal, as a result of the
6 violation for the payment of actual damages sustained by the customer and costs of
7 litigation including reasonable ~~attorney's~~ attorney fees, and the aggrieved consumer
8 shall have a private right of action for actual damages, including but not limited to, costs
9 and ~~attorney's~~ attorney fees. Actual damages shall be measured by the consumer's out-
10 of-pocket loss, which is an amount of money equal to the difference between the amount
11 paid by the consumer for the goods or service and the actual market value of the goods or
12 service that the consumer actually received. In any private action for damages for a
13 violation of the Consumer Protection Act the court shall, subsequent to adjudication on
14 the merits and upon motion of the prevailing party, determine whether a claim or
15 defense asserted in the action by a nonprevailing party was asserted in bad faith, was
16 not well grounded in fact, or was unwarranted by existing law or a good faith argument
17 for the extension, modification, or reversal of existing law. Upon so finding, the court
18 shall enter a judgment ordering such nonprevailing party to reimburse the prevailing
19 party an amount not to exceed Ten Thousand Dollars (\$10,000.00) for reasonable costs,
20 including ~~attorney's~~ attorney fees, incurred with respect to such claim or defense.

21 B. In order to recover damages in an action for a violation of the Consumer
22 Protection Act, a person shall be required to prove that the person reasonably relied to

1 that person's detriment upon the practice alleged to be a violation of the Consumer
2 Protection Act, and that the damages were proximately caused by the practice alleged to
3 be a violation of the Consumer Protection Act.

4 C. The commission of any act or practice declared to be a violation of the Consumer
5 Protection Act, if such act or practice is also found to be unconscionable, shall render the
6 violator liable to the aggrieved customer for the payment of a civil penalty, recoverable in
7 an individual action only, in a sum set by the court of not more than Two Thousand
8 Dollars (\$2,000.00) for each violation. In determining whether an act or practice is
9 unconscionable, the following circumstances shall be taken into consideration by the
10 court: (1) whether the violator knowingly or with reason to know, took advantage of a
11 consumer reasonably unable to protect his or her interests because of his or her age,
12 physical infirmity, ignorance, illiteracy, inability to understand the language of an
13 agreement or similar factor; (2) whether, at the time the consumer transaction was
14 entered into, the violator knew or had reason to know that price grossly exceeded the
15 price at which similar property or services were readily obtainable in similar
16 transactions by like consumers; (3) whether, at the time the consumer transaction was
17 entered into, the violator knew or had reason to know that there was no reasonable
18 probability of payment of the obligation in full by the consumer; (4) whether the violator
19 knew or had reason to know that the transaction he or she induced the consumer to enter
20 into was excessively one-sided in favor of the violator.

21 ~~C.~~ D. Any person who is found to be in violation of the Oklahoma Consumer
22 Protection Act in a civil action or who willfully violates the terms of any injunction or

1 court order issued pursuant to the Consumer Protection Act shall forfeit and pay a civil
2 penalty of not more than Ten Thousand Dollars (\$10,000.00) per violation, in addition to
3 other penalties that may be imposed by the court, as the court shall deem necessary and
4 proper. For the purposes of this section, the district court issuing an injunction shall
5 retain jurisdiction, and in such cases, the Attorney General, acting in the name of the
6 state, or a district attorney may petition for recovery of civil penalties.

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

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

1 a fine not to exceed Five Thousand Dollars (\$5,000.00), or both such fine and
2 imprisonment.

3 SECTION 31. AMENDATORY 23 O.S. 2001, Section 9.1, as amended by
4 Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2006, Section 9.1), is amended to read
5 as follows:

6 Section 9.1 A. ~~It~~ Except as provided in Section 33 of this act, in an action for the
7 breach of an obligation not arising from contract, the jury, in addition to actual damages,
8 may, subject to the provisions and limitations in subsections B, C ~~and~~ D, E and G of this
9 section, award punitive damages for the sake of example and by way of punishing the
10 defendant based upon the following factors:

11 1. The seriousness of the hazard to the public arising from the defendant's
12 misconduct and any harm likely to result or harm that has actually occurred due to the
13 misconduct;

14 2. The profitability of the misconduct to the defendant;

15 3. The duration and frequency of the misconduct and any concealment of it;

16 4. The degree of the defendant's awareness of the hazard and of its excessiveness;

17 5. The attitude and conduct of the defendant upon discovery of the misconduct or
18 hazard;

19 6. In the case of a defendant which is a corporation or other entity, the number and
20 level of employees involved in causing or concealing the misconduct; and

21 7. The financial condition of the defendant.

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

1 1. The defendant has been guilty of reckless disregard for the rights of others; or
2 2. An insurer has recklessly disregarded its duty to deal fairly and act in good faith
3 with its insured; the jury, in a separate proceeding conducted after the jury has made
4 such finding and awarded actual damages, may award punitive damages in an amount
5 not to exceed the greater of:

- 6 a. One Hundred Thousand Dollars (\$100,000.00), or
- 7 b. the amount of the actual damages awarded.

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

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

11 1. The defendant has acted intentionally and with malice towards others; or
12 2. An insurer has intentionally and with malice breached its duty to deal fairly and
13 act in good faith with its insured;
14 the jury, in a separate proceeding conducted after the jury has made such finding and
15 awarded actual damages, may award punitive damages in an amount not to exceed the
16 greatest of:

- 17 a. Five Hundred Thousand Dollars (\$500,000.00),
- 18 b. twice the amount of actual damages awarded, or
- 19 c. the increased financial benefit derived by the defendant or insurer as a
20 direct result of the conduct causing the injury to the plaintiff and other
21 persons or entities.

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

7 D. Category III. Where the jury finds by clear and convincing evidence that:
8 1. The defendant has acted intentionally and with malice towards others; or
9 2. An insurer has intentionally and with malice breached its duty to deal fairly and
10 act in good faith with its insured; and the court finds, on the record and out of the
11 presence of the jury, that there is evidence beyond a reasonable doubt that the defendant
12 or insurer acted intentionally and with malice and engaged in conduct life-threatening to
13 humans,
14 the jury, in a separate proceeding conducted after the jury has made such finding and
15 awarded actual damages, may award punitive damages in any amount the jury deems
16 appropriate, without regard to the limitations set forth in subsections B and C of this
17 section. Any award of punitive damages under this subsection awarded in any manner
18 other than as required in this subsection shall be void and reversible error.

19 E. In any civil action in which an entitlement to punitive damages shall have been
20 established, no award of punitive damages shall exceed Two Million Dollars
21 (\$2,000,000.00).

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 F. In a claim for punitive damages, a plaintiff shall present prima facie evidence for
2 the punitive damages claim before conducting discovery regarding the financial assets or
3 financial condition of the defendant. The limitation on the amount of punitive damages
4 imposed by subsection E of this section shall not be disclosed to the jury, but shall be
5 applied by the court to any punitive damages verdict.

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

9 F. H. 1. In a case involving injury or harm allegedly caused by a product, the
10 manufacturer, distributor or seller of the product shall not be subject to exemplary or
11 punitive damages if, at the time the product left the control of the manufacturer,
12 distributor or seller, the product or the aspect, component, warning or absence of
13 warning contained in or accompanying the product that allegedly caused the injury or
14 harm either:

- 15 a. was in material compliance with statute or with the standards, rules,
16 regulations, requirements or specifications of a federal or state agency
17 responsible for regulating, evaluating or approving the project, or
18 b. was approved by a federal or state agency responsible for regulating,
19 evaluating or approving the product.

20 2. This subsection shall not apply if it is proven by clear and convincing evidence
21 that the defendant at any time before the event that allegedly caused the injury:

- 1 a. intentionally withheld or intentionally misrepresented information
2 which it was required at any time to submit to the agency and the
3 withholding or misrepresentation of such information was causally
4 related to the injury or harm alleged, or
5 b. made an illegal payment to an official or employee of the federal or
6 state government for the purpose of securing or maintaining approval
7 of the product.

8 3. This subsection shall apply to every case pending on or after November 1, 2007,
9 regardless of when the case was filed.

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

13 ~~G. This~~ J. The provisions of this section, except subsections E, F and H of this
14 section, shall apply to all civil actions filed after the effective date of this act August 25,
15 1995.

16 K. The provisions of subsections E, F and H of this section shall apply to all civil
17 actions filed on or after November 1, 2007.

18 SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma
19 Statutes as Section 9.2 of Title 23, unless there is created a duplication in numbering,
20 reads as follows:

1 A. In a medical liability action, the jury may only award punitive damages, in
2 addition to actual damages, if the jury finds by clear and convincing evidence that the
3 defendant has been guilty of intentional or impaired conduct.

4 B. The jury must award punitive damages in a separate proceeding conducted after
5 the jury has made the finding required by subsection A of this section and awarded
6 actual damages in a medical liability action.

7 C. The provisions of this section shall apply to all medical liability actions that
8 accrue on or after November 1, 2007.

9 SECTION 33. AMENDATORY Section 18, Chapter 368, O.S.L. 2004 (23 O.S.
10 Supp. 2006, Section 15), is amended to read as follows:

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

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

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

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

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

6 SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 16 of Title 23, unless there is created a duplication in numbering,
8 reads as follows:

9 A. If the plaintiff has settled with one or more persons, the court shall reduce the
10 amount of damages to be recovered by the plaintiff with respect to a cause of action by a
11 percentage equal to the percentage of responsibility of each settling person.

12 B. If the plaintiff in a medical liability action has settled with one or more persons,
13 the court shall reduce the amount of damages to be recovered by the plaintiff with
14 respect to a cause of action by an amount equal to one of the following, as elected by the
15 defendant:

- 16 1. The sum of the dollar amounts of all settlements; or
17 2. A percentage equal to each settling person's percentage of responsibility as found
18 by the trier of fact.

