

THE HOUSE OF REPRESENTATIVES
Tuesday, April 15, 2008

Committee Substitute for
ENGROSSED
Senate Bill No. 156

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 156 - By:
LAUGHLIN AND BINGMAN of the Senate and SULLIVAN, COOKSEY AND DERBY of
the House.

An Act relating to civil procedure; requiring appointment of attorney for specified purpose; providing for award of certain fees; requiring plaintiff to attach certain affidavit in civil action for negligence; providing requirements for Oklahoma Uniform Jury Instructions; amending 12 O.S. 2001, Section 588, which relates to general and specific findings; modifying procedure; amending 12 O.S. 2001, Section 684, as amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2007, Section 684), which relates to dismissal; modifying procedure for dismissal without court order; providing for dismissal of action under certain circumstances; stating requirements for expert opinions; allowing for extension under certain circumstances; requiring plaintiff to provide certain information; amending Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2007, Section 727.1), which relates to interest on judgments; modifying time of accrual of prejudgment interest on certain actions; modifying method of computing interest; amending 12 O.S. 2001, Sections 990.4, as last amended by Section 6, Chapter 1, O.S.L. 2005, 2004, as amended by Section 7, Chapter 402, O.S.L. 2002, 2011, as amended by Section 10, Chapter 368, O.S.L. 2004, Section 1, Chapter 370, O.S.L. 2004, as amended by Section 10, Chapter 12, O.S.L. 2007, 2023 and 2702 (12 O.S. Supp. 2007, Sections 990.4, 2004, 2011 and 2011.1), which relate to stays of enforcement, the Oklahoma Pleading Code, frivolous claims or defenses, class actions and expert testimony; modifying certain appeal bond procedures; modifying time limit for service of process; modifying definitions; providing procedure for summary judgment; requiring certain standard of review upon appeal of order maintaining a class action; requiring stay of discovery while appeal is pending; requiring potential class members to request inclusion in the class; providing procedure for summary judgment; providing requirements for expert

testimony; providing role of the court; providing for interpretation; stating legislative intent; amending 15 O.S. 2001, Sections 754 and 761.1, which relate to the Oklahoma Consumer Protection Act; updating statutory reference; excepting certain actions, transactions, and claims from the Oklahoma Consumer Protection Act; requiring certain losses to be ascertainable; providing for private right of action for actual damages; providing for determination of actual damages; allowing court to order reimbursement of certain costs and fees; providing for maximum amount that court may order as reimbursement of certain costs and fees; requiring certain proof in order to recover damages; defining terms; providing for periodic payment of certain damages; amending Section 18, Chapter 368, O.S.L. 2004, and 23 O.S. 2001, Section 61 (23 O.S. Supp. 2007, Section 15), which relate to joint and several liability and obligations not arising from contract; modifying exceptions to severability; providing limits of liability for noneconomic damages for certain actions; requiring certain adjustment; defining term; requiring admission of evidence of certain compensation; allowing discretion in limiting award of certain damages; providing exception; defining term; providing that proof of certain losses must be in the form of a net loss after reduction for income tax payments or unpaid tax liability; amending 47 O.S. 2001, Section 11-1112, as last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp. 2007, Section 11-1112), which relates to child passenger restraint systems; eliminating prohibitions against admissibility of certain evidence in civil actions; amending Section 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2007, Section 1-1708.1G), which relates to prejudgment interest for medical liability actions; providing time that prejudgment interest accrues; 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. 2007, Section 1-1709.1), which relates to peer review information; providing that certain information is not subject to discovery or admissible at trial; requiring certain findings for certain information to be admissible; creating the Uniform Emergency Volunteer Health Practitioners Act; providing short title; defining terms; providing for application; authorizing the State Department of Health to regulate volunteer health practitioners in a declared emergency; requiring certain consultation and compliance of specified host entities; setting requirements for a volunteer health practitioner registration system; permitting certain confirmation; requiring certain notification; authorizing host entities to refuse the services of a volunteer health practitioner; permitting certain volunteer health practitioners to practice in this state during a declared emergency; prohibiting certain

volunteer health practitioners from certain protections; clarifying credentialing or privileging standards; requiring adherence to certain scopes of practice; prohibiting the providing of services outside a practitioner's scope of practice; authorizing the Department or a host entity to restrict certain services; providing certain protection; permitting certain licensing boards to impose administrative sanctions; requiring certain reporting; requiring certain consideration; providing for certain rights, privileges or immunities; permitting the Department to incorporate certain volunteer health practitioners; authorizing the State Board of Health to promulgate rules; requiring consideration for uniformity; amending 63 O.S. 2001, Sections 683.9 and 683.13, as amended by Sections 9 and 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2007, Sections 683.9 and 683.13), which relate to the Emergency Management Act of 2003; modifying definition; providing certain exclusion; stating legislative findings; defining terms; providing for confidentiality of certain records; prohibiting certain testimony; limiting liability of certain persons; prohibiting submission of certain information into evidence; creating the School Protection Act; providing short title; stating purpose of the act; making it unlawful to make a false criminal report against an education employee; providing punishment; limiting application for statements against certain persons; providing for effect on other laws; providing that existence of liability insurance is not a waiver of any defense; providing for the applicability of other laws; amending 51 O.S. 2001, Section 155, as last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp. 2007, Section 155), which relates to exemptions from liability; adding certain exemptions; amending 76 O.S. 2001, Sections 5.5, 25 and 31, which relate to limitations for certain actions, professional review bodies, civil immunity for volunteers, charitable organizations, and not-for-profit corporations; establishing a statute of repose for certain actions; providing that peer review information is private, confidential and privileged; providing exception; providing notice requirement; providing that certain information is not subject to discovery or admissible at trial; prohibiting testimony by certain persons; modifying definition; 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; stating legislative findings; limiting liability of certain manufacturers; limiting liability of certain associations; clarifying applicability of certain provisions; repealing Section 1, Chapter 368, O.S.L. 2004 (5 O.S.

Supp. 2007, Section 7.1), which relates to the award of attorney fees in class actions; repealing 47 O.S. 2001, Section 12-420, as amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2007, Section 12-420), which relates to inadmissibility of evidence in civil actions of failure to use seatbelt; repealing Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2007, Sections 1-1708.1F and 1-1708.1F-1), which relate to limits on noneconomic damages in medical liability actions; repealing Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp. 2007, Section 6602), which relates to emergency powers regarding licensing and appointment of health personnel; 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 In class actions, if a request for an award of attorney fees is made, the court may
5 appoint an attorney to represent the class upon request by any members of the class in a
6 hearing on the issue of the amount of attorney fees only. Said attorney shall be
7 independent of the attorney or attorneys seeking attorney fees in the class action, and
8 said independent attorney shall be awarded reasonable fees by the court on an hourly
9 basis out of the proceeds awarded to the class.

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

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

5 a. the party has consulted and reviewed the facts of the claim with a
6 qualified expert,

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

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

15 2. If the civil action is filed:

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

18 b. no extension of time is subsequently granted by the court, pursuant to
19 subsection B of this section,

20 the court shall, upon motion of the adverse party, dismiss the action.

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

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

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

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

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

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

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

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

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

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

20 SECTION 5. AMENDATORY 12 O.S. 2001, Section 684, as amended by
21 Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2007, Section 684), is amended to
22 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 subsection 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 6. AMENDATORY Section 7, Chapter 368, O.S.L. 2004 (12 O.S.
11 Supp. 2007, 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,~~ beginning November 1, 2008, if a verdict for damages by
17 reason of personal injuries or injury to personal rights including, but not limited to,
18 injury resulting from bodily restraint, personal insult, defamation, invasion of privacy,
19 injury to personal relations, or detriment due to an act or omission of another is accepted
20 by the trial court, the court in rendering judgment shall add interest on the verdict at a
21 rate prescribed pursuant to subsection I of this section from the date which is thirty-six
22 (36) months after the suit resulting in the judgment was commenced to the earlier of the

1 date the verdict is accepted by the trial court as expressly stated in the judgment, or the
2 date the judgment is filed with the court clerk. No prejudgment interest shall begin to
3 accrue until thirty-six (36) months after the suit resulting in the judgment was
4 commenced. The interest rate for computation of prejudgment interest shall begin with
5 the rate prescribed by subsection I of this section which is in effect for the calendar year
6 ~~in~~ which is thirty-six (36) months after the suit resulting in the judgment is was
7 commenced. This rate shall be in effect until the end of the calendar year in which ~~the~~
8 ~~suit resulting in judgment was filed~~ interest begins to accrue or until the date judgment
9 is filed, whichever first occurs. Beginning on January 1 of the next succeeding calendar
10 year until the end of that calendar year, or until the date the judgment is filed,
11 whichever first occurs, and for each succeeding calendar year thereafter, the
12 prejudgment interest rate shall be the rate in effect for judgments rendered during each
13 calendar year as certified by the Administrative Director of the Courts pursuant to
14 subsection I of this section. After the computation of all prejudgment interest has been
15 completed, the total amount of prejudgment interest shall be added to the amount of the
16 judgment rendered pursuant to the trial of the action, and the total amount of the
17 resulting judgment shall become the amount upon which postjudgment interest is
18 computed pursuant to subsection A of this section.

