

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 805

By: Coffee

4  
5  
6 AS INTRODUCED

7 An Act relating to tort reform; providing for  
8 determination of attorney fees in class actions;  
9 providing for judicial discretion to modify the fee  
award; requiring attorney fees to include noncash  
benefits in certain circumstances; defining terms;  
10 establishing a statute of repose for product  
liability actions; amending Section 2, Chapter 368,  
O.S.L. 2004 (12 O.S. Supp. 2006, Section 130) and 12  
11 O.S. 2001, Sections 134 and 137, which relate to  
venue; modifying venue for certain actions;  
12 authorizing the court to decline to exercise  
jurisdiction under the doctrine of forum non  
13 conveniens; providing factors that the court may  
consider; providing that improper venue does not toll  
14 statute of limitations; requiring each plaintiff to  
establish venue in cases in which there are multiple  
15 plaintiffs; providing for interlocutory appeal;  
requiring plaintiff to attach certain affidavit in  
16 civil action for professional negligence; providing  
for dismissal of action under certain circumstances;  
17 stating requirements for expert opinions; allowing  
for extension under certain circumstances; requiring  
18 plaintiff to provide certain information; amending 12  
O.S. 2001, Sections 683 and 684, as amended by  
19 Sections 3 and 4, Chapter 368, O.S.L. 2004 (12 O.S.  
Supp. 2006, Sections 683 and 684), which relate to  
20 dismissal; modifying procedure for dismissal without  
court order; providing that certain actions shall be  
21 dismissed with prejudice; amending Section 7, Chapter  
368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 727.1),  
22 which relates to interest on judgments; limiting  
applicability of prejudgment interest to actions  
23 filed prior to a certain date; amending 12 O.S. 2001,  
Section 832, which relates to contribution; limiting  
24 right to contribution; amending 12 O.S. 2001, Section

1 990.4, as last amended by Section 6, Chapter 1,  
2 O.S.L. 2005 (12 O.S. Supp. 2006, Section 990.4),  
3 which relates to stay of enforcement of judgments,  
4 decrees and final orders; providing maximum amount  
5 for bond; modifying court authority to lower amount  
6 of bond; requiring the court to enter certain orders  
7 to prevent dissipation or diversion; amending 12 O.S.  
8 2001, Section 993, which relates to interlocutory  
9 appeals from certain orders; modifying grounds for  
10 interlocutory appeals; providing standard for making  
11 certain determination; requiring the Supreme Court to  
12 make certain determination within certain time;  
13 providing that action in the trial court is stayed in  
14 certain circumstances; amending 12 O.S. 2001, Section  
15 1101, which relates to offer of judgment; clarifying  
16 language; amending 12 O.S. 2001, Sections 2004, as  
17 amended by Section 7, Chapter 402, O.S.L. 2002, 2008,  
18 2009 and 2011, as amended by Section 10, Chapter 368,  
19 O.S.L. 2004 (12 O.S. Supp. 2006, Sections 2004 and  
20 2011), which relate to the Oklahoma Pleading Code;  
21 modifying time limit for service; modifying monetary  
22 threshold for which amount of damages is not  
23 specified; limiting the amount of damages that may be  
24 recovered under certain circumstances; modifying  
definition; amending Section 1, Chapter 370, O.S.L.  
2004 (12 O.S. Supp. 2006, Section 2011.1), which  
relates to frivolous claims or defenses; modifying  
definition; providing for pretrial conferences;  
providing monetary requirement; limiting amount of  
damages that may be recovered; amending 12 O.S. 2001,  
Section 2023, which relates to class actions;  
requiring the court to hear and rule on certain  
motions before making a determination on certifying a  
class; providing effect of interlocutory appeal in  
certain circumstances; requiring potential class  
members to request inclusion in the class; providing  
procedure for summary judgment; providing that  
evidence of remarriage of a surviving spouse is  
admissible in wrongful death actions; amending 12  
O.S. 2001, Section 2702, which relates to testimony  
by experts; providing requirements for expert  
testimony; providing role of the court; providing for  
interpretation; amending 12 O.S. 2001, Section 3226,  
as last amended by Section 3, Chapter 519, O.S.L.  
2004 (12 O.S. Supp. 2006, Section 3226), which  
relates to discovery; eliminating requirement that a  
party produce certain agreement; requiring certain