19 C. In every medical liability action, the plaintiff shall, within sixty (60) days after
20 the commencement of the action, serve written notice to the defendant(s) of any amount
21 paid or payable as a medical benefit pursuant to any health, sickness, or accident
22 insurance or plan, which provides health benefits, or any contract or agreement of any

1 group, organization, partnership, or corporation to provide, pay for, or reimburse the cost
2 of medical, hospital, dental, or other health care services, and shall file a copy thereof
3 with the court or arbitrator.

4 D. An election made under subsection B of this section shall be made by any
5 defendant filing a written election before the issues of the action are submitted to the
6 trier of fact and when made, shall be binding on all defendants. If no defendant makes
7 this election or if conflicting elections are made, all defendants are considered to have
8 elected the option provided for in paragraph 1 of subsection B of this section.

9 SECTION 35. AMENDATORY 23 O.S. 2001, Section 61, is amended to read as
10 follows:

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

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

20 SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 61.2 of Title 23, unless there is created a duplication in numbering,
22 reads as follows:

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

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

7 SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 61.3 of Title 23, unless there is created a duplication in numbering,
9 reads as follows:

10 A. Except as provided in subsection B of this section, in any action not arising out
11 of contract, the amount of noneconomic damages awarded shall not exceed Three
12 Hundred Thousand Dollars (\$300,000.00), regardless of the number of parties against
13 whom the action is brought or the number of actions brought with respect to the personal
14 injury.

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

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

21 D. The provisions of this section shall apply only to actions that accrue on or after
22 November 1, 2007.

1 SECTION 38. AMENDATORY 47 O.S. 2001, Section 11-1112, as last amended
2 by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp. 2006, Section 11-1112), is amended
3 to read as follows:

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

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

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

- 13 1. The driver of a school bus, taxicab, moped, motorcycle, or other motor vehicle not
14 required to be equipped with safety belts pursuant to state or federal laws;
- 15 2. The driver of an ambulance or emergency vehicle;
- 16 3. The driver of a vehicle in which all of the seat belts are in use;
- 17 4. The transportation of children who for medical reasons are unable to be placed in
18 such devices; or
- 19 5. The transportation of a child who weighs more than forty (40) pounds and who is
20 being transported in the back seat of a vehicle while wearing only a lap safety belt when
21 the back seat of the vehicle is not equipped with combination lap and shoulder safety
22 belts, or when the combination lap and shoulder safety belts in the back seat are being

1 used by other children who weigh more than forty (40) pounds. Provided, however, for
2 purposes of this paragraph, back seat shall include all seats located behind the front seat
3 of a vehicle operated by a licensed child care facility or church. Provided further, there
4 shall be a rebuttable presumption that a child has met the weight requirements of this
5 paragraph if at the request of any law enforcement officer, the licensed child care facility
6 or church provides the officer with a written statement verified by the parent or legal
7 guardian that the child weighs more than forty (40) pounds.

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

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

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

19 ~~G.~~ Any person convicted of violating subsection A or B of this section shall be
20 punished by a fine of Fifty Dollars (\$50.00) and shall pay all court costs thereof. Revenue
21 from such fine shall be apportioned to the Department of Public Safety Revolving Fund
22 and used by the Oklahoma Highway Safety Office to promote the use of child passenger

1 restraint systems as provided in Section 11-1113 of this title. This fine shall be
2 suspended and the court costs limited to a maximum of Fifteen Dollars (\$15.00) in the
3 case of the first offense upon proof of purchase or acquisition by loan of a child passenger
4 restraint system. Provided, the Department of Public Safety shall not assess points to
5 the driving record of any person convicted of a violation of this section.

6 SECTION 39. AMENDATORY 47 O.S. 2001, Section 12-420, as amended by
7 Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2006, Section 12-420), is amended to
8 read as follows:

9 Section 12-420. ~~Nothing in Sections 12-416 through 12-420 of this title shall~~ Any
10 violation of the Oklahoma Mandatory Seat Belt Use Act may be used in any civil
11 proceeding in this state and the use or nonuse of seat belts shall not be submitted into
12 permitted as evidence in any civil suit in Oklahoma.

13 SECTION 40. AMENDATORY 47 O.S. 2001, Section 230.30, is amended to
14 read as follows:

15 Section 230.30 A. No license shall be issued by the Corporation Commission to any
16 carrier until after the carrier shall have filed with the Commission a liability insurance
17 policy or bond covering public liability and property damage, issued by some insurance or
18 bonding company or insurance carrier authorized pursuant to this section and which has
19 complied with all of the requirements of the Commission, which bond or policy shall be
20 approved by the Commission, and shall be in a sum and amount as fixed by a proper
21 order of the Commission; and the liability and property damage insurance policy or bond
22 shall bind the obligor thereunder to make compensation for injuries to, or death of,

1 persons, and loss or damage to property, resulting from the operation of any carrier for
2 which the carrier is legally liable. A copy of the policy or bond shall be filed with the
3 Commission, and, after judgment against the carrier for any damage, the injured party
4 may maintain an action upon the policy or bond to recover the same, and shall be a
5 proper party to maintain such action only after a final judgment against the carrier has
6 been entered by the court; provided, in a civil action against a motor carrier operating in
7 this state, there shall be no direct action allowed against the insurer required by this
8 statute. In no instance shall an insurance or bonding company or insurance carrier
9 authorized pursuant to this section be sued in a civil action by a third party before a final
10 judgment against the carrier has been entered by the court.

11 B. Every motor carrier shall file with the Commission a cargo insurance policy or
12 bond covering any goods or property being transported, issued by some insurance or
13 bonding company or insurance carrier authorized as set forth below, and which has
14 complied with all of the requirements of the Commission, which bond or policy shall be
15 approved by the Commission, and shall be in a sum and amount as fixed by a proper
16 order of the Commission. The cargo insurance must be filed with the Commission prior
17 to a license being issued by the Commission, unless the motor carrier has been exempted
18 from this requirement.

19 Intrastate motor carriers of sand, rock, gravel, asphaltic mixtures or other similar
20 road building materials shall not be required to file cargo insurance and shall be required
21 to maintain liability insurance limits of Three Hundred Fifty Thousand Dollars
22 (\$350,000.00) combined single limit.

1 No carrier, whose principal place of business is in Oklahoma, shall conduct any
2 operations in this state unless the operations are covered by a valid primary bond or
3 insurance policy issued by a provider authorized or approved by the State Insurance
4 Commissioner. No carrier shall conduct any operations in this state unless the
5 operations are covered by a valid bond or insurance policy issued by a provider
6 authorized and approved by a National Association of Insurance Commissioners and
7 certified by the State Insurance Commission.

8 C. Each carrier shall maintain on file, in full force, all insurance required by the
9 laws of this state and the rules of the Commission during the operation of the carrier and
10 that the failure for any cause to maintain the coverage in full force and effect shall
11 immediately, without any notice from the Commission, suspend the rights of the carrier
12 to operate until proper insurance is provided. Any carrier suspended for failure to
13 maintain proper insurance shall have a reasonable time, not exceeding sixty (60) days, to
14 have its license reactivated, and to provide proper insurance upon showing:

- 15 1. No operation during the period in which it did not have insurance; and
- 16 2. Furnishing of proper insurance coverage.

17 D. Any carrier who fails to reactivate its license within sixty (60) days after the
18 suspension, as above provided, shall have the license canceled, by operation of law,
19 without any notice from the Commission. No license so canceled shall be reinstated or
20 otherwise made operative except that the Commission may reinstate the license of a
21 carrier upon proper showing that the carrier was actually covered by proper insurance
22 during the suspension or cancellation period, and that failure to file with the Commission

1 was not due to the negligence of the carrier. Any carrier desiring to file for
2 reinstatement of its license shall do so within ninety (90) days of its cancellation by law.

3 E. The Commission shall, in its discretion, permit the filing of certificates of
4 insurance coverage or such form as may be prescribed by the Commission, in lieu of
5 copies of insurance policies or bonds, with the proviso that if the certificates are
6 authorized the insurance company or carrier so filing it, upon request of the Commission,
7 will, at any time, furnish an authenticated copy of the policy which the certificate
8 represents, and further provided that thirty (30) days prior to effective cancellation or
9 termination of the policy of insurance for any cause, the insurer shall so notify the
10 Commission in writing of the facts or as deemed necessary by the Commission.

11 SECTION 41. AMENDATORY Section 4, Chapter 390, O.S.L. 2003 (63 O.S.
12 Supp. 2006, Section 1-1708.1D), is amended to read as follows:

13 Section 1-1708.1D A. In any medical liability action, if the plaintiff receives
14 compensation or is to receive compensation in the future for the injuries or harm that
15 gave rise to the cause of action from a source wholly independent of the defendant, such
16 fact shall be admitted into evidence and the amount may be deducted from the amount of
17 damages that the plaintiff recovers from the defendant.

18 B. In every medical liability action, the court shall admit evidence of payments of
19 medical bills made to the injured party, ~~unless the court makes the finding described in~~
20 ~~paragraph B of this section.~~ Recovery for payment of medical bills shall be limited to the
21 amount actually paid, not the amount billed. In case of unreimbursed care, payment
22 shall be paid according to Medicare reimbursement rates at the time care was provided.

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

7 SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 1-1708.1F-2 of Title 63, unless there is created a duplication in
9 numbering, reads as follows:

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

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

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

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

3 SECTION 43. AMENDATORY Section 7, Chapter 390, O.S.L. 2003 (63 O.S.
4 Supp. 2005, Section 1-1708.1G), is amended to read as follows:

5 Section 1-1708.1G Notwithstanding the provisions of Section 727 of Title 12 of the
6 Oklahoma Statutes or any other provision of the Oklahoma Statutes to the contrary,
7 prejudgment interest in a medical liability action shall be determined using a rate equal
8 to the average United States Treasury Bill rate of the preceding calendar year as
9 certified to the Administrative Director of the Courts by the State Treasurer on the first
10 regular business day in January of each year. Prejudgment interest shall be applicable
11 only to actions filed prior to November 1, 2007.