19 F. If a verdict of the type described by subsection E of this section is rendered
20 against this state or its political subdivisions, including counties, municipalities, school
21 districts, and public trusts of which this state or a political subdivision of this state is a
22 beneficiary, the judgment shall bear interest at the rate prescribed pursuant to

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

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

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

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

19 J. For purposes of computing postjudgment interest, the provisions of this section
20 shall be applicable to all judgments of the district courts rendered on or after January 1,
21 ~~2005~~ 2009. Effective January 1, ~~2005~~ 2009, the method for computing postjudgment

1 interest prescribed by this section shall be applicable to all judgments remaining unpaid
2 rendered prior to January 1, ~~2005~~ 2009.

3 K. For purposes of computing prejudgment interest, the provisions of this section
4 shall be applicable to all actions which are filed in the district courts on or after January
5 1, ~~2005~~ 2009, for which an award of prejudgment interest is authorized by the provisions
6 of this section.

7 SECTION 7. AMENDATORY 12 O.S. 2001, Section 990.4, as last amended by
8 Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp. 2007, Section 990.4), is amended to read
9 as follows:

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

12 1. While a ~~post-trial~~ posttrial motion is pending;

13 2. During the time in which an appeal may be commenced in any court in or
14 outside of this state; or

15 3. While an appeal is pending in any court in or outside of this state.

16 Such stay may be obtained by filing with the court clerk a written undertaking and the
17 posting of a supersedeas bond or other security as provided in this section. In the
18 undertaking the appellant shall agree to satisfy the judgment, decree or final order, and
19 pay the costs and interest on appeal, if it is affirmed. The undertaking and supersedeas
20 bond or security may be given at any time. The stay is effective when the bond and the
21 sufficiency of the sureties are approved by the trial court or the security is deposited with
22 the court clerk. The enforcement of the judgment, decree or order shall no longer be

1 stayed, and the judgment, decree or order may be enforced against any surety on the
2 bond or other security:

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

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

7 3. If an appeal is no longer pending.

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

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

10 a. subject to the limitations hereinafter provided, the bond shall be
11 double the amount of the judgment, decree or final order, unless the
12 bond is executed or guaranteed by a surety as hereinafter provided.
13 The bond shall be for the amount of the judgment, decree or order
14 including costs and interest on appeal where it is executed or
15 guaranteed by an entity with suretyship powers as provided by the
16 laws of Oklahoma. In no case shall the bond exceed Twenty-five
17 Million Dollars (\$25,000,000.00). If the party posting the supersedeas
18 bond is an individual or a business with two hundred fifty employees
19 or less on the date of the judgment, the supersedeas bond shall not
20 exceed One Million Dollars (\$1,000,000.00). On a showing by the
21 judgment debtor that the judgment debtor is likely to suffer
22 substantial economic harm if required to post bond in the amount

1 required by this paragraph, the court shall balance the likely
2 substantial economic harm to the judgment debtor with the ability of
3 the judgment creditor to collect the judgment in the event the
4 judgment is affirmed on appeal and may lower the bond accordingly.
5 “Substantial economic harm” means insolvency or creating a
6 significant risk of insolvency. ~~The court shall not lower a bond as
7 provided in this paragraph to the extent there is in effect an insurance
8 policy, or agreement under which a third party is liable to satisfy part
9 or all of the judgment entered and such party is required to post all or
10 part of the bond. Upon lowering the bond as provided in this
11 paragraph, the court shall enter an order enjoining a judgment debtor
12 from dissipating or transferring assets to avoid satisfaction of the
13 judgment, but the court shall not make any order that interferes with
14 the judgment debtor’s use of assets in the normal course of business If
15 it is proved by a preponderance of the evidence that the appellant for
16 whom the bond has been limited pursuant to this subparagraph is
17 intentionally dissipating or diverting assets outside of the ordinary
18 course of its business for the purpose of avoiding payment of the
19 judgment, the court shall enter such orders as are necessary to prevent
20 dissipation or diversion including, but not limited to, requiring that a
21 bond be posted equal to the full amount of security required pursuant
22 to this section, and~~

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

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

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

21 4. When the judgment or final order directs the assignment or delivery of
22 documents, they may be placed in the custody of the clerk of the court in which the

1 judgment or order was rendered, for deposit with a public or private entity for
2 safekeeping during the pendency of the stay, as directed by the court in writing, or the
3 bond shall be in such sum as may be prescribed by the court; or

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

1 documents entered into on November 23, 1998, by this state and leading United States
2 smokeless tobacco product manufacturers.

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

16 D. In any action not provided for in ~~subsections~~ subsection A, B or C of this section,
17 the court may stay the enforcement of any judgment, decree or final order during the
18 pendency of the appeal or while any ~~post-trial~~ posttrial motion is pending upon such
19 terms as to bond or otherwise as it considers proper for the security of the rights of the
20 parties.

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

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

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

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

17 I. Appeal bonds shall not be required for appeals of punitive damages.

18 SECTION 8. AMENDATORY 12 O.S. 2001, Section 2004, as amended by
19 Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2007, Section 2004), is amended to
20 read as follows:

21 Section 2004.

22 PROCESS

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

4 B. SUMMONS: FORM.

5 1. The summons shall be signed by the clerk, be under the seal of the court, contain
6 the name of the court and the names of the parties, be directed to the defendant, state
7 the name and address of the plaintiff's attorney, if any, otherwise, the plaintiff's address,
8 and the time within which these rules require the defendant to appear and defend, and
9 shall notify the defendant that in case of failure to appear, judgment by default will be
10 rendered against the defendant for the relief demanded in the petition.

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

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

18 1. SERVICE BY PERSONAL DELIVERY.

19 a. At the election of the plaintiff, process, other than a subpoena, shall be
20 served by a sheriff or deputy sheriff, a person licensed to make service
21 of process in civil cases, or a person specially appointed for that

1 purpose. The court shall freely make special appointments to serve all
2 process, other than a subpoena, under this paragraph.

3 b. A summons to be served by the sheriff or deputy sheriff shall be
4 delivered to the sheriff by the court clerk or an attorney of record for
5 the plaintiff. When a summons, subpoena, or other process is to be
6 served by the sheriff or deputy sheriff of another county, the court
7 clerk shall mail it, together with his voucher for the fees collected for
8 the service, to the sheriff of that county. The sheriff shall deposit the
9 voucher in the Sheriff's Service Fee Account created pursuant to
10 Section 514.1 of Title 19 of the Oklahoma Statutes. The sheriff or
11 deputy sheriff shall serve the process in the manner that other process
12 issued out of the court of the sheriff's own county is served. A
13 summons to be served by a person licensed to make service of process
14 in civil cases or by a person specially appointed for that purpose shall
15 be delivered by an attorney of record for the plaintiff to such person.

16 c. Service shall be made as follows:

17 (1) Upon an individual other than an infant who is less than fifteen
18 (15) years of age or an incompetent person, by delivering a copy
19 of the summons and of the petition personally or by leaving
20 copies thereof at the person's dwelling house or usual place of
21 abode with some person then residing therein who is fifteen (15)
22 years of age or older or by delivering a copy of the summons and

1 of the petition to an agent authorized by appointment or by law
2 to receive service of process;

3 (2) Upon an infant who is less than fifteen (15) years of age, by
4 serving the summons and petition personally and upon either of
5 the infant's parents or guardian, or if they cannot be found, then
6 upon the person having the care or control of the infant or with
7 whom the infant lives; and upon an incompetent person by
8 serving the summons and petition personally and upon the
9 incompetent person's guardian;

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

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

20 (5) Upon a state, county, school district, public trust or municipal
21 corporation or other governmental organization thereof subject
22 to suit, by delivering a copy of the summons and of the petition

1 to the officer or individual designated by specific statute;
2 however, if there is no statute, then upon the chief executive
3 officer or a clerk, secretary, or other official whose duty it is to
4 maintain the official records of the organization; and

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

15 2. SERVICE BY MAIL.

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

1 refused, on the date of refusal of the summons and petition by the
2 defendant.

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

19 c. Service by mail shall not be the basis for the entry of a default or a
20 judgment by default unless the record contains a return receipt
21 showing acceptance by the defendant or a returned envelope showing
22 refusal of the process by the defendant. Acceptance or refusal of

1 service by mail by a person who is fifteen (15) years of age or older who
2 resides at the defendant's dwelling house or usual place of abode shall
3 constitute acceptance or refusal by the party addressed. In the case of
4 an entity described in division (3) of subparagraph c of paragraph 1 of
5 this subsection, acceptance or refusal by any officer or by any employee
6 of the registered office or principal place of business who is authorized
7 to or who regularly receives certified mail shall constitute acceptance
8 or refusal by the party addressed. A return receipt signed at such
9 registered office or principal place of business shall be presumed to
10 have been signed by an employee authorized to receive certified mail.
11 In the case of a state municipal corporation, or other governmental
12 organization thereof subject to suit, acceptance or refusal by an
13 employee of the office of the officials specified in division (5) of
14 subparagraph c of paragraph 1 of this subsection who is authorized to
15 or who regularly receives certified mail shall constitute acceptance or
16 refusal by the party addressed. If delivery of the process is refused,
17 upon the receipt of notice of such refusal and at least ten (10) days
18 before applying for entry of default, the person elected by plaintiff
19 pursuant to subparagraph a of this paragraph to serve the process
20 shall mail to the defendant by first-class mail a copy of the summons
21 and petition and a notice prepared by the plaintiff that despite such
22 refusal the case will proceed and that judgment by default will be

1 rendered against him unless he appears to defend the suit. Any
2 default or judgment by default shall be set aside upon motion of the
3 defendant in the manner prescribed in Section 1031.1 of this title, or
4 upon petition of the defendant in the manner prescribed in Section
5 1033 of this title if the defendant demonstrates to the court that the
6 return receipt was signed or delivery was refused by an unauthorized
7 person. A petition shall be filed within one (1) year after the defendant
8 has notice of the default or judgment by default but in no event more
9 than two (2) years after the filing of the judgment.