12 SECTION 44. AMENDATORY Section 24, Chapter 368, O.S.L. 2004 (63 O.S.
13 Supp. 2005, Section 1-1708.1I), is amended to read as follows:

14 Section 1-1708.1I A. To be qualified to offer expert testimony on the issue of
15 whether a defendant health care provider departed from accepted standards of health
16 care, a witness must be currently practicing health care in the field of health care
17 services relevant to the claim or must have been practicing in that field at the time the
18 claim was filed.

19 B. The court shall apply the criteria specified in subsection ~~B~~ C of this section and
20 in Section 2702 of Title 12 of the Oklahoma Statutes in determining whether an expert is
21 qualified to offer expert testimony on the issue of whether the defendant health care
22 provider departed from accepted standards of health care but may depart from those

1 criteria if, under the circumstances, the court determines that there is good reason to
2 admit the expert's testimony. The court shall state on the record the reason for
3 admitting the testimony if the court departs from the criteria.

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

7 ~~1. Is licensed to practice medicine~~ is certified by a licensing agency of one or more
8 states of the United States or a national professional certifying agency, or has other
9 substantial training or experience, in ~~any~~ the area of health care relevant to the claim;
10 and

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

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

15 SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 1-1708.1J of Title 63, unless there is created a duplication in
17 numbering, reads as follows:

18 A. As used in this section:

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

21 a. medical, health care, or custodial care services,

- 1 b. physical pain and mental anguish, disfigurement, or physical
2 impairment,
3 c. loss of consortium, companionship, or society, or
4 d. loss of earnings;

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

- 7 a. loss of income, wages, or earning capacity and other pecuniary losses,
8 and
9 b. loss of inheritance; and

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

12 B. This section applies only to a medical liability action against a health care
13 provider in which the present value of the award of future damages, as determined by
14 the court, equals or exceeds One Hundred Thousand Dollars (\$100,000.00).

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

19 D. At the request of a defendant health care provider or a plaintiff, the court may
20 order that future damages other than medical, health care, or custodial services awarded
21 in a health care liability claim be paid in whole or in part in periodic payments rather
22 than by a lump-sum payment subject to supervision by the court.

1 E. The court shall make a specific finding of the dollar amount of periodic payments
2 that will compensate the plaintiff for the future damages.

3 F. The court shall specify in its judgment ordering the payment of future damages
4 by periodic payments the:

- 5 1. Recipient of the payments;
- 6 2. Dollar amount of the payments;
- 7 3. Interval between payments; and
- 8 4. Number of payments or the period of time over which payments must be made.

9 G. The entry of an order for the payment of future damages by periodic payments
10 constitutes a release of the health care liability claim filed by the plaintiff.

11 H. As a condition to authorizing periodic payments of future damages, the court
12 shall require a defendant who is not adequately insured to provide evidence of financial
13 responsibility in an amount adequate to assure full payment of damages awarded by the
14 judgment.

15 I. The judgment shall provide for payments to be funded by:

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

19 2. An obligation of the United States;

20 3. Applicable and collectible liability insurance from one or more qualified insurers;
21 or

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

1 J. On termination of periodic payments of future damages, the court shall order the
2 return of the security, or as much as remains, to the defendant.

3 K. On the death of the recipient, money damages awarded for loss of future
4 earnings shall continue to be paid to the estate of the recipient of the award without
5 reduction. Periodic payments, other than future loss of earnings, terminate on the death
6 of the recipient. If the recipient of periodic payments dies before all payments required
7 by the judgment are paid, the court may modify the judgment to award and apportion the
8 unpaid damages for future loss of earnings in an appropriate manner. Following the
9 satisfaction or termination of any obligations specified in the judgment for periodic
10 payments, any obligation of the defendant health care provider to make further
11 payments ends and any security given reverts to the defendant.

12 L. For purposes of computing the award of attorney fees when the plaintiff is
13 awarded a recovery that will be paid in periodic payments, the court shall place a total
14 value on the payments based on the plaintiff's projected life expectancy and reduce the
15 amount to present value.

16 SECTION 46. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as last amended
17 by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2006, Section 1-1709.1), is
18 amended to read as follows:

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

20 1. "Credentialing or recredentialing data" means:

- 21 a. the application submitted by a health care professional requesting
22 appointment or reappointment to the medical staff of a health care

- 1 facility or requesting clinical privileges or other permission to provide
2 health care services at a health care facility,
- 3 b. any information submitted by the health care professional in support
4 of such application,
 - 5 c. any information, unless otherwise privileged, obtained by the health
6 care facility during the credentialing or recredentialing process
7 regarding such application, and
 - 8 d. the decision made by the health care facility regarding such
9 application;

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

13 3. “Health care facility” means:

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

21 4. “Health care professional” means any person authorized to practice allopathic
22 medicine and surgery, osteopathic medicine, podiatric medicine, optometry, chiropractic,

1 psychology, dentistry or a dental specialty under a license issued pursuant to Title 59 of
2 the Oklahoma Statutes;

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

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

1 f. copies of all documents and raw data previously created elsewhere and
2 considered during the peer review process, whether available
3 elsewhere or not, or

4 g. credentialing or recredentialing data regarding the health care
5 professional who provided the health care services being reviewed or
6 who is the subject of a credentialing or recredentialing process; and

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

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

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

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

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

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

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

12 a. ~~that~~

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

15 b. ~~that~~

16 2. That the health care facility was independently negligent as a result of
17 permitting the health care professional to provide health care services to the patient in
18 the health care facility,
19 the recommendations made and action taken as a result of any peer review process
20 utilized by such health care facility regarding the health care professional prior to the
21 date of the alleged negligence shall not be subject to discovery pursuant to the Oklahoma
22 Discovery Code.

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

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

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

10 SECTION 47. AMENDATORY 76 O.S. 2001, Section 18, as amended by
11 Section 4, Chapter 462, O.S.L. 2002 (76 O.S. Supp. 2006, Section 18), is amended to read
12 as follows:

13 Section 18. ~~An~~ A. Subject to the provisions of subsection B of this section, an action
14 for damages for injury or death against any physician, health care provider or hospital
15 licensed under the laws of this state, whether based in tort, breach of contract or
16 otherwise, arising out of patient care, shall be brought within two (2) years of the date
17 the plaintiff knew or should have known, through the exercise of reasonable diligence, of
18 the existence of the death, injury or condition complained of; provided, however, the
19 minority or incompetency when the cause of action arises will extend said period of
20 limitation.

21 B. Any action for damages for injury or death against any physician, health care
22 provider, or hospital licensed under the laws of this state, based in tort and arising out of

1 patient care, shall be brought within eight (8) years after the date of the act or omission
2 that gives rise to the claim. This subsection is intended as a statute of repose and all
3 actions which are not brought within eight (8) years after the act or omission giving rise
4 to the claim are time barred. The provisions of this subsection do not extend the statute
5 of limitations provided for in subsection A of this section.

6 SECTION 48. AMENDATORY 76 O.S. 2001, Section 25, is amended to read as
7 follows:

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

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

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

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

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

9 SECTION 49. AMENDATORY 76 O.S. 2001, Section 31, is amended to read as
10 follows:

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

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

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

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

1 C. Any person who, in good faith and without compensation, or expectation of
2 compensation, donates or loans emergency service equipment to a volunteer shall not be
3 liable for damages resulting from the use of such equipment by the volunteer, except
4 when the donor of the equipment knew or should have known that the equipment was
5 dangerous or faulty in a way which could result in bodily injury, death or damage to
6 property.

7 D. Definitions.

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

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

19 3. For the purposes of this section, the term "not-for-profit corporation" means a
20 corporation formed for a purpose not involving pecuniary gain to its shareholders or
21 members, paying no dividends or other pecuniary remuneration, directly or indirectly, to
22 its shareholders or members as such, and having no capital stock.

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

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

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

11 SECTION 50. AMENDATORY Section 34, Chapter 368, O.S.L. 2004 (76 O.S.
12 Supp. 2006, Section 32), is amended to read as follows:

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

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

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

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

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

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

8 5. Before the volunteer medical professional provides professional medical services,
9 the volunteer medical professional and the person receiving the services or, if that person
10 is a minor or otherwise legally incapacitated, the person's parent, conservator, legal
11 guardian, or other person with legal responsibility for the care of the person or animal
12 signs a written statement that acknowledges:

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

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

- 1 1. The referred volunteer medical professional provides services without receiving
2 any compensation for the treatment;
- 3 2. The referred volunteer medical professional was acting in good faith and, if
4 licensed, the services provided were within the scope of the license of the referred
5 volunteer medical professional;
- 6 3. The referred volunteer medical professional commits the act or omission in the
7 course of providing professional services;
- 8 4. The damage or injury was not caused by gross negligence or willful and wanton
9 misconduct by the referred volunteer medical professional; and
- 10 5. Before the referred volunteer medical professional provides professional services,
11 the referred volunteer medical professional and the person receiving the services or, if
12 that person is a minor or otherwise legally incapacitated, the person's parent,
13 conservator, legal guardian, or other person with legal responsibility for the care of the
14 person or animal signs a written statement that acknowledges:
- 15 a. that the referred volunteer medical professional providing professional
16 medical services has no expectation of and will receive no
17 compensation of any kind for providing the professional medical
18 services, and
- 19 b. an understanding of the limitations on the recovery of damages from
20 the volunteer medical professional in exchange for receiving free
21 professional medical services.

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

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

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

- 16 1. Physician;
- 17 2. Physician’s assistant;
- 18 3. Registered nurse;
- 19 4. Advanced nurse practitioner or vocational nurse;
- 20 5. Pharmacist;
- 21 6. Podiatrist;
- 22 7. Dentist or dental hygienist; ~~or~~

1 8. Optometrist;

2 9. Veterinarian; or

3 10. Registered veterinarian technician.