10 3. SERVICE BY PUBLICATION.

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

- 1 (1) whether a person named as defendant is living or dead, and, if
2 dead, the names or whereabouts of the person's successors, if
3 any,
4 (2) the names or whereabouts of the unknown successors, if any, of
5 a named decedent,
6 (3) whether a partnership, corporation, or other association named
7 as a defendant continues to have legal existence or not; or the
8 names or whereabouts of its officers or successors,
9 (4) whether any person designated in a record as a trustee
10 continues to be the trustee; or the names or whereabouts of the
11 successors of the trustee, or
12 (5) the names or whereabouts of the owners or holders of special
13 assessment or improvement bonds, or any other bonds, sewer
14 warrants or tax bills.
- 15 c. Service pursuant to this paragraph shall be made by publication of a
16 notice, signed by the court clerk, one (1) day a week for three (3)
17 consecutive weeks in a newspaper authorized by law to publish legal
18 notices which is published in the county where the petition is filed. If
19 no newspaper authorized by law to publish legal notices is published in
20 such county, the notice shall be published in some such newspaper of
21 general circulation which is published in an adjoining county. All
22 named parties and their unknown successors who may be served by

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

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

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

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

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

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

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

- 1 e. Before entry of a default judgment or order against a party who has
2 been served solely by publication under this paragraph, the court shall
3 conduct an inquiry to determine whether the plaintiff, or someone
4 acting in his behalf, made a distinct and meaningful search of all
5 reasonably available sources to ascertain the whereabouts of any
6 named parties who have been served solely by publication under this
7 paragraph. Before entry of a default judgment or order against the
8 unknown successors of a named defendant, a named decedent, or a
9 dissolved partnership, corporation or association, the court shall
10 conduct an inquiry to ascertain whether the requirements described in
11 subparagraph b of this paragraph have been satisfied.
- 12 f. A party against whom a default judgment or order has been rendered,
13 without other service than by publication in a newspaper, may, at any
14 time within three (3) years after the filing of the judgment or order,
15 have the judgment or order set aside in the manner prescribed in
16 Sections 1031.1 and 1033 of this title. Before the judgment or order is
17 set aside, the applicant shall notify the adverse party of the intention
18 to make an application and shall file a full answer to the petition, pay
19 all costs if the court requires them to be paid, and satisfy the court by
20 affidavit or other evidence that during the pendency of the action the
21 applicant had no actual notice thereof in time to appear in court and
22 make a defense. The title to any property which is the subject of and

1 which passes to a purchaser in good faith by or in consequence of the
2 judgment or order to be opened shall not be affected by any
3 proceedings under this subparagraph. Nor shall proceedings under
4 this subparagraph affect the title of any property sold before judgment
5 under an attachment. The adverse party, on the hearing of an
6 application to open a judgment or order as provided by this
7 subparagraph, shall be allowed to present evidence to show that
8 during the pendency of the action the applicant had notice thereof in
9 time to appear in court and make a defense.

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

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

17 4. SERVICE ON THE SECRETARY OF STATE.

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

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

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

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

7 (1) the corporation's last-known address shown on the records of the
8 Franchise Tax Division of the Oklahoma Tax Commission, if any
9 is listed there; and

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

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

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

17 c. Service on the Secretary of State shall be made by filing two (2) copies
18 of the summons and petition with the Secretary of State, notifying the
19 Secretary of State that service is being made pursuant to the
20 provisions of this paragraph, and paying the Secretary of State the fee
21 prescribed in paragraph 7 of Section 1142 of Title 18 of the Oklahoma
22 Statutes, which fee shall be taxed as part of the costs of the action, suit

1 or proceeding if the plaintiff shall prevail therein. If a registered agent
2 for the corporation is listed in the records of the Secretary of State, the
3 plaintiff must also furnish a certified copy of the return showing that
4 service on the registered agent has been attempted either in person or
5 by mail, and that neither the registered agent nor an officer of the
6 corporation could be found at the registered office of the corporation.

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

17 e. Before entry of a default judgment or order against a corporation that
18 has been served by serving the Secretary of State as its agent under
19 this paragraph, the court shall determine whether the requirements of
20 this paragraph have been satisfied. A default judgment or order
21 against a corporation that has been served only by service on the
22 Secretary of State may be set aside upon motion of the corporation in

1 the manner prescribed in Section 1031.1 of this title, or upon petition
2 of the corporation in the manner prescribed in Section 1033 of this
3 title, if the corporation demonstrates to the court that it had no actual
4 notice of the action in time to appear and make its defense. A petition
5 shall be filed within one (1) year after the corporation has notice of the
6 default judgment or order but in no event more than two (2) years after
7 the filing of the default judgment or order.

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

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

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

20 6. SERVICE BY OTHER METHODS. If service cannot be made by personal
21 delivery or by mail, a defendant of any class referred to in division (1) or (3) of
22 subparagraph c of paragraph 1 of this subsection may be served as provided by court

1 order in any manner which is reasonably calculated to give the defendant actual notice of
2 the proceedings and an opportunity to be heard.

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

7 D. SUMMONS AND PETITION. The summons and petition shall be served
8 together. The plaintiff shall furnish the person making service with such copies as are
9 necessary. The failure to serve a copy of the petition with the summons is not a ground
10 for dismissal for insufficiency of service of process, but on motion of the party served, the
11 court may extend the time to answer or otherwise plead. If a summons and petition are
12 served by personal delivery, the person serving the summons shall state on the copy that
13 is left with the person served the date that service is made. This provision is not
14 jurisdictional, but if the failure to comply with it prejudices the party served, the court,
15 on motion of the party served, may extend the time to answer or otherwise plead.

16 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

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

21 a. by personal delivery in the manner prescribed for service within this
22 state,

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

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

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

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

21 6. a. A court of this state may order service upon any person who is
22 domiciled or can be found within this state of any document issued in

1 connection with a proceeding in a tribunal outside this state. The
2 order may be made upon application of any interested person or in
3 response to a letter rogatory issued by a tribunal outside this state and
4 shall direct the manner of service.

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

7 c. Service under this paragraph does not, of itself, require the recognition
8 or enforcement of an order, judgment, or decree rendered outside this
9 state.

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

13 G. RETURN.

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

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

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

1 shall make affidavit thereof. The return shall set forth the name of the person served
2 and the date, place, and method of service.

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

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

18 I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is not made
19 upon a defendant within ~~one hundred eighty (180)~~ one hundred twenty (120) days after
20 the filing of the petition and the plaintiff cannot show good cause why such service was
21 not made within that period, the action ~~may~~ shall be deemed dismissed as to that
22 defendant without prejudice ~~upon the court's own initiative with notice to the plaintiff or~~

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

10 SECTION 9. AMENDATORY 12 O.S. 2001, Section 2011, as amended by
11 Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2007, Section 2011), is amended to
12 read as follows:

13 Section 2011.

14 SIGNING OF PLEADINGS

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

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

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

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

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

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

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

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

21 1. HOW INITIATED.

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

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

19 2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for violation of
20 this section shall be limited to what is sufficient to deter repetition of such conduct or
21 comparable conduct by others similarly situated. Subject to the limitations in
22 subparagraphs a, b and c of this paragraph, the sanction may consist of, or include,

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

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

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

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

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

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

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

7 SECTION 10. AMENDATORY Section 1, Chapter 370, O.S.L. 2004, as
8 amended by Section 10, Chapter 12, O.S.L. 2007 (12 O.S. Supp. 2007, Section 2011.1), is
9 amended to read as follows:

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

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

3 Section 2023.

4 CLASS ACTIONS

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

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

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

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

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

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

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

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

20 b. adjudications with respect to individual members of the class which
21 would as a practical matter be dispositive of the interests of the other

1 members not parties to the adjudications or substantially impair or
2 impede their ability to protect their interests; or

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

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

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

18 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE
19 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS
20 CLASS ACTIONS.

21 1. As soon as practicable after the commencement of an action brought as a class
22 action, the court shall determine by order whether it is to be so maintained. An order

1 under this subsection may be conditional, and may be altered or amended before the
2 decision on the merits.

3 2. If the order described in paragraph 1 of this subsection becomes subject to
4 appellate review, the reviewing court shall apply a de novo standard. While the appeal of
5 the order is pending, discovery shall be stayed.

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

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

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

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

8 ~~3.~~ 4. The judgment in an action maintained as a class action under ~~paragraphs~~
9 paragraph 1 or 2 of subsection B of this section, whether or not favorable to the class,
10 shall include and describe those whom the court finds to be members of the class. The
11 judgment in an action maintained as a class action under paragraph 3 of subsection B of
12 this section, whether or not favorable to the class, shall include and specify or describe
13 those to whom the notice provided in paragraph ~~2~~ 3 of this subsection ~~C of this section~~
14 was directed, and who have not requested ~~exclusion~~ inclusion, and whom the court finds
15 to be members of the class.

- 16 ~~4.~~ 5. When appropriate:
- 17 a. an action may be brought or maintained as a class action with respect
 - 18 to particular issues, or
 - 19 b. a class may be divided into subclasses and each subclass treated as a
 - 20 class.

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

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

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

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

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

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

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

15 ~~4.~~ 5. Requiring that the pleadings be amended to eliminate therefrom allegations
16 as to representation of absent persons, and that the action proceed accordingly; and

17 ~~5.~~ 6. Dealing with similar procedural matters.

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

20 E. DISMISSAL OR COMPROMISE. A class action shall not be dismissed or
21 compromised without the approval of the court, and notice of the proposed dismissal or

1 compromise shall be given to all members of the class in such manner as the court
2 directs.

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

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

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

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

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

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

1 which the adverse party would have the burden of persuasion at trial. If the adverse
2 party does not so respond, summary judgment, if otherwise appropriate hereunder, shall
3 be entered against the adverse party.

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

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

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

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

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

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

8 SECTION 13. 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 or 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 before the hearing. If of a type
7 reasonably relied upon by experts in the particular field in forming opinions or inferences
8 upon the subject, the facts or data need not be admissible in evidence in order for the
9 opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall
10 not be disclosed to the jury by the proponent of the opinion or inference unless the court
11 determines that their probative value in assisting the jury to evaluate the expert's
12 opinion substantially outweighs their prejudicial effect.

13 D. BARS TO EXPERT TESTIMONY.

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

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

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 through 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
7 through D of this section. Such hearing and ruling shall be completed no later than the
8 final pretrial hearing. Upon request, the trial court's ruling shall set forth the findings of
9 fact and conclusions of law upon which the order to admit or exclude expert evidence is
10 based.

11 F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

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

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

1 authored by the witness within the preceding ten (10) years; the compensation to be paid
2 for the study and testimony; and a listing of any other cases in which the witness has
3 testified as an expert at trial or by deposition within the preceding four (4) years.

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

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

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

1 H. INTERLOCUTORY APPEAL. Interlocutory appeal of a ruling on the
2 admissibility of expert evidence shall be available at the discretion of the appellate court.

3 In deciding whether to grant the interlocutory appeal, the court shall consider whether:

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

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

6 3. The ruling will help establish civil liability at or above Seventy-five Thousand
7 Dollars (\$75,000.00), where the testimony could be outcome-determinative for

8 establishing liability or determining damages. Neither a party's failure to seek

9 interlocutory appeal or an appellate court's decision to deny a motion for interlocutory

10 appeal shall waive a party's right to appeal a ruling on the admissibility of expert

11 evidence after an entry of judgment in the case.

12 I. STANDARD OF REVIEW.

13 1. As the proper construction of the expert evidence admissibility framework
14 prescribed by this section is a question of law, the courts of appeals shall apply a de novo

15 standard of review in determining whether the trial court fully applied the proper legal

16 standard in considering the admissibility of expert evidence.

17 2. As the application of this section to determine the admissibility of expert

18 testimony is a question of fact, the courts of appeals shall apply an abuse of discretion

19 standard in determining whether the trial court properly admitted or excluded particular

20 expert evidence.

21 J. SEVERABILITY CLAUSE. The provisions of this section are severable. If any

22 portion of this section is declared unconstitutional or the application of any part of this

1 section to any person or circumstance is held invalid, the remaining portions of the
2 section and their applicability to any person or circumstance shall remain valid and
3 enforceable.

4 K. EFFECTIVE DATE. This section shall become effective upon enactment and
5 shall apply to all actions commenced on or after November 1, 2008, and to all pending
6 actions in which trial has not been scheduled or in which trial has been scheduled in
7 excess of ninety (90) days after November 1, 2008.

8 SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma
9 Statutes as Section 751A of Title 15, unless there is created a duplication in numbering,
10 reads as follows:

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

16 SECTION 15. AMENDATORY 15 O.S. 2001, Section 754, is amended to read
17 as follows:

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

20 1. Publishers, broadcasters, printers, or other persons insofar as an unlawful
21 practice as defined in Section ~~3~~ 753 of this ~~act~~ title involves information that has been

1 disseminated or reproduced on behalf of others without knowledge that it is an unlawful
2 practice;

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

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

12 SECTION 16. AMENDATORY 15 O.S. 2001, Section 761.1, is amended to read
13 as follows:

14 Section 761.1 A. The commission of any act or practice declared to be a violation of
15 the Oklahoma Consumer Protection Act shall render the violator liable to the aggrieved
16 consumer who suffers an ascertainable loss of money or property, real or personal, as a
17 result of the violation for the payment of actual damages sustained by the customer and
18 costs of litigation including reasonable ~~attorney's~~ attorney fees, and the aggrieved
19 consumer shall have a private right of action for actual damages, including, but not
20 limited to, costs and ~~attorney's~~ attorney fees. Actual damages shall be measured by the
21 out-of-pocket loss of the consumer, which is an amount of money equal to the difference
22 between the amount paid by the consumer for the good or service and the actual market

1 value of the good or service that the consumer actually received. In any private action
2 for damages for a violation of the Oklahoma Consumer Protection Act the court shall,
3 subsequent to adjudication on the merits and upon motion of the prevailing party,
4 determine whether a claim or defense asserted in the action by a nonprevailing party
5 was asserted in bad faith, was not well grounded in fact, or was unwarranted by existing
6 law or a good faith argument for the extension, modification, or reversal of existing law.
7 Upon so finding, the court ~~shall~~ may enter a judgment ordering such nonprevailing party
8 to reimburse the prevailing party an amount not to exceed Ten Thousand Dollars
9 (\$10,000.00) for reasonable costs, including ~~attorney's~~ attorney fees, incurred with
10 respect to such claim or defense.

11 B. In order to recover damages in an action for a violation of the Oklahoma
12 Consumer Protection Act, a person shall be required to prove that he or she reasonably
13 relied to his or her detriment upon the practice alleged to be a violation of the Oklahoma
14 Consumer Protection Act, and that his or her damages were proximately caused by the
15 practice alleged to be a violation of the Oklahoma Consumer Protection Act.

16 C. The commission of any act or practice declared to be a violation of the Oklahoma
17 Consumer Protection Act, if such act or practice is also found to be unconscionable, shall
18 render the violator liable to the aggrieved customer for the payment of a civil penalty,
19 recoverable in an individual action only, in a sum set by the court of not more than Two
20 Thousand Dollars (\$2,000.00) for each violation. In determining whether an act or
21 practice is unconscionable the following circumstances shall be taken into consideration
22 by the court: ~~(1) whether~~

1 1. Whether the violator knowingly or with reason to know, took advantage of a
2 consumer reasonably unable to protect his or her interests because of his or her age,
3 physical infirmity, ignorance, illiteracy, inability to understand the language of an
4 agreement or similar factor; ~~(2) whether~~

5 2. Whether, at the time the consumer transaction was entered into, the violator
6 knew or had reason to know that price grossly exceeded the price at which similar
7 property or services were readily obtainable in similar transactions by like consumers;
8 ~~(3) whether~~

9 3. Whether, at the time the consumer transaction was entered into, the violator
10 knew or had reason to know that there was no reasonable probability of payment of the
11 obligation in full by the consumer; ~~(4) whether~~ and

12 4. Whether the violator knew or had reason to know that the transaction he or she
13 induced the consumer to enter into was excessively one-sided in favor of the violator.

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

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

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

19 SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma
20 Statutes as Section 9.2 of Title 23, unless there is created a duplication in numbering,
21 reads as follows:

22 A. As used in this section:

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

- 3 a. medical, health care, or custodial care services,
- 4 b. physical pain and mental anguish, disfigurement, or physical
5 impairment,
- 6 c. loss of consortium, companionship, or society, or
- 7 d. loss of earnings;

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

- 10 a. loss of income, wages, or earning capacity and other pecuniary losses,
11 or
- 12 b. loss of inheritance; and

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

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

18 C. Upon request of a party, the court shall order that medical, health care, or
19 custodial services awarded in an action be paid in whole or in part in periodic payments
20 rather than by a lump-sum payment. Upon request of a party, the court may order that
21 future damages other than medical, health care, or custodial services awarded in a

1 health care liability action be paid in whole or in part in periodic payments rather than
2 by a lump-sum payment.