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

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

13 1. The person was acting in good faith and within the scope of the official duties
14 and functions of the Medical or Veterinary Reserve Corps; and

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

17 H. This section shall apply to all civil actions, including civil actions against
18 veterinarians, registered veterinary technicians, or Veterinary Reserve Corps filed on or
19 after November 1, ~~2004~~ 2007.

20 SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 33 of Title 76, unless there is created a duplication in numbering,
22 reads as follows:

1 Sections 51 through 54 of this act shall be known and may be cited as the “Common
2 Sense Consumption Act”.

3 SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma
4 Statutes as Section 34 of Title 76, unless there is created a duplication in numbering,
5 reads as follows:

6 The intent of the Common Sense Consumption Act is to prevent frivolous lawsuits
7 against manufacturers, packers, distributors, carriers, holders, sellers, marketers or
8 advertisers of food products that comply with applicable statutory and regulatory
9 requirements.

10 SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma
11 Statutes as Section 35 of Title 76, unless there is created a duplication in numbering,
12 reads as follows:

13 As used in the Common Sense Consumption Act:

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

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

1 3. “Knowing and willful” violation means that:

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

8 SECTION 54. NEW LAW A new section of law to be codified in the Oklahoma
9 Statutes as Section 36 of Title 76, unless there is created a duplication in numbering,
10 reads as follows:

11 A. Except as provided in subsection B of this section, a manufacturer, packer,
12 distributor, carrier, holder, seller, marketer or advertiser of a food, as defined in Section
13 201(f) of the federal Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an
14 association of one or more such entities, shall not be subject to civil liability arising under
15 any law of this state, including all statutes, regulations, rules, common law, public
16 policies, court or administrative decisions or decrees, or other state action having the
17 effect of law, for any claim arising out of weight gain, obesity, a health condition
18 associated with weight gain or obesity, or other generally known condition allegedly
19 caused by or allegedly likely to result from long-term consumption of food.

20 B. Subsection A of this section shall not preclude civil liability if the claim of weight
21 gain, obesity, health condition associated with weight gain or obesity, or other generally

1 known condition allegedly caused by or allegedly likely to result from long-term
2 consumption of food is based on:

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

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

10 C. In any action exempted under paragraph 1 of subsection B of this section, the
11 complaint initiating such action shall state with particularity the following: the statute,
12 regulation or other law of this state or of the United States that was allegedly violated;
13 the facts that are alleged to constitute a material violation of such statute or regulation;
14 and the facts alleged to demonstrate that such violation proximately caused actual injury
15 to the plaintiff. In any action exempted under paragraph 2 of subsection B of this
16 section, in addition to the foregoing pleading requirements, the complaint initiating such
17 action shall state with particularity facts sufficient to support a reasonable inference that
18 the violation was with intent to deceive or injure consumers or with the actual knowledge
19 that such violation was injurious to consumers. For purposes of applying the Common
20 Sense Consumption Act, the foregoing pleading requirements are hereby deemed part of
21 the substantive law of this state and not merely in the nature of procedural provisions.

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

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

15 SECTION 55. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 101 of Title 76, unless there is created a duplication in numbering,
17 reads as follows:

18 Sections 55 through 64 of this act shall be known and may be cited as the “Product
19 Liability Act”.

20 SECTION 56. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 102 of Title 76, unless there is created a duplication in numbering,
22 reads as follows:

1 In the Product Liability Act:

2 1. "Claimant" means a party seeking relief, including a plaintiff, counterclaimant,
3 or cross-claimant;

4 2. "Product liability action" means any action against a manufacturer or seller for
5 recovery of damages arising out of personal injury, death, or property damage allegedly
6 caused by a defective product whether the action is based in strict tort liability, strict
7 products liability, negligence, misrepresentation, breach of express or implied warranty,
8 or any other theory or combination of theories;

9 3. "Seller" means a person who is engaged in the business of distributing or
10 otherwise placing, for any commercial purpose, in the stream of commerce for use or
11 consumption a product or any component part thereof; and

12 4. "Manufacturer" means a person who is a designer, formulator, constructor,
13 rebuilder, fabricator, producer, compounder, processor, or assembler of any product or
14 any component part thereof and who places the product or any component part thereof in
15 the stream of commerce.

16 SECTION 57. NEW LAW A new section of law to be codified in the Oklahoma
17 Statutes as Section 103 of Title 76, unless there is created a duplication in numbering,
18 reads as follows:

19 A. In a product liability action, a manufacturer or seller shall not be liable if:

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

1 2. The product is a common consumer product intended for personal consumption.

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

4 SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma
5 Statutes as Section 104 of Title 76, unless there is created a duplication in numbering,
6 reads as follows:

7 A. In a product liability action in which a claimant alleges a design defect, the
8 burden is on the claimant to prove by a preponderance of the evidence that:

9 1. There was a safer alternative design; and

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

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

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

17 2. Was economically and technologically feasible at the time the product left the
18 control of the manufacturer or seller by the application of existing or reasonably
19 achievable scientific knowledge.

20 C. This section does not supersede or modify any statute, regulation, or other law of
21 this state or of the United States that relates to liability for, or to relief in the form of,

1 abatement of nuisance, civil penalties, cleanup costs, cost recovery, an injunction, or
2 restitution that arises from contamination or pollution of the environment.

3 D. This section does not apply to:

4 1. A cause of action based on a toxic or environmental tort; or

5 2. A drug or device, as those terms are defined in the federal Food, Drug, and
6 Cosmetic Act (21 U.S.C., Section 321).

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

11 SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma
12 Statutes as Section 105 of Title 76, unless there is created a duplication in numbering,
13 reads as follows:

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

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

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

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

5 SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma
6 Statutes as Section 106 of Title 76, unless there is created a duplication in numbering,
7 reads as follows:

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

10 1. That the seller participated in the design of the product;

11 2. That the seller altered or modified the product and the claimant's harm resulted
12 from that alteration or modification;

13 3. That the seller installed the product, or had the product installed, on another
14 product and the claimant's harm resulted from the product's installation onto the
15 assembled product;

16 4. That:

17 a. the seller exercised substantial control over the content of a warning or
18 instruction that accompanied the product,

19 b. the warning or instruction was inadequate, and

20 c. the claimant's harm resulted from the inadequacy of the warning or
21 instruction;

22 5. That:

- 1 a. the seller made an express factual representation about an aspect of
- 2 the product,
- 3 b. the representation was incorrect,
- 4 c. the claimant relied on the representation in obtaining or using the
- 5 product, and
- 6 d. if the aspect of the product had been as represented, the claimant
- 7 would not have been harmed by the product or would not have suffered
- 8 the same degree of harm;

9 6. That:

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

13 7. That the manufacturer of the product is:

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

16 SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma
17 Statutes as Section 107 of Title 76, unless there is created a duplication in numbering,
18 reads as follows:

19 A. In a product liability action alleging that an injury was caused by a failure to
20 provide adequate warnings or information with regard to a pharmaceutical product,
21 there is a rebuttable presumption that the defendant or defendants, including a health

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 care provider, manufacturer, distributor, and prescriber, are not liable with respect to
2 the allegations involving failure to provide adequate warnings or information if:

3 1. The warnings or information that accompanied the product in its distribution
4 were those approved by the United States Food and Drug Administration for a product
5 approved under the federal Food, Drug, and Cosmetic Act (21 U.S.C., Section 301 et seq.),
6 as amended, or Section 351, Public Health Service Act (43 U.S.C., Section 262), as
7 amended; or

8 2. The warnings provided were those stated in monographs developed by the
9 United States Food and Drug Administration for pharmaceutical products that may be
10 distributed without an approved new drug application.

11 B. The claimant may only rebut the presumption provided for in subsection A of
12 this section as to each defendant by establishing that:

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

17 2. The pharmaceutical product as sold or prescribed in the United States by the
18 defendant after the effective date of an order of the United States Food and Drug
19 Administration to remove the product from the market or to withdraw its approval of the
20 product;

1 design for the product complied with mandatory safety standards or regulations adopted
2 and promulgated by the federal government, or an agency of the federal government,
3 that were applicable to the product at the time of manufacture and that governed the
4 product risk that allegedly caused harm.

5 B. The claimant may rebut the presumption in subsection A of this section by
6 establishing that:

7 1. The mandatory federal safety standards or regulations applicable to the product
8 were inadequate to protect the public from unreasonable risks of injury or damage; or

9 2. The manufacturer, before or after marketing the product, withheld or
10 misrepresented information or material relevant to the federal government's or agency's
11 determination of adequacy of the safety standards or regulations at issue in the action.

12 C. In a product liability action brought against a product manufacturer or seller,
13 there is a rebuttable presumption that the product manufacturer or seller is not liable for
14 any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or
15 design of a product if the product manufacturer or seller establishes that the product was
16 subject to premarket licensing or approval by the federal government, or an agency of the
17 federal government, that the manufacturer complied with all of the government's or
18 agency's procedures and requirements with respect to premarket licensing or approval,
19 and that after full consideration of the product's risks and benefits the product was
20 approved or licensed for sale by the government or agency. The claimant may rebut this
21 presumption by establishing that:

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

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

8 D. This section does not extend to manufacturing flaws or defects even though the
9 product manufacturer has complied with all quality control and manufacturing practices
10 mandated by the federal government or an agency of the federal government.

11 E. This section does not extend to products covered by Section 54 of this act.

12 SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma
13 Statutes as Section 109 of Title 76, unless there is created a duplication in numbering,
14 reads as follows:

15 In a product liability action, if measures are taken which, if taken previously, would
16 have made an event less likely to occur, evidence of the subsequent measures is not
17 admissible to prove a defect in a product, negligence, or culpable conduct in connection
18 with the event. In a product liability action brought under any theory or doctrine, if the
19 feasibility of a design or change in warnings is not controverted, then a subsequent
20 design change or change in warnings shall not be admissible into evidence. This section
21 shall not require the exclusion of evidence of subsequent measures when offered for
22 another purpose such as proving ownership, control, or impeachment.

1 SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 110 of Title 76, unless there is created a duplication in numbering,
3 reads as follows:

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

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

12 a. in any action based on strict tort liability, the product contained
13 specific identifiable defects having a potential for injury beyond that
14 which would be contemplated by the ordinary user of the product and
15 was unreasonably dangerous and in a defective condition when it left
16 the control of the manufacturer, or

17 b. in any other action, those acts or omissions would give rise to fault,
18 and

19 c. in any action based on any theory or doctrine, the defective condition of
20 the product or other fault was a proximate cause of the plaintiff's
21 injury; or

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

10 B. If the defective condition referred to in the written report required by paragraph
11 1 of subsection A of this section is based on a design defect, the plaintiff or attorney shall
12 further state that the qualified expert has identified in the written report either:

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

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

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

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

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

3 F. This section shall apply to any cause of action filed on or after November 1, 2007.

4 SECTION 65. NEW LAW A new section of law to be codified in the Oklahoma
5 Statutes as Section 71 of Title 76, unless there is created a duplication in numbering,
6 reads as follows:

7 Sections 65 through 71 of this act shall be known and may be cited as the “Asbestos
8 and Silica Claims Priorities Act.”

9 SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma
10 Statutes as Section 72 of Title 76, unless there is created a duplication in numbering,
11 reads as follows:

12 A. FINDINGS. The Legislature finds that:

13 1. Asbestos is a mineral that was widely used prior to the mid-1970s for insulation,
14 fireproofing, and other purposes;

15 2. Many American workers were exposed to asbestos, especially during World War
16 II;

17 3. Long-term exposure to asbestos has been associated with mesothelioma and lung
18 cancer, as well as nonmalignant conditions, such as asbestosis, pleural plaques, and
19 diffuse bilateral pleural thickening;

20 4. The United States Supreme Court has said that this country is experiencing an
21 “asbestos-litigation crisis”;

1 5. Reports indicate that up to ninety percent (90%) of asbestos claims are filed by
2 individuals who allege that they have been exposed to asbestos, but who suffer no
3 demonstrable asbestos-related impairment. Lawyer-sponsored x-ray screenings of
4 workers at occupational locations are used to amass large numbers of claimants, the vast
5 majority of whom are unimpaired;

6 6. The costs of compensating unimpaired claimants and litigating their claims
7 jeopardizes the ability of defendants to compensate people with cancer and other serious
8 diseases; threatens the savings, retirement benefits, and jobs of current and retired
9 employees; and adversely affects the communities in which the defendants operate;

10 7. At least seventy-eight companies have declared bankruptcy due to the burden of
11 asbestos litigation. The rate of asbestos-driven bankruptcies has accelerated. Between
12 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the
13 prior two decades;

14 8. Bankruptcies have led plaintiffs and their lawyers to expand their search for
15 solvent peripheral defendants. The number of asbestos defendants now includes over
16 eight thousand five hundred companies, affecting many small- and medium-size
17 companies in industries that cover eighty-five percent (85%) of the United States
18 economy;

19 9. Efforts to address asbestos litigation may increase the number of silica-related
20 filings;

1 10. Silica is a naturally occurring mineral and is the second most common
2 constituent of the earth's crust. Crystalline silica in the form of quartz is present in
3 sand, gravel, soil, and rocks;

4 11. Silica-related illnesses, including silicosis, can develop from the prolonged
5 inhalation of respirable silica dust. Silicosis was widely recognized as an occupational
6 disease many years ago;

7 12. Silica claims, like asbestos claims, often involve individuals with no
8 demonstrable impairment. Claimants frequently are identified through the use of
9 interstate, for-profit, screening companies;

10 13. Silica screening processes have been found subject to substantial abuse and
11 potential fraud in federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553),
12 398 F. Supp. 2d 563 (S.D. Tex. 2005));

13 14. Concerns about statutes of limitations may prompt unimpaired asbestos and
14 silica claimants to bring lawsuits prematurely to protect against losing their ability to
15 assert a claim in the future should they develop an impairing condition;

16 15. Sound public policy requires that the claims of persons with no present physical
17 impairment from asbestos or silica exposure be deferred to give priority to physically
18 impaired claimants, and to safeguard the jobs, benefits, and savings of workers in
19 affected companies; and

20 16. Claimant consolidations, joinders, and similar procedures used by some courts
21 to deal with the mass of asbestos and silica cases can undermine the appropriate
22 functioning of the court system, deny due process to plaintiffs and defendants, and

1 further encourage the filing of thousands of cases by persons who are not sick and likely
2 will never develop an impairing condition caused by exposure to asbestos or silica.

3 B. PURPOSES. The purposes of the Asbestos and Silica Claims Priorities Act are
4 to:

5 1. Give priority to current claimants who can demonstrate an asbestos-related or
6 silica-related impairment based on reasonable, objective medical criteria;

7 2. Toll the running of statutes of limitations for persons who have been exposed to
8 asbestos or to silica, but who have no present asbestos-related or silica-related
9 impairment; and

10 3. Enhance the ability of the courts to supervise and control asbestos and silica
11 litigation.

12 SECTION 67. NEW LAW A new section of law to be codified in the Oklahoma
13 Statutes as Section 72 of Title 76, unless there is created a duplication in numbering,
14 reads as follows:

15 As used in the Asbestos and Silica Claims Priorities Act, the term:

16 1. “AMA Guides to the Evaluation of Permanent Impairment” means the American
17 Medical Association’s “Guides to the Evaluation of Permanent Impairment” in effect at
18 the time of the performance of any examination or test on the exposed person required
19 under the Asbestos and Silica Claims Priorities Act;

20 2. “Asbestos” means chrysotile, amosite, crocidolite, tremolite asbestos,
21 anthophyllite asbestos, actinolite asbestos, winchite, richterite, asbestiform amphibole
22 minerals, and any of these minerals that have been chemically treated or altered,

1 including all minerals defined as asbestos in 29 C.F.R. 1910 at the time an asbestos
2 claim is made;

3 3. “Asbestos claim” means any claim for damages, losses, indemnification,
4 contribution, or other relief of whatever nature arising out of, based on, or in any way
5 related to the alleged health effects associated with the inhalation or ingestion of
6 asbestos, including:

- 7 a. loss of consortium,
- 8 b. personal injury or death,
- 9 c. mental or emotional injury,
- 10 d. risk or fear of disease or other injury,
- 11 e. the costs of medical monitoring or surveillance, to the extent such
- 12 claims are recognized under state law, or
- 13 f. any claim made by or on behalf of any person exposed to asbestos, or a
- 14 representative, spouse, parent, child, or other relative of the exposed
- 15 person.

16 The term “asbestos claim” does not include a claim for compensatory benefits pursuant to
17 a workers’ compensation law or a veterans’ benefits program;

18 4. “Asbestosis” means bilateral diffuse interstitial fibrosis of the lungs caused by
19 inhalation of asbestos;

20 5. “Board-certified internist” means a qualified physician:

- 21 a. who is certified by the American Board of Internal Medicine, and
- 22 b. whose certification was current at the time of:

- 1 (1) the performance of any examination, and
- 2 (2) rendition of any report required under the Asbestos and Silica
- 3 Claims Priorities Act;
- 4 6. “Board-certified occupational medicine specialist” means a qualified physician:
- 5 a. who is certified in the subspecialty of occupational medicine by the
- 6 American Board of Preventive Medicine, and
- 7 b. whose certification was current at the time of:
- 8 (1) the performance of any examination, and
- 9 (2) rendition of any report required under the Asbestos and Silica
- 10 Claims Priorities Act;
- 11 7. “Board-certified pathologist” means a qualified physician:
- 12 a. who holds primary certification in anatomic pathology or combined
- 13 anatomic or clinical pathology from the American Board of Pathology,
- 14 b. whose professional practice is principally in the field of pathology and
- 15 involves regular evaluation of pathology materials obtained from
- 16 surgical or postmortem specimens, and
- 17 c. whose certification was current at the time of:
- 18 (1) any slide or tissue examination, and
- 19 (2) rendition of any report required under the Asbestos and Silica
- 20 Claims Priorities Act;
- 21 8. “Board-certified pulmonologist” means a qualified physician:

- 1 a. who is certified in the subspecialty of pulmonary medicine by the
2 American Board of Internal Medicine, and
3 b. whose certification was current at the time of:
4 (1) the performance of any examination, and
5 (2) rendition of any report required under the Asbestos and Silica
6 Claims Priorities Act;

7 9. “Certified B-reader” means a person who has successfully passed the B-reader
8 certification examination for x-ray interpretation sponsored by the National Institute for
9 Occupational Safety and Health, and whose certification was current at the time of any
10 readings required under the Asbestos and Silica Claims Priorities Act;

11 10. “Chest x-rays” means radiographic films taken in accordance with all applicable
12 state and federal standards and in the posterior-anterior view;

13 11. “Claimant” means any party asserting an asbestos or silica claim, including a
14 plaintiff, counterclaimant, cross-claimant, or third-party plaintiff; if a claim is brought
15 through or on behalf of an estate, the term includes the claimant’s decedent; if a claim is
16 brought through or on behalf of a minor or incompetent, the term includes the claimant’s
17 parent or guardian;

18 12. “DLCO” means diffusing capacity of the lung for carbon monoxide, which is the
19 measurement of carbon monoxide transfer from inspired gas to pulmonary capillary
20 blood;

21 13. “Exposed person” means a person whose claimed exposure to respirable
22 asbestos or respirable silica is the basis for an asbestos or silica claim;

1 14. “FEV-1” means forced expiratory volume in the first second, which is the
2 maximal volume of air expelled in one (1) second during performance of simple
3 spirometric tests;