3 D. The court shall make a specific finding of the dollar amount of periodic
4 payments that will compensate the plaintiff for the future damages. The court shall
5 specify in its judgment ordering the payment of future damages by periodic payments
6 the:

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

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

13 F. As a condition to authorizing periodic payments of future damages, the court
14 shall require a defendant who is not adequately insured to provide evidence of financial
15 responsibility in an amount adequate to assure full payment of damages awarded by the
16 judgment. The judgment shall provide for payments to be funded by:

- 17 1. An annuity contract issued by a company licensed to do business as an insurance
18 company, including an assignment within the meaning of Section 130, Internal Revenue
19 Code of 1986, as amended;
- 20 2. An obligation of the United States;
- 21 3. Applicable and collectible liability insurance from one or more qualified insurers;

22 or

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

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

4 H. On the death of the recipient, money damages awarded for loss of future
5 earnings shall continue to be paid to the estate of the recipient of the award without
6 reduction. Following the satisfaction or termination of any obligations specified in the
7 judgment for periodic payments, any obligation of the defendant health care provider to
8 make further payments ends and any security given reverts to the defendant.

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

13 SECTION 18. AMENDATORY Section 18, Chapter 368, O.S.L. 2004 (23 O.S.
14 Supp. 2007, Section 15), is amended to read as follows:

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

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

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

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

9 E. C. The provisions of this section shall apply to all civil actions based on fault and
10 not arising out of contract that accrue on or after November 1, ~~2004~~ 2008.

11 SECTION 19. AMENDATORY 23 O.S. 2001, Section 61, is amended to read as
12 follows:

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

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

1 subrogation or to compensation resulting from the proceeds of life insurance shall not be
2 subject to this section.

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

6 A. Except as provided in subsection B of this section, in any action not arising out
7 of contract, the amount of noneconomic damages awarded shall not exceed Three
8 Hundred Thousand Dollars (\$300,000.00), regardless of the number of parties against
9 whom the action is brought or the number of actions brought with respect to the personal
10 injury. The dollar amount prescribed by this subsection shall be adjusted annually based
11 upon any positive increase in the Consumer Price Index that measures the average
12 changes in prices of goods and services purchased by urban wage earners and clerical
13 workers' families and single workers living alone (CPI-W) for the preceding calendar
14 year. The adjustment required by this subsection shall be made by the State Treasurer
15 and certified to the Administrative Director of the Courts on April 1 of each year or not
16 later than thirty (30) days after the date upon which the Bureau of Labor Statistics
17 releases the CPI-W inflationary data for the preceding calendar year, whichever date
18 first occurs. No adjustment to the dollar amount prescribed by this subsection shall be
19 made for any year in which there is a decline in the Consumer Price Index.

20 B. If the jury finds by clear and convincing evidence that the acts of the party
21 which caused the damages were grossly negligent or committed intentionally or with
22 malice toward others, and the court finds, on the record and out of the presence of the

1 jury that there is evidence beyond a reasonable doubt that the defendant was grossly
2 negligent or acted intentionally or with malice toward others, the jury in a separate
3 proceeding, conducted after the jury has made such a finding and awarded actual
4 damages, may award noneconomic damages in an amount the jury deems appropriate
5 without regard to the limitation set forth in subsection A of this section. Any award of
6 noneconomic damages under this subsection awarded in any manner other than as
7 required in this section shall be void and reversible.

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

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

14 E. The provisions of this section shall apply only to actions that accrue on or after
15 November 1, 2008.

16 SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma
17 Statutes as Section 61.3 of Title 23, unless there is created a duplication in numbering,
18 reads as follows:

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

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

3 SECTION 22. AMENDATORY 47 O.S. 2001, Section 11-1112, as last amended
4 by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp. 2007, Section 11-1112), is amended
5 to read as follows:

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

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

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

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

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

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

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

21 5. The transportation of a child who weighs more than forty (40) pounds and who is
22 being transported in the back seat of a vehicle while wearing only a lap safety belt when

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

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

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

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

21 ~~G.~~ F. Any person convicted of violating subsection A or B of this section shall be
22 punished by a fine of Fifty Dollars (\$50.00) and shall pay all court costs thereof. Revenue

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

8 SECTION 23. AMENDATORY Section 7, Chapter 390, O.S.L. 2003 (63 O.S.
9 Supp. 2007, Section 1-1708.1G), is amended to read as follows:

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

17 SECTION 24. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as last amended
18 by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2007, Section 1-1709.1), is
19 amended to read as follows:

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

21 1. “Credentialing or recredentialing data” means:

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

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

15 3. “Health care facility” means:

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

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

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

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

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

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

- 13 B. 1. Peer review information shall be private, confidential and privileged;
- 14 ~~a.~~ except that a health care facility or county medical society shall be
- 15 permitted to provide relevant peer review information to the state
- 16 agency or board which licensed the health care professional who
- 17 provided the health care services being reviewed in a peer review
- 18 process or who is the subject of a credentialing or recredentialing
- 19 process, with notice to the health care professional, ~~and~~
- 20 ~~b. except as provided in subsections C and D of this section.~~

21 2. Nothing in this section shall be construed to abrogate, alter or affect any
22 provision in the Oklahoma Statutes which provides that information regarding liability

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1 insurance of a health care facility or health care professional is not discoverable or
2 admissible.

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

12 D. ~~±~~ In any civil action in which a patient or patient’s legal representative has
13 alleged:

14 a. ~~that~~

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

17 b. ~~that~~

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

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1 date of the alleged negligence shall not be subject to discovery pursuant to the Oklahoma
2 Discovery Code or admissible at trial.

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

4 a. a claim of independent negligence against a health care facility shall
5 not be admissible as evidence until a judge or jury has first found the
6 health care professional to have been negligent in providing health
7 care services to the patient in such health care facility, ~~and~~

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

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

13 SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma
14 Statutes as Section 684.14 of Title 63, unless there is created a duplication in numbering,
15 reads as follows:

16 This section and Sections 26 through 37 of this act shall be known and may be cited
17 as the “Uniform Emergency Volunteer Health Practitioners Act”.

18 SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma
19 Statutes as Section 684.15 of Title 63, unless there is created a duplication in numbering,
20 reads as follows:

21 As used in the Uniform Emergency Volunteer Health Practitioners Act:

- 1 1. “Disaster relief organization” means an entity that provides emergency or
2 disaster relief services that include health or veterinary services provided by volunteer
3 health practitioners and that:
- 4 a. is designated or recognized as a provider of those services pursuant to
5 a disaster response and recovery plan adopted by an agency of the
6 federal government or the State Department of Health, and
7 b. regularly plans and conducts its activities in coordination with an
8 agency of the federal government or the State Department of Health;
- 9 2. “Emergency” means an event or condition that is an emergency pursuant to the
10 Oklahoma Emergency Management Act of 2003 or the Catastrophic Health Emergency
11 Powers Act;
- 12 3. “Emergency declaration” means a declaration of emergency issued by a person
13 authorized to do so under the laws of this state pursuant to the Oklahoma Emergency
14 Management Act of 2003 or the Catastrophic Health Emergency Powers Act;
- 15 4. “Emergency Management Assistance Compact” means the interstate compact
16 approved by Congress by Public Law No. 104-321, 110 Stat. 3877;
- 17 5. “Entity” means a person other than an individual;
- 18 6. “Health facility” means an entity licensed under the laws of this or another state
19 to provide health or veterinary services;
- 20 7. “Health practitioner” means an individual licensed under the laws of this or
21 another state to provide health or veterinary services;

1 8. “Health services” means the provision of treatment, care, advice or guidance, or
2 other services, or supplies, related to the health or death of individuals or human
3 populations, to the extent necessary to respond to an emergency, including:

4 a. the following, concerning the physical or mental condition or functional
5 status of an individual or affecting the structure or function of the
6 body:

7 (1) preventive, diagnostic, therapeutic, rehabilitative, maintenance,
8 or palliative care, and

9 (2) counseling, assessment, procedures, or other services,

10 b. sale or dispensing of a drug, a device, equipment, or another item to an
11 individual in accordance with a prescription, and

12 c. funeral, cremation, cemetery, or other mortuary services;

13 9. “Host entity” means an entity operating in this state which uses volunteer health
14 practitioners to respond to an emergency;

15 10. “License” means authorization by a state to engage in health or veterinary
16 services that are unlawful without the authorization and includes authorization under
17 the laws of this state to an individual to provide health or veterinary services based upon
18 a national certification issued by a public or private entity;

19 11. “Person” means an individual, corporation, business trust, trust, partnership,
20 limited liability company, association, joint venture, public corporation, government or
21 governmental subdivision, agency, or instrumentality, or any other legal or commercial
22 entity;

1 12. “Scope of practice” means the extent of the authorization to provide health or
2 veterinary services granted to a health practitioner by a license issued to the practitioner
3 in the state in which the principal part of the practitioner’s services are rendered,
4 including any conditions imposed by the licensing authority;

5 13. “State” means a state of the United States, the District of Columbia, Puerto
6 Rico, the United States Virgin Islands, or any territory or insular possession subject to
7 the jurisdiction of the United States;

8 14. “Veterinary services” means the provision of treatment, care, advice or
9 guidance, or other services, or supplies, related to the health or death of an animal or to
10 animal populations, to the extent necessary to respond to an emergency, including, but
11 not limited to:

- 12 a. diagnosis, treatment, or prevention of an animal disease, injury, or
- 13 other physical or mental condition by the prescription, administration,
- 14 or dispensing of vaccine, medicine, surgery, or therapy,
- 15 b. use of a procedure for reproductive management, and
- 16 c. monitoring and treatment of animal populations for diseases that have
- 17 spread or demonstrate the potential to spread to humans; and

18 15. “Volunteer health practitioner” means a health practitioner who provides
19 health or veterinary services, whether or not the practitioner receives compensation for
20 those services and does not include a practitioner who receives compensation pursuant to
21 a preexisting employment relationship with a host entity or affiliate which requires the
22 practitioner to provide health services in this state, unless the practitioner is not a

1 resident of this state and is employed by a disaster relief organization providing services
2 in this state while an emergency declaration is in effect.

3 SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma
4 Statutes as Section 684.16 of Title 63, unless there is created a duplication in numbering,
5 reads as follows:

6 This Uniform Emergency Volunteer Health Practitioners Act applies to volunteer
7 health practitioners registered with a registration system that complies with Section 29
8 of this act and who provide health or veterinary services in this state for a host entity
9 while an emergency declaration is in effect.

10 SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma
11 Statutes as Section 684.17 of Title 63, unless there is created a duplication in numbering,
12 reads as follows:

13 A. While an emergency declaration is in effect, the State Department of Health
14 may limit, restrict, or otherwise regulate:

- 15 1. The duration of practice by volunteer health practitioners;
16 2. The geographical areas in which volunteer health practitioners may practice;
17 3. The types of volunteer health practitioners who may practice; and
18 4. Any other matters necessary to coordinate effectively the provision of health or
19 veterinary services during the emergency.

20 B. An order issued pursuant to subsection A of this section may take effect
21 immediately, without prior notice or comment, and is not a rule within the meaning of
22 the Administrative Procedures Act.

1 C. A host entity that uses volunteer health practitioners to provide health or
2 veterinary services in this state shall:

3 1. Consult and coordinate its activities with the State Department of Health to the
4 extent practicable to provide for the efficient and effective use of volunteer health
5 practitioners; and

6 2. Comply with any laws other than this act relating to the management of
7 emergency health or veterinary services, including the Oklahoma Emergency
8 Management Act of 2003 and the Catastrophic Health Emergency Powers Act.

9 SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma
10 Statutes as Section 684.18 of Title 63, unless there is created a duplication in numbering,
11 reads as follows:

12 A. To qualify as a volunteer health practitioner registration system, a system must:

13 1. Accept applications for the registration of volunteer health practitioners before
14 or during an emergency;

15 2. Include information about the licensure and good standing of health
16 practitioners which is accessible by authorized persons;

17 3. Be capable of confirming the accuracy of information concerning whether a
18 health practitioner is licensed and in good standing before health services or veterinary
19 services are provided under this act; and

20 4. Meet one of the following conditions:

21 a. be an emergency system for advance registration of volunteer health
22 practitioners established by a state and funded through the Health

- 1 Resources Services Administration under Section 319I of the Public
2 Health Services Act, 42 U.S.C., Section 247d-7b,
- 3 b. be a local unit consisting of trained and equipped emergency response,
4 public health, and medical personnel formed pursuant to Section 2801
5 of the Public Health Services Act, 42 U.S.C., Section 300hh,
- 6 c. be operated by a:
- 7 (1) disaster relief organization,
8 (2) licensing board,
9 (3) national or regional association of licensing boards or health
10 practitioners,
11 (4) health facility that provides comprehensive inpatient and
12 outpatient health-care services, including a tertiary care and
13 teaching hospital, or
14 (5) governmental entity, or
- 15 d. be designated by the State Department of Health as a registration
16 system for purposes of this act.

17 B. While an emergency declaration is in effect, the State Department of Health, a
18 person authorized to act on behalf of the Department, or a host entity may confirm
19 whether volunteer health practitioners utilized in this state are registered with a
20 registration system that complies with subsection A of this section. Confirmation is
21 limited to obtaining identities of the practitioners from the system and determining
22 whether the system indicates that the practitioners are licensed and in good standing.

1 C. Upon request of a person in this state authorized under subsection B of this
2 section, or a similarly authorized person in another state, a registration system located
3 in this state shall notify the person of the identities of volunteer health practitioners and
4 whether the practitioners are licensed and in good standing.

5 D. A host entity shall not be required to use the services of a volunteer health
6 practitioner even if the practitioner is registered with a registration system that
7 indicates that the practitioner is licensed and in good standing.

8 SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma
9 Statutes as Section 684.19 of Title 63, unless there is created a duplication in numbering,
10 reads as follows:

11 A. While an emergency declaration is in effect, a volunteer health practitioner,
12 registered with a registration system that complies with Section 29 of this act and
13 licensed and in good standing in the state upon which the practitioner's registration is
14 based, may practice in this state to the extent authorized by this act as if the practitioner
15 were licensed in this state.

16 B. A volunteer health practitioner qualified under subsection A of this section is not
17 entitled to the protections of this act if the practitioner is licensed in more than one state
18 and any license of the practitioner is suspended, revoked, or subject to an agency order
19 limiting or restricting practice privileges, or has been voluntarily terminated under
20 threat of sanction.

1 SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 684.20 of Title 63, unless there is created a duplication in numbering,
3 reads as follows:

4 A. For purposes of this section:

5 1. "Credentialing" means obtaining, verifying, and assessing the qualifications of a
6 health practitioner to provide treatment, care, or services in or for a health facility; and

7 2. "Privileging" means the authorizing by an appropriate authority, such as a
8 governing body, of a health practitioner to provide specific treatment, care, or services at
9 a health facility subject to limits based on factors that include license, education,
10 training, experience, competence, health status, and specialized skill.

11 B. This act does not affect credentialing or privileging standards of a health facility
12 and does not preclude a health facility from waiving or modifying those standards while
13 an emergency declaration is in effect.

14 SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma
15 Statutes as Section 684.21 of Title 63, unless there is created a duplication in numbering,
16 reads as follows:

17 A. Subject to subsections B and C of this section, a volunteer health practitioner
18 shall adhere to the scope of practice for a similarly licensed practitioner established by
19 the licensing provisions, practice acts, or other laws of this state.

20 B. Except as otherwise provided in subsection C of this section, this act does not
21 authorize a volunteer health practitioner to provide services that are outside the

1 practitioner's scope of practice, even if a similarly licensed practitioner in this state
2 would be permitted to provide the services.

3 C. The State Department of Health may modify or restrict the health or veterinary
4 services that volunteer health practitioners may provide pursuant to this act. An order
5 under this subsection may take effect immediately, without prior notice or comment, and
6 is not a rule within the meaning of the Administrative Procedures Act.

7 D. A host entity may restrict the health or veterinary services that a volunteer
8 health practitioner may provide pursuant to this act.

9 E. A volunteer health practitioner does not engage in unauthorized practice unless
10 the practitioner has reason to know of any limitation, modification, or restriction under
11 this section or that a similarly licensed practitioner in this state would not be permitted
12 to provide the services. A volunteer health practitioner has reason to know of a
13 limitation, modification, or restriction or that a similarly licensed practitioner in this
14 state would not be permitted to provide a service if:

15 1. The practitioner knows the limitation, modification, or restriction exists or that a
16 similarly licensed practitioner in this state would not be permitted to provide the service;
17 or

18 2. From all the facts and circumstances known to the practitioner at the relevant
19 time, a reasonable person would conclude that the limitation, modification, or restriction
20 exists or that a similarly licensed practitioner in this state would not be permitted to
21 provide the service.

1 F. In addition to the authority granted by law of this state other than this act to
2 regulate the conduct of health practitioners, a licensing board or other disciplinary
3 authority in this state:

4 1. May impose administrative sanctions upon a health practitioner licensed in this
5 state for conduct outside of this state in response to an out-of-state emergency;

6 2. May impose administrative sanctions upon a practitioner not licensed in this
7 state for conduct in this state in response to an in-state emergency; and

8 3. Shall report any administrative sanctions imposed upon a practitioner licensed
9 in another state to the appropriate licensing board or other disciplinary authority in any
10 other state in which the practitioner is known to be licensed.

11 G. In determining whether to impose administrative sanctions under subsection F
12 of this section, a licensing board or other disciplinary authority shall consider the
13 circumstances in which the conduct took place, including any exigent circumstances, and
14 the practitioner's scope of practice, education, training, experience, and specialized skill.

15 SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 684.22 of Title 63, unless there is created a duplication in numbering,
17 reads as follows:

18 A. This act does not limit rights, privileges, or immunities provided to volunteer
19 health practitioners by laws other than this act. Except as otherwise provided in
20 subsection B of this section, this act does not affect requirements for the use of health
21 practitioners pursuant to the Emergency Management Assistance Compact.

1 B. The State Department of Health, pursuant to the Emergency Management
2 Assistance Compact, may incorporate into the emergency forces of this state volunteer
3 health practitioners who are not officers or employees of this state, a political subdivision
4 of this state, or a municipality or other local government within this state.

5 SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma
6 Statutes as Section 684.23 of Title 63, unless there is created a duplication in numbering,
7 reads as follows:

8 The State Board of Health may promulgate rules to implement this act. In doing so,
9 the State Department of Health shall consult with and consider the recommendations of
10 the entity established to coordinate the implementation of the Emergency Management
11 Assistance Compact and shall also consult with and consider rules promulgated by
12 similarly empowered agencies in other states to promote uniformity of application of this
13 act and make the emergency response systems in the various states reasonably
14 compatible.