4 15. “FVC” means forced vital capacity, which is the maximal volume of air expired
5 with maximum effort from a position of full inspiration;

6 16. “ILO scale” means the system for the classification of chest x-rays set forth in
7 the International Labor Office’s “Guidelines for the Use of ILO International
8 Classification of Radiographs of Pneumoconioses” in effect at the time of the performance
9 of any examination or test on the exposed person required under the Asbestos and Silica
10 Claims Priorities Act;

11 17. “Pathological evidence of asbestosis” means pathological asbestosis graded 1(B)
12 or higher under the criteria published in the “Asbestos-Associated Diseases”, Special
13 Issue of the Archives of Pathological and Laboratory Medicine, Vol. 106, No. 11,
14 Appendix 3 (Oct. 8, 1982);

15 18. “Pathological evidence of silicosis” mean demonstration of classic silicotic
16 nodules exceeding one (1) centimeter in diameter as set forth in 112 “Archives of
17 Pathology & Laboratory Medicine” 673-720 (1988);

18 19. “Predicted lower limit of normal” means the calculated standard convention
19 lying at the fifth percentile, below the upper ninety-five percent (95%) of the reference
20 population, based on age, height, and gender, according to the recommendations of the
21 American Thoracic Society as referenced in the AMA’s “Guides to the Evaluation of
22 Permanent Impairment”;

1 20. “Qualified physician” means a licensed, Board-certified internist, occupational
2 medicine specialist, pathologist or pulmonologist:

- 3 a. who has personally conducted a physical examination of the exposed
4 person, or in the case of a Board-certified pathologist, has examined
5 tissue samples or pathological slides of the exposed person, or if the
6 exposed person is deceased, based upon a detailed review of the
7 medical records and existing tissue samples and pathological slides of
8 the deceased person,
- 9 b. who is treating or treated the exposed person and has or had a doctor-
10 patient relationship with the exposed person at the time of the
11 physical examination, or in the case of a Board-certified pathologist,
12 has examined tissue samples or pathological slides of the exposed
13 person at the request of such treating physician,
- 14 c. who receives or received payment for the exposed person’s diagnosis,
15 examination, and treatment from the exposed person or claimant or
16 from the exposed person’s health maintenance organization or other
17 medical provider, and such payment is not subject to reimbursement
18 by or on behalf of anyone providing legal services to the claimant, and
- 19 d. whose diagnosing, examining, testing, screening or treating of the
20 exposed person was not, directly or indirectly, premised upon and did
21 not require the exposed person or claimant to retain the legal services
22 of an attorney or law firm;

1 21. “Radiological evidence of asbestosis” means an ILO quality 1 or 2 chest x-ray
2 read by a certified B-reader as showing, according to the ILO scale, bilateral small
3 irregular opacities (s, t, or u) graded 1/1 or higher;

4 22. “Radiological evidence of diffuse bilateral pleural thickening” means an ILO
5 quality 1 or 2 chest x-ray read by a certified B-reader as showing, according to the ILO
6 scale, diffuse bilateral pleural thickening graded b2 or higher including blunting of the
7 costophrenic angle;

8 23. “Radiological evidence of silicosis” means an ILO quality 1 or 2 chest x-ray read
9 by a certified B-reader as showing, according to the ILO scale, either:

- 10 a. bilateral predominantly nodular opacities (p, q, or r) occurring
11 primarily in the upper lung fields, graded 1/1 or higher, or
12 b. A-, B-, or C-sized opacities representing complicated silicosis (also
13 known as progressive massive fibrosis);

14 24. “Silica” means a respirable crystalline form of the naturally occurring mineral
15 form of silicon dioxide, including quartz, cristobalite, and tridymite;

16 25. “Silica claim” means any claim for damages, losses, indemnification,
17 contribution, or other relief of whatever nature arising out of, based on, or in any way
18 related to the alleged health effects associated with the inhalation of silica, including:

- 19 a. loss of consortium,
20 b. personal injury or death,
21 c. mental or emotional injury,
22 d. risk or fear of disease or other injury,

- 1 e. the costs of medical monitoring or surveillance, to the extent such
2 claims are recognized under state law, or
3 f. any claim made by or on behalf of any person exposed to silica, or a
4 representative, spouse, parent, child, or other relative of the exposed
5 person.

6 The term “silica claim” does not include a claim for compensatory benefits pursuant to a
7 workers’ compensation law or a veterans’ benefits program;

8 26. “Silicosis” means fibrosis of the lung produced by inhalation of silica, including
9 acute silicosis, accelerated silicosis, and chronic silicosis;

10 27. “Substantial contributing factor”:

- 11 a. in the context of an asbestos claim, means that:
- 12 (1) the claimant must identify:
- 13 (a) the specific asbestos product to which the exposed person
14 was exposed or the specific premises at which the exposed
15 person was exposed,
- 16 (b) the location and duration of such exposure, and
17 (c) the specific circumstances of such exposure,
- 18 (2) such exposure:
- 19 (a) was more than incidental contact with the product and
20 location, and
21 (b) took place on a regular basis over an extended period of
22 time in physical proximity to the exposed person,

- 1 (3) the exposed person inhaled respirable asbestos fibers in
2 sufficient quantities to be capable of causing harm, and
3 (4) a qualified physician has determined with a reasonable degree
4 of medical certainty that the exposed person's impairment would
5 not have occurred but for the specific asbestos exposure, and
6 b. in the context of a silica claim, means that:
7 (1) the claimant must identify:
8 (a) the specific silica product to which the exposed person
9 was exposed,
10 (b) the location and duration of such exposure, and
11 (c) the specific circumstances of such exposure,
12 (2) such exposure:
13 (a) was more than incidental contact with the product and
14 location, and
15 (b) took place on a regular basis over an extended period of
16 time in physical proximity to the exposed person,
17 (3) the exposed person inhaled respirable silica particles in
18 sufficient quantities to be capable of causing harm, and
19 (4) a qualified physician has determined with a reasonable degree
20 of medical certainty that the exposed person's impairment would
21 not have occurred but for the specific silica exposure;

1 28. “Supporting test results” means copies of the B-reading, pulmonary function
2 tests (including printouts of the flow volume loops, volume time curves, DLCO graphs,
3 and data for all trials and all other elements required to demonstrate compliance with
4 the equipment, quality, interpretation and reporting standards set forth herein) lung
5 volume tests, reports of x-ray examinations, diagnostic imaging of the chest, pathology
6 reports, and all other tests reviewed by the diagnosing, qualified physician in reaching
7 the physician’s conclusions;

8 29. “Total lung capacity” means the volume of gas contained in the lungs at the end
9 of a maximal inspiration;

10 30. “Veterans’ benefits program” means a program for benefits in connection with
11 military service administered by the Veterans' Administration under Title 38, U.S.C.;
12 and

13 31. “Workers’ compensation law”:

- 14 a. means a law respecting a program administered by a state or the
15 United States to provide compensatory benefits, funded by a
16 responsible employer or its insurance carrier, for occupational diseases
17 or injuries or for disability or death caused by occupational diseases or
18 injuries,
- 19 b. includes the Longshore and Harbor Workers’ Compensation Act (33
20 U.S.C., Section 901 et seq.) and the Federal Employees’ Compensation
21 Act (Chap. 81 of Title 5, U.S.C.), and
- 22 c. does not include:

- 1 (1) the Act of April 22, 1908, commonly known as the Federal
2 Employers' Liability Act (45 U.S.C., Section 51 et seq.), or
3 (2) any claim for exemplary or punitive damages by an employee,
4 estate, heir, representative or any other person or entity against
5 the employer of an exposed person arising out of or related to
6 asbestos-related injury or silica-related injury.

7 SECTION 68. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 73 of Title 76, unless there is created a duplication in numbering,
9 reads as follows:

10 A. IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM. To bring or maintain an
11 asbestos or silica claim, an exposed person must have a physical impairment and present
12 prima facie evidence that exposure to asbestos or silica was a substantial contributing
13 factor to that impairment. The prima facie showing shall be made as to each defendant
14 against whom a claimant alleges an asbestos or silica claim.

15 B. PRELIMINARY PROCEEDINGS.

16 1. FILING OF REPORT. The plaintiff in any civil action alleging an asbestos or
17 silica claim shall file together with the complaint or other initial pleading a written
18 report and supporting test results constituting prima facie evidence of the claimant's
19 asbestos-related or silica-related impairment meeting the requirements of this section.
20 The written report shall be prepared by the diagnosing, qualified physician and shall not
21 be prepared by a lawyer or person working for or on behalf of any lawyer or law firm.

1 2. TIMING. For any asbestos or silica claim pending on the effective date of the
2 Asbestos and Silica Claims Priorities Act, the claimant shall file the written report and
3 supporting test results described in paragraph 1 of this subsection not later than one
4 hundred eighty (180) days after the effective date of the Asbestos and Silica Claims
5 Priorities Act or not later than sixty (60) days prior to the commencement of trial,
6 whichever occurs first.

7 3. DEFENDANT'S RIGHT TO CHALLENGE. The defendant shall be afforded a
8 reasonable opportunity to challenge the adequacy of the proffered prima facie evidence of
9 impairment.

10 4. DISMISSAL. The claim shall be dismissed without prejudice upon a finding of
11 failure to make the required prima facie showing.