15 SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 684.24 of Title 63, unless there is created a duplication in numbering,
17 reads as follows:

18 In applying and construing this uniform act, consideration must be given to the
19 need to promote uniformity of the law with respect to its subject matter among states
20 that enact it.

1 SECTION 36. AMENDATORY 63 O.S. 2001, Section 683.9, as amended by
2 Section 9, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2007, Section 683.9), is amended to
3 read as follows:

4 Section 683.9 The provisions of this section shall be operative only during the
5 existence of a natural or man-made emergency. The existence of such emergency may be
6 proclaimed by the Governor or by concurrent resolution of the Legislature if the
7 Governor in such proclamation, or the Legislature in such resolution, finds that an
8 emergency or disaster has occurred or is anticipated in the immediate future. Any such
9 emergency, whether proclaimed by the Governor or by the Legislature, shall terminate
10 upon the proclamation of the termination thereof by the Governor, or by passage by the
11 Legislature of a concurrent resolution terminating such emergency. During such period
12 as such state of emergency exists or continues, the Governor shall have and may exercise
13 the following additional emergency powers:

14 1. To activate the Emergency Operations Plan, and to assume regulatory control
15 over all essential resources of this state, directly or through the boards, agencies, offices
16 and officers established by ~~said~~ the Emergency Operations Plan, to determine priorities
17 of such resources and allocate such resources as the Governor may deem necessary in
18 cooperation with the political subdivisions of this state, the federal government, or other
19 states. "Resources" shall mean all economic resources within this state including but not
20 limited to food, manpower, health ~~and health manpower~~, water, transportation, economic
21 stabilization, electric power, petroleum, gas, and solid fuel, industrial production,
22 construction and housing;

1 2. To enforce all laws, rules and regulations relating to emergency management
2 and to assume direct operational control of any or all emergency management forces and
3 helpers in this state;

4 3. To provide for the evacuation of all or part of the population from any stricken or
5 threatened area or areas within this state and to take such steps as are necessary for the
6 receipt and care of such evacuees;

7 4. Subject to the provisions of the State Constitution, to remove from office any
8 public officer having administrative responsibilities under this act for willful failure to
9 obey any order, rule or regulation adopted pursuant to this act. Such removal shall be
10 upon charges after service upon such person of a copy of such charges and after giving
11 such person an opportunity to be heard in the defense of such person. Pending the
12 preparation and disposition of charges, the Governor may suspend such person for a
13 period not exceeding thirty (30) days. A vacancy resulting from removal or suspension
14 pursuant to this section shall be filled by the Governor until it is filled as otherwise
15 provided by law; and

16 5. To perform and exercise such other functions, powers, and duties as are
17 necessary to promote and secure the safety and protection of the civilian population and
18 to carry out the provisions of the Emergency Operations Plan in a national or state
19 emergency.

20 SECTION 37. AMENDATORY 63 O.S. 2001, Section 683.13, as amended by
21 Section 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2007, Section 683.13), is amended to
22 read as follows:

1 Section 683.13 A. All functions hereunder and all other activities relating to
2 emergency management are hereby declared to be governmental functions. The
3 provisions of this section shall not affect the right of any person to receive benefits to
4 which the person would otherwise be entitled under this act, or under the workers'
5 compensation law, or under any pension law, nor the right of any such person to receive
6 any benefits or compensation under any Act of Congress. Any municipal fireman or
7 policeman engaged in any emergency management activities, while complying with or
8 attempting to comply with this act or any rule or regulation pursuant thereto, shall be
9 considered as serving in his or her regular line of duty and shall be entitled to all benefits
10 of any applicable pension fund.

11 B. Any requirement for a license to practice any professional, mechanical, or other
12 skill shall not apply to any authorized emergency management worker from any state
13 rendering mutual aid and who holds a comparable license in that state, who shall
14 practice such professional, mechanical, or other skill during an emergency declared
15 under the provisions of this act, when such professional, mechanical or other skill is
16 exercised in accordance with the provisions of this act.

17 C. As used in this section, the term "emergency management worker" shall include
18 any full or part-time paid, volunteer, or auxiliary employee of this state, or other states,
19 territories, possession or the District of Columbia, of the federal government, or any
20 neighboring country, or of any political subdivision thereof, or of any agency or
21 organization, performing emergency management services under state supervision, and
22 who has been properly trained in the performance of emergency management functions,

1 at any place in this state subject to the order or control of, or pursuant to a request of,
2 the state government or any political subdivision thereof. The term “emergency
3 management worker” shall not include any volunteer health practitioner subject to the
4 provisions of the Uniform Emergency Volunteer Health Practitioners Act.

5 D. Any emergency management worker, as defined in this section, performing
6 emergency management services at any place in this state pursuant to agreements,
7 compacts, or arrangements for mutual aid and assistance, to which the state or a
8 political subdivision thereof is a party, shall possess the same powers, duties,
9 immunities, and privileges the person would ordinarily possess if performing the same
10 duties in the state, province, or political subdivision thereof in which normally employed
11 or rendering services.

12 SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma
13 Statutes as Section 1924.1 of Title 63, unless there is created a duplication in numbering,
14 reads as follows:

15 The Legislature finds that:

16 1. Skilled nursing facilities, as defined in 42 U.S.C., Section 1395i-3, participating
17 in the Medicare program and nursing facilities, as defined in 42 U.S.C., Section 1396r,
18 participating in the Medicaid program are required to establish and maintain quality
19 assessment and assurance committees to identify issues with respect to which quality
20 assessment and assurance activities are necessary and to develop and implement
21 appropriate plans of action to correct identified quality deficiencies pursuant to 42

1 U.S.C., Sections 1395i-3 and 1396r and rules promulgated by the State Department of
2 Health;

3 2. The Centers for Medicare and Medicaid Services and the State Department of
4 Health have recognized the effectiveness of such quality assessment and assurance
5 programs to measure, monitor and improve the quality of care furnished by skilled
6 nursing facilities and nursing facilities;

7 3. The threat of liability for private money damages or civil money penalties under
8 federal and state law unreasonably discourages skilled nursing facilities, nursing
9 facilities, health care professionals and other health care providers from conducting or
10 participating in effective quality assessment and assurance activities and medical error
11 review activities;

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

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

20 SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 1924.2 of Title 63, unless there is created a duplication in numbering,
22 reads as follows:

1 For purposes of this section and Sections 40 through 42 of this act:

2 1. “Quality assessment and assurance activities” means activities performed by a
3 health care provider for the purpose of evaluating matters relating to patient safety and
4 quality of care, or health resources management review and identification and
5 prevention of medical incidents and risks, and shall include without limitation peer
6 review activities, quality assessment and assurance committee activities and patient care
7 assessment;

8 2. “Quality assessment and assurance committee” means any committee of a skilled
9 nursing facility or a nursing facility which conducts quality assessment and assurance
10 activities;

11 3. “Quality assessment and assurance committee records” means documents and
12 other information in whatever form:

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

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

1 4. “Statements of deficiencies” means information respecting surveys and
2 certifications made regarding a skilled nursing facility or a nursing facility including, but
3 not limited to, federal and state survey reports, citation reports, statements of
4 deficiencies, plans of correction or similar findings of noncompliance with statutory or
5 regulatory requirements or standards; and

6 5. “Minimum-Data-Set-related documentation” means documents and other
7 information in whatever form related to the reporting of resident assessment data by
8 skilled nursing facilities or nursing facilities for inclusion in the Minimum Data Set
9 (MDS).

10 SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma
11 Statutes as Section 1924.3 of Title 63, unless there is created a duplication in numbering,
12 reads as follows:

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

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

1 SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 1924.4 of Title 63, unless there is created a duplication in numbering,
3 reads as follows:

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

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

15 SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 1924.5 of Title 63, unless there is created a duplication in numbering,
17 reads as follows:

18 Statements of deficiencies issued by any federal or state entity to a skilled nursing
19 facility or a nursing facility and such facility's Minimum-Data-Set-related documentation
20 may not be admitted into evidence in any state judicial or administrative proceeding
21 unless:

- 22 1. The deficiency determination is final, adjudicated and has been appealed;

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

1 2. The deficiency determination or Minimum-Data-Set-related documentation is
2 otherwise admissible under the State Rules of Civil Procedure, as applicable; and

3 3. The statements of deficiencies, plans of correction or Minimum-Data-Set-related
4 documentation is directly related to the harm allegedly caused to the patient that is the
5 subject of the proceeding.

6 Statements of deficiencies, plans of correction and Minimum-Data-Set-related
7 documentation may not be admitted into evidence in any judicial or administrative
8 proceeding for purposes of establishing a standard of care or negligence as a matter of
9 law.

10 SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma
11 Statutes as Section 24-200 of Title 70, unless there is created a duplication in numbering,
12 reads as follows:

13 This section and Sections 44 through 47 of this act shall be known and may be cited
14 as the “School Protection Act”.

15 SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 24-201 of Title 70, unless there is created a duplication in numbering,
17 reads as follows:

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

1 SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 24-202 of Title 70, unless there is created a duplication in numbering,
3 reads as follows:

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

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

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

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

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

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

1 SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 24-203 of Title 70, unless there is created a duplication in numbering,
3 reads as follows:

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

8 SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma
9 Statutes as Section 24-204 of Title 70, unless there is created a duplication in numbering,
10 reads as follows:

11 The School Protection Act shall be in addition to The Governmental Tort Claims Act
12 or any other applicable law.

13 SECTION 48. AMENDATORY 51 O.S. 2001, Section 155, as last amended by
14 Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp. 2007, Section 155), is amended to
15 read as follows:

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

- 18 1. Legislative functions;
- 19 2. Judicial, quasi-judicial, or prosecutorial functions, other than claims for wrongful
20 criminal felony conviction resulting in imprisonment provided for in Section 154 of this
21 title;
- 22 3. Execution or enforcement of the lawful orders of any court;

- 1 4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or
2 invalid, including, but not limited to, any statute, charter provision, ordinance,
3 resolution, rule, regulation or written policy;
- 4 5. Performance of or the failure to exercise or perform any act or service which is in
5 the discretion of the state or political subdivision or its employees;
- 6 6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the
7 method of providing, police, law enforcement or fire protection;
- 8 7. Any claim based on the theory of attractive nuisance;
- 9 8. Snow or ice conditions or temporary or natural conditions on any public way or
10 other public place due to weather conditions, unless the condition is affirmatively caused
11 by the negligent act of the state or a political subdivision;
- 12 9. Entry upon any property where that entry is expressly or implied authorized by
13 law;
- 14 10. Natural conditions of property of the state or political subdivision;
- 15 11. Assessment or collection of taxes or special assessments, license or registration
16 fees, or other fees or charges imposed by law;
- 17 12. Licensing powers or functions including, but not limited to, the issuance, denial,
18 suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any
19 permit, license, certificate, approval, order or similar authority;
- 20 13. Inspection powers or functions, including failure to make an inspection, review
21 or approval, or making an inadequate or negligent inspection, review or approval of any
22 property, real or personal, to determine whether the property complies with or violates

1 any law or contains a hazard to health or safety, or fails to conform to a recognized
2 standard;

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

5 15. Absence, condition, location or malfunction of any traffic or road sign, signal or
6 warning device unless the absence, condition, location or malfunction is not corrected by
7 the state or political subdivision responsible within a reasonable time after actual or
8 constructive notice or the removal or destruction of such signs, signals or warning
9 devices by third parties, action of weather elements or as a result of traffic collision
10 except on failure of the state or political subdivision to correct the same within a
11 reasonable time after actual or constructive notice. Nothing herein shall give rise to
12 liability arising from the failure of the state or any political subdivision to initially place
13 any of the above signs, signals or warning devices. The signs, signals and warning
14 devices referred to herein are those used in connection with hazards normally connected
15 with the use of roadways or public ways and do not apply to the duty to warn of special
16 defects such as excavations or roadway obstructions;

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

18 17. Misrepresentation, if unintentional;

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

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

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

5 21. Participation in any activity approved by a local board of education and held
6 within a building or on the grounds of the school district served by that local board of
7 education before or after normal school hours or on weekends;

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

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

15 a. in an effort to quell a riot,

16 b. in response to a natural disaster or military attack, or

17 c. if participating in a military mentor program ordered by the court;

18 24. Provision, equipping, operation or maintenance of any prison, jail or
19 correctional facility, or injuries resulting from the parole or escape of a prisoner or
20 injuries by a prisoner to any other prisoner; provided, however, this provision shall not
21 apply to claims from individuals not in the custody of the Department of Corrections

1 based on accidents involving motor vehicles owned or operated by the Department of
2 Corrections;

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

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

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

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

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

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

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

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

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

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

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

9 SECTION 49. AMENDATORY 76 O.S. 2001, Section 5.5, is amended to read as
10 follows:

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

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

20 SECTION 50. AMENDATORY 76 O.S. 2001, Section 25, is amended to read as
21 follows:

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

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

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

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

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

4 SECTION 51. AMENDATORY 76 O.S. 2001, Section 31, is amended to read as
5 follows:

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

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

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

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

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

1 D. Definitions.

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

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

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

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

20 F. The immunity from civil liability provided for by this section shall extend only to
21 the actions taken by a person rendering the service, care, assistance, advice, or other
22 benefit as a volunteer, and does not confer any immunity to any person for actions taken

1 by the volunteer prior to or after the rendering of the service, care, assistance, advice, or
2 other benefit as a volunteer.

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

5 SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma
6 Statutes as Section 33 of Title 76, unless there is created a duplication in numbering,
7 reads as follows:

8 This section and Sections 53 through 55 of this act shall be known and may be cited
9 as the “Common Sense Consumption Act”.

10 SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma
11 Statutes as Section 34 of Title 76, unless there is created a duplication in numbering,
12 reads as follows:

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

17 SECTION 54. NEW LAW A new section of law to be codified in the Oklahoma
18 Statutes as Section 35 of Title 76, unless there is created a duplication in numbering,
19 reads as follows:

20 As used in the Common Sense Consumption Act:

21 1. “Claim” means any claim by or on behalf of a natural person, as well as any
22 derivative or other claim arising therefrom asserted by or on behalf of any other

1 individual, corporation, company, association, firm, partnership, society, joint-stock
2 company, or any other entity, including any governmental entity or governmental officer,
3 or private attorney;

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

- 8 3. “Knowing and willful violation” means that:
- 9 a. the conduct constituting the violation was committed with the intent to
10 deceive or injure consumers or with actual knowledge that such
11 conduct was injurious to consumers, and
 - 12 b. the conduct constituting the violation was not required by regulations,
13 orders, rules or other pronouncement of, or any statute administered
14 by, a federal, state, or local government agency.

15 SECTION 55. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 36 of Title 76, unless there is created a duplication in numbering,
17 reads as follows:

18 A. Except as provided in subsection B of this section, a manufacturer, packer,
19 distributor, carrier, holder, seller, marketer or advertiser of a food, as defined in Section
20 201(f) of the Federal Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an
21 association of one or more such entities, shall not be subject to civil liability arising under
22 any law of this state, including all statutes, regulations, rules, common law, public

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

1 policies, court or administrative decisions or decrees, or other state action having the
2 effect of law, for any claim arising out of weight gain, obesity, a health condition
3 associated with weight gain or obesity, or other generally known condition allegedly
4 caused by or allegedly likely to result from long-term consumption of food.

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

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

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

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

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

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

17 E. The provisions of the Common Sense Consumption Act shall apply to all covered
18 claims pending on November 1, 2008, and all claims filed thereafter, regardless of when
19 the claim arose.

20 SECTION 56. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 40 of Title 76, unless there is created a duplication in numbering,
22 reads as follows:

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

4 SECTION 57. NEW LAW A new section of law to be codified in the Oklahoma
5 Statutes as Section 41 of Title 76, unless there is created a duplication in numbering,
6 reads as follows:

7 No firearm manufacturer, distributor, or seller who lawfully manufactures,
8 distributes, or sells a firearm is liable to any person or entity, or to the estate, successors,
9 or survivors of either, for any injury suffered, including wrongful death and property
10 damage, because of use of such firearm by another.

11 SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma
12 Statutes as Section 42 of Title 76, unless there is created a duplication in numbering,
13 reads as follows:

14 No association of persons who hold licenses under Section 923 of Chapter 44 of Title
15 18, United States Code, as in effect on January 1, 1999, is liable to any person or entity,
16 or to the estate, successors or survivors of either, for any injury suffered, including
17 wrongful death and property damage, because of the use of a firearm sold or
18 manufactured by any licensee who is a member of such association.

19 SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma
20 Statutes as Section 43 of Title 76, unless there is created a duplication in numbering,
21 reads as follows:

1 The provisions of this section and Sections 56 through 58 of this act do not apply to
2 actions for deceit, breach of contract, or expressed or implied warranties, or for injuries
3 resulting from failure of firearms to operate in a normal or usual manner due to defects
4 or negligence in design or manufacture. The provisions of this section and Sections 56
5 through 58 of this act do not apply to actions arising from the unlawful sale or transfer of
6 firearms, or to instances where the transferor knew, or should have known, that the
7 recipient would engage in the unlawful sale or transfer of the firearm, or would use, or
8 purposely allow the use of, the firearm in an unlawful, negligent, or improper fashion.
9 For purposes of this section, the potential of a firearm to cause serious injury, damage, or
10 death as a result of normal function does not constitute a defective condition of the
11 product. A firearm may not be deemed defective on the basis of its potential to cause
12 serious injury, damage, or death when discharged.

13 SECTION 60. REPEALER Section 1, Chapter 368, O.S.L. 2004 (5 O.S. Supp.
14 2007, Section 7.1), is hereby repealed.

15 SECTION 61. REPEALER 47 O.S. 2001, Section 12-420, as amended by
16 Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2007, Section 12-420), is hereby
17 repealed.

18 SECTION 62. REPEALER Section 6, Chapter 390, O.S.L. 2003, as amended by
19 Section 21, Chapter 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L. 2004 (63 O.S.
20 Supp. 2007, Sections 1-1708.1F and 1-1708.1F-1), are hereby repealed.

21 SECTION 63. REPEALER Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp.
22 2007, Section 6602), is hereby repealed.

1 SECTION 64. This act shall become effective November 1, 2008.
2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
3 dated 04-14-08 - DO PASS, As Amended and Coauthored.