12 C. NEW CLAIM REQUIRED INFORMATION.

13 1. IN GENERAL. All asbestos claims and silica claims filed in this state on or after
14 the effective date of the Asbestos and Silica Claims Priorities Act shall include a sworn
15 information form containing all of the following:

- 16 a. the claimant's name, address, date of birth, social security number,
17 and marital status,
18 b. the exposed person's name, last-known address, date of birth, social
19 security number, and marital status,
20 c. if the claimant alleges exposure to asbestos or silica through another
21 person, the name, address, date of birth, social security number,
22 marital status, for each person by which claimant alleges exposure

- 1 (hereafter the “index person”) and the claimant’s relationship to each
2 such person,
- 3 d. for each alleged exposure of the exposed person and for each index
4 person:
- 5 (1) the specific location and manner of each such exposure,
6 (2) the beginning and ending dates of each such exposure, and
7 (3) the identity of the manufacturer of the specific asbestos or silica
8 product to which the exposed person or index person was
9 exposed or the specific premises at which the exposed person or
10 index person was exposed,
- 11 e. the occupation and name of the employer of the exposed person at the
12 time of each alleged exposure,
- 13 f. the identity of the defendant or defendants against whom the claimant
14 asserts a claim,
- 15 g. the specific disease related to asbestos or silica claimed to exist, and
16 h. any:
- 17 (1) supporting documentation of the condition claimed to exist, and
18 (2) documentation to support the claimant or index person’s
19 identification of the asbestos or silica product to which such
20 person was exposed or the specific premises at which the person
21 was exposed.

1 2. INDIVIDUAL REQUIREMENTS. All asbestos claims and silica claims along
2 with sworn information forms must be individually filed. No claims on behalf of a group
3 or class of persons shall be permitted.

4 D. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR
5 NONMALIGNANT ASBESTOS CLAIMS.

6 1. IN GENERAL. No person shall bring or maintain an asbestos claim related to
7 an alleged nonmalignant asbestos-related condition in the absence of a prima facie
8 showing of physical impairment of the exposed person for which asbestos exposure is a
9 substantial contributing factor.

10 2. PRIMA FACIE SHOWING. The prima facie showing under paragraph 1 of this
11 subsection shall be made as to each defendant and include a detailed narrative medical
12 report and diagnosis by a qualified physician that includes all of the following:

- 13 a. evidence verifying that the diagnosing, qualified physician has taken a
14 detailed occupational, exposure, medical, and smoking history from the
15 exposed person or, if that person is deceased, from a person who is
16 knowledgeable regarding such history,
17 b. evidence sufficient to demonstrate that at least fifteen (15) years have
18 elapsed between the exposed person's first exposure to asbestos and
19 the date of diagnosis,
20 c. a determination by the diagnosing, qualified physician, on the basis of
21 a personal medical examination and pulmonary function testing of the
22 exposed person (or, if the exposed person is deceased, based upon the

1 person's medical records) that the claimant has (or deceased person
2 had) a permanent respiratory impairment rating of at least Class 2 as
3 defined by and evaluated pursuant to the AMA's "Guides to the
4 Evaluation of Permanent Impairment",
5 d. evidence verifying that the exposed person has asbestosis or diffuse
6 bilateral pleural thickening, based at a minimum on radiological or
7 pathological evidence of asbestosis or radiological evidence of diffuse
8 bilateral pleural thickening,
9 e. a determination by the diagnosing, qualified physician that asbestosis
10 or diffuse bilateral pleural thickening, rather than chronic obstructive
11 pulmonary disease, is a substantial contributing factor to the exposed
12 person's physical impairment, based at a minimum on a determination
13 that the exposed person has:
14 (1) forced vital capacity below the predicted lower limit of normal
15 and FEV1/FVC ratio (using actual values) at or above the
16 predicted lower limit of normal, or
17 (2) total lung capacity, by plethysmography or timed gas dilution,
18 below the predicted lower limit of normal, and
19 f. verification that the diagnosing, qualified physician has concluded that
20 the exposed person's impairment was not more probably the result of
21 causes other than asbestos exposure as revealed by the exposed
22 person's occupational, exposure, medical, and smoking history. A

1 conclusion which states that the impairment is consistent or
2 compatible with asbestos exposure or asbestos-related disease does not
3 meet the requirements of this paragraph.

4 E. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED CANCER OTHER
5 THAN MESOTHELIOMA.

6 1. IN GENERAL. No person shall bring or maintain an asbestos claim related to
7 an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima
8 facie showing of a primary cancer for which exposure to asbestos was a substantial
9 contributing factor.

10 2. PRIMA FACIE SHOWING. The prima facie showing under paragraph 1 of this
11 subsection shall be made as to each defendant and include a detailed narrative medical
12 report and diagnosis by a qualified physician that includes all of the following:

- 13 a. evidence verifying that the diagnosing, qualified physician has taken a
14 detailed occupational, exposure, medical, and smoking history from the
15 exposed person or, if that person is deceased, from a person who is
16 knowledgeable regarding such history,
17 b. evidence sufficient to demonstrate that at least fifteen (15) years have
18 elapsed between the exposed person's first exposure to asbestos and
19 the date of diagnosis,
20 c. evidence verifying that the exposed person has asbestosis, based at a
21 minimum on radiological or pathological evidence of asbestosis, and

1 d. the diagnosing, qualified physician has concluded that the claimant's
2 cancer was not more probably the result of causes other than asbestos
3 exposure as revealed by the exposed person's occupational, exposure,
4 medical, and smoking history. A conclusion which states that the
5 cancer is consistent or compatible with asbestos exposure or asbestos-
6 related disease does not meet the requirements of this paragraph.

7 F. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED MESOTHELIOMA.

8 1. IN GENERAL. No person shall bring or maintain an asbestos claim related to
9 alleged mesothelioma in the absence of a prima facie showing of an asbestos-related
10 malignant tumor with a primary site of origin in the pleura, the peritoneum, or
11 pericardium.

12 2. PRIMA FACIE SHOWING. The prima facie showing under paragraph 1 of this
13 subsection shall be made as to each defendant and include a detailed narrative medical
14 report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma
15 and a report by a qualified physician certifying that:

- 16 a. exposure to asbestos was a substantial contributing factor to the
17 diagnosed mesothelioma, and
18 b. the mesothelioma was not more probably the result of causes other
19 than asbestos exposure as revealed by the exposed person's
20 occupational, exposure, medical, and smoking history.

21 G. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA
22 CLAIMS.

1 1. IN GENERAL. No person shall bring or maintain a silica claim related to an
2 alleged silica-related condition, other than a silica-related cancer, in the absence of a
3 prima facie showing of physical impairment as a result of a medical condition for which
4 exposure to silica was a substantial contributing factor.

5 2. PRIMA FACIE SHOWING. The prima facie showing under paragraph 1 of this
6 subsection shall be made as to each defendant and include a detailed narrative medical
7 report and diagnosis by a qualified physician that includes all of the following:

- 8 a. evidence verifying that the diagnosing, qualified physician has taken a
9 detailed occupational, exposure, medical, and smoking history from the
10 exposed person or, if that person is deceased, from a person who is
11 knowledgeable regarding such history,
- 12 b. evidence verifying that the exposed person has silicosis, based at a
13 minimum on radiological or pathological evidence of silicosis, or acute
14 silicosis,
- 15 c. evidence verifying there has been a sufficient latency period for the
16 applicable type of silicosis,
- 17 d. a determination by the diagnosing, qualified physician, on the basis of
18 a personal medical examination and pulmonary function testing of the
19 exposed person (or, if the exposed person is deceased, based upon the
20 person's medical records) that the claimant has (or deceased person
21 had) a permanent respiratory impairment rating of at least Class 2 as

1 defined by and evaluated pursuant to the AMA's "Guides to the
2 Evaluation of Permanent Impairment", and

- 3 e. verification that the diagnosing, qualified physician has concluded that
4 the exposed person's impairment was not more probably the result of
5 causes other than silica exposure as revealed by the exposed person's
6 occupational, exposure, medical, and smoking history. A conclusion
7 which states that the impairment is consistent or compatible with
8 silica exposure or silica-related disease does not meet the requirements
9 of this paragraph.

10 H. PRIMA FACIE EVIDENCE OF SILICA-RELATED CANCER.

11 1. IN GENERAL. No person shall bring or maintain a silica claim related to an
12 alleged silica-related cancer in the absence of a prima facie showing of a primary cancer
13 for which exposure to silica was a substantial contributing factor.

14 2. PRIMA FACIE. The prima facie showing Under paragraph 1 of this subsection
15 shall be made as to each defendant and include a detailed narrative medical report and
16 diagnosis by a qualified physician that includes all of the following:

- 17 a. evidence verifying that the diagnosing, qualified physician has taken a
18 detailed occupational, exposure, medical, and smoking history from the
19 exposed person or, if that person is deceased, from a person who is
20 knowledgeable regarding such history,
21 b. evidence verifying that the exposed person has silicosis, based at a
22 minimum on radiological or pathological evidence of silicosis,

- 1 c. evidence sufficient to demonstrate that at least fifteen (15) years have
2 elapsed between the exposed person's first exposure to silica and the
3 date of diagnosis, and
- 4 d. verification that the diagnosing, qualified physician has concluded that
5 the claimant's cancer was not more probably the result of causes other
6 than silica exposure as revealed by the exposed person's occupational,
7 exposure, medical, and smoking history. A conclusion which states
8 that the cancer is consistent or compatible with silica exposure or
9 silica-related disease does not meet the requirements of this
10 paragraph.

11 I. COMPLIANCE WITH TECHNICAL STANDARDS. Evidence relating to
12 physical impairment under this section, including pulmonary function testing and
13 diffusing studies, shall:

14 1. Comply with the quality controls, equipment requirements, methods of
15 calibration and techniques set forth in the AMA's "Guides to the Evaluation of
16 Permanent Impairment" and all standards set forth in the "Official Statements of the
17 American Thoracic Society" which are in effect on the date of any examination or
18 pulmonary function testing of the exposed person required by the Asbestos and Silica
19 Claims Priorities Act;

20 2. Not be obtained and may not be based on testing or examinations that violate
21 any law, regulation, licensing requirement, or medical code of practice of the state in
22 which the examination, test, or screening was conducted, or of this state; and

1 3. Not be obtained under the condition that the claimant retains the legal services
2 of the attorney or law firm sponsoring the examination, test, or screening.

3 SECTION 69. NEW LAW A new section of law to be codified in the Oklahoma
4 Statutes as Section 74 of Title 76, unless there is created a duplication in numbering,
5 reads as follows:

6 A. NO PRESUMPTION AT TRIAL. Evidence relating to the prima facie showings
7 required under the Asbestos and Silica Claims Priorities Act shall not create any
8 presumption that the claimant has an asbestos- or silica-related injury or impairment,
9 and shall not be conclusive as to the liability of any defendant.

10 B. ADMISSIBILITY OF EVIDENCE. No evidence shall be offered at trial, and the
11 jury shall not be informed of:

12 1. The grant or denial of a motion to dismiss an asbestos or silica claim under the
13 provisions of the Asbestos and Silica Claims Priorities Act; or

14 2. The provisions of the Asbestos and Silica Claims Priorities Act with respect to
15 what constitutes a prima facie showing of asbestos- or silica-related impairment.

16 C. DISCOVERY. Until such time as the trial court enters an order determining
17 that the claimant has established prima facie evidence of impairment, no asbestos or
18 silica claim shall be subject to discovery, except discovery related to establishing or
19 challenging the prima facie evidence or by order of the trial court upon motion of one of
20 the parties and for good cause shown.

21 D. CONSOLIDATION.

1 1. A court may consolidate for trial any number and type of asbestos or silica claims
2 with the consent of all the parties. In the absence of such consent, the court may
3 consolidate for trial only asbestos claims or silica claims relating to the exposed person
4 and members of the household of the exposed person.

5 2. No class action or any other form of mass aggregation claim filing relating to
6 more than one exposed person, except claims relating to the exposed person and
7 members of his or her household, shall be permitted for asbestos or silica claims.

8 3. The provisions of this section do not preclude consolidation of cases by court
9 order for pretrial or discovery purposes.

10 E. FORUM NON CONVENIENS.

11 1. As to any asbestos or silica claim filed on or after the date of enactment of the
12 Asbestos and Silica Claims Priorities Act, or that is pending on the date of enactment of
13 the Asbestos and Silica Claims Priorities Act but that has not commenced trial or any
14 new trial or retrial following motion, appeal, or otherwise with the presentation of
15 evidence to the trier of fact prior to the date of enactment of the Asbestos and Silica
16 Claims Priorities Act, if the court in which the asbestos or silica claim is pending, on
17 written motion of a party, finds that in the interest of justice and for the convenience of
18 the parties a claim or action to which the Asbestos and Silica Claims Priorities Act
19 applies would be more properly heard in a forum outside this state, the court shall
20 decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay
21 or dismiss the claim or action. In determining whether to grant a motion to stay or

1 dismiss an action under the doctrine of forum non conveniens, the court shall consider
2 whether:

- 3 a. an alternate forum exists in which the claim or action may be tried,
- 4 b. the alternate forum provides an adequate remedy,
- 5 c. maintenance of the claim or action in the courts of this state would
6 work a substantial injustice to the moving party,
- 7 d. the alternate forum, as a result of the submission of the parties or
8 otherwise, can exercise jurisdiction over all the defendants properly
9 joined to the plaintiff's claim,
- 10 e. the balance of the private interests of the parties and the public
11 interest of the state predominate in favor of the claim or action being
12 brought in an alternate forum, and
- 13 f. the stay or dismissal would not result in unreasonable duplication or
14 proliferation of litigation.

15 2. A trial court may not abate or dismiss a claim under this paragraph until the
16 defendant files with the court or with the clerk of the court a written stipulation that,
17 with respect to a new action on the claim commenced by the plaintiff, the defendant
18 waives the right to assert a statute of limitations defense in all other states of the United
19 States in which the claim was not barred by limitations at the time the claim was filed in
20 this state as necessary to effect a tolling of the limitations periods in those states
21 beginning on the date the action originally was filed and ending on the date the claim is
22 dismissed or an abatement period of one (1) year ends. The court may not abate or

1 dismiss a claim under this paragraph until the defendant files with the court or with the
2 clerk of the court a written stipulation that, with respect to a new action on the claim
3 commenced by the plaintiff in another state of the United States, the claimant may elect
4 that the claimant and the defendant may rely on responses to discovery already provided
5 under the rules of civil procedure of this state, plus any additional discovery that may be
6 conducted under the rules of civil procedure in another state, or use responses to
7 discovery already provided and conduct additional discovery as permitted under the rules
8 of civil procedure in the other state.

9 F. VENUE.

10 1. An asbestos or silica claim filed after the November 1, 2007, shall be filed in this
11 state only in the county where:

- 12 a. the claimant resided for a period Of at least one hundred eighty (180)
13 consecutive days immediately prior to filing suit, or
- 14 b. the exposed person had the most substantial cumulative exposure to
15 asbestos for an asbestos claim or to silica for a silica claim, and that
16 such exposure was a substantial contributing factor to the asbestos- or
17 silica-related impairment on which the claim is based.

18 2. With respect to asbestos or silica claims pending as of November 1, 2007, and in
19 which the trial, or any new trial or retrial following motion, appeal, or otherwise,
20 commences with the presentation of evidence to the trier of fact on or after November 1,
21 2007, any claim as to which venue would not have been proper if the claim originally had
22 been brought in accordance with paragraph 1 of this subsection shall be transferred

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 within ninety (90) days after November 1, 2007, to the district court in the county in
2 which either:

- 3 a. the claimant was domiciled at the time the asbestos or silica claim
4 originally was filed, or
- 5 b. the exposed person had the most substantial cumulative exposure to
6 asbestos for an asbestos claim or to silica for a silica claim, and that
7 such exposure was a substantial contributing factor to the asbestos- or
8 silica-related impairment on which the claim is based.

9 SECTION 70. NEW LAW A new section of law to be codified in the Oklahoma
10 Statutes as Section 75 of Title 76, unless there is created a duplication in numbering,
11 reads as follows:

12 A. STATUTE OF LIMITATIONS.

13 1. With respect to an asbestos or silica claim not barred by limitations in this state
14 as of November 1, 2007, a claimant's cause of action shall not accrue, nor shall the
15 running of limitations commence, prior to the earlier of the date:

- 16 a. the exposed person received a medical diagnosis of an asbestos-related
17 impairment or silica-related impairment,
- 18 b. the exposed person discovered facts that would have led a reasonable
19 person to obtain a medical diagnosis with respect to the existence of an
20 asbestos-related impairment or silica-related impairment, or
- 21 c. the date of death of the exposed person having an asbestos-related or
22 silica-related impairment.

1 2. Nothing in this section shall be construed to revive or extend limitations with
2 respect to any claim for asbestos-related impairment or silica-related impairment that
3 was otherwise time-barred as a matter of applicable state law as of the date the Asbestos
4 and Silica Claims Priorities Act is enacted.

5 3. Nothing in this section shall be construed so as to adversely affect, impair, limit,
6 modify or nullify any settlement or other agreements with respect to an asbestos or silica
7 claim entered into prior to the date of enactment of the Asbestos and Silica Claims
8 Priorities Act.

9 B. TWO-DISEASE RULE. An asbestos or silica claim arising out of a
10 nonmalignant condition shall be a distinct cause of action from a claim for an asbestos-
11 related or silica-related cancer. No damages shall be awarded for fear or increased risk
12 of future disease in any civil action asserting an asbestos or silica claim.

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

16 The Asbestos and Silica Claims Priorities Act applies to all asbestos or silica claims
17 filed on or after November 1, 2007. The Asbestos and Silica Claims Priorities Act also
18 applies to any pending asbestos or silica claim in which trial has not commenced as of
19 November 1, 2007.

20 SECTION 72. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 111 of Title 76, unless there is created a duplication in numbering,
22 reads as follows:

1 A. 1. In any civil action for professional negligence, except as provided in
2 subsection B of this section, the plaintiff shall attach to the petition an affidavit attesting
3 that:

- 4 a. the plaintiff has consulted and reviewed the facts of the claim with a
5 qualified expert,
6 b. the plaintiff has obtained a written opinion from a qualified expert
7 that clearly identifies the plaintiff and includes the expert's
8 determination that, based upon a review of the available medical
9 records, facts or other relevant material, a reasonable interpretation of
10 the facts supports a finding that the acts or omissions of the defendant
11 against whom the action is brought constituted professional
12 negligence, and
13 c. on the basis of the qualified expert's review and consultation, the
14 plaintiff has concluded that the claim is meritorious and based on good
15 cause.

16 2. If the civil action for professional negligence is filed:

- 17 a. without an affidavit being attached to the petition, as required in
18 paragraph 1 of this subsection, and
19 b. no extension of time is subsequently granted by the court pursuant to
20 subsection B of this section,

21 the court shall, upon motion of the defendant, dismiss the action without prejudice to its
22 refiling.

1 3. The written opinion from the qualified expert shall state the acts or omissions
2 of the defendant or defendants that the expert then believes constituted professional
3 negligence and shall include reasons explaining why the acts or omissions constituted
4 professional negligence. The written opinion from the qualified expert shall not be
5 admissible at trial for any purpose nor shall any inquiry be permitted with regard to the
6 written opinion for any purpose either in discovery or at trial.

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

12 2. If on the expiration of an extension period described in paragraph 1 of this
13 subsection, the plaintiff has failed to file in the action an affidavit as described above,
14 the court shall, upon motion of the defendant, unless good cause is shown for such
15 failure, dismiss the action without prejudice to its refiling.

16 C. 1. Upon written request of any defendant in a civil action for professional
17 negligence, the plaintiff shall, within ten (10) business days after receipt of such
18 request, provide the defendant with:

- 19 a. a copy of the written opinion of a qualified expert mentioned in an
20 affidavit filed pursuant to subsection A or B of this section, and
21 b. an authorization from the plaintiff in a form that complies with
22 applicable state and federal laws, including the Health Insurance