1 disclosures prior to discovery request; stating  
2 legislative intent in construing the Oklahoma  
3 Consumer Protection Act; amending 15 O.S. 2001,  
4 Sections 754 and 761.1, which relate to liability  
5 under the Oklahoma Consumer Protection Act; modifying  
6 exclusions from the Oklahoma Consumer Protection Act;  
7 requiring actual damages incurred by person bringing  
8 private action; amending 23 O.S. 2001, Section 9.1,  
9 as amended by Section 1, Chapter 462, O.S.L. 2002 (23  
10 O.S. Supp. 2006, Section 9.1), which relates to  
11 punitive damages; modifying factors to be considered  
12 in awarding punitive damages; requiring presentation  
13 of prima facie evidence for punitive damages claims  
14 prior to certain discovery; limiting punitive damage  
15 award based on net worth of defendant, with  
16 exceptions; providing for determination of net worth;  
17 providing that portion of punitive damage award in  
18 medical liability actions escheats to the state to  
19 certain fund; amending Section 18, Chapter 368,  
20 O.S.L. 2004 (23 O.S. Supp. 2006, Section 15), which  
21 relates to joint and several liability; modifying  
22 exceptions to severability; providing exception;  
23 providing procedures for jury to award punitive  
24 damages in medical liability action; providing for  
reduction of damages if the plaintiff has settled  
with one or more persons; amending 23 O.S. 2001,  
Section 61, which relates to the measure of damages  
for the breach of obligations not arising from  
contract; providing that compensation from collateral  
sources shall be admitted into evidence and may be  
deducted from damages awarded; providing proof of  
certain losses must be in the form of a net loss  
after reduction for income tax payments or unpaid tax  
liability; providing limits of liability for  
noneconomic damages for certain actions; defining  
term; amending 47 O.S. 2001, Section 11-1112, as last  
amended by Section 1, Chapter 361, O.S.L. 2005 (47  
O.S. Supp. 2006, Section 11-1112), which relates to  
child passenger restraint systems; eliminating  
prohibitions against admissibility of certain  
evidence in civil actions; limiting liability for  
certain entities; amending 47 O.S. 2001, Section 12-  
420, as amended by Section 13, Chapter 50, O.S.L.  
2005 (47 O.S. Supp. 2006, Section 12-420), which  
relates to seat belts; providing for use of evidence  
in civil proceedings; amending Sections 4 and 7,  
Chapter 390, O.S.L. 2003 and Section 24, Chapter 368,

1 O.S.L. 2004 (63 O.S. Supp. 2006, Sections 1-1708.1D,  
2 1-1708.1G and 1-1708.1I), which relate to the  
3 Affordable Access to Health Care Act; requiring  
4 receipt of compensation for injury be admitted into  
5 evidence for certain purposes; limiting recovery for  
6 payment of medical bills; removing courts right to  
7 make certain determination; providing limits of  
8 liability in certain civil actions against hospitals,  
9 hospital systems and certain persons, with  
10 exceptions; requiring written acknowledgment;  
11 limiting applicability of prejudgment interest to  
12 medical liability actions filed prior to a certain  
13 date; mandating certain qualifications for expert  
14 witnesses; modifying criteria for determining if an  
15 expert is qualified to offer expert testimony;  
16 providing for payment of future losses in medical  
17 liability actions; amending 63 O.S. 2001, Section 1-  
18 1709.1, as last amended by Section 2, Chapter 558,  
19 O.S.L. 2004 (63 O.S. Supp. 2006, Section 1-1709.1),  
20 which relates to peer review information; providing  
21 that certain information, recommendations and actions  
22 are not subject to discovery; amending 76 O.S. 2001,  
23 Section 18, as amended by Section 4, Chapter 462,  
24 O.S.L. 2002 (76 O.S. Supp. 2006, Section 18), which  
relates to medical liability actions; providing  
exception; requiring medical liability action to be  
brought in certain time period; stating intent of  
subsection; amending 76 O.S. 2001, Section 25, which  
relates to professional review bodies; providing that  
certain information is not subject to discovery;  
prohibiting testimony by certain persons; amending 76  
O.S. 2001, Section 31 and Section 34, Chapter 368,  
O.S.L. 2004 (76 O.S. Supp. 2006, Section 32), which  
relate to civil immunity for volunteers, charitable  
organizations, not-for-profit corporations and  
volunteer medical professionals; modifying  
definition; expanding immunity for volunteer medical  
professionals; creating the Common Sense Consumption  
Act; providing short title; stating legislative  
intent; defining terms; providing immunity from civil  
liability for certain claims; providing exception;  
providing pleading requirements; providing for stay  
of discovery and other proceedings in certain  
circumstances; providing scope of claims covered;  
creating the Product Liability Act; providing short  
title; defining terms; providing that a manufacturer  
or seller shall not be liable for inherently unsafe

1 products; providing procedures and requirements in  
2 actions alleging design defect; providing elements a  
3 claimant must prove in certain actions against  
4 manufacturers or sellers of firearms or ammunition;  
5 limiting liability of nonmanufacturing sellers;  
6 providing rebuttable presumption in actions relating  
7 to pharmaceutical products; providing rebuttable  
8 presumption concerning compliance with government  
9 standards; defining term; making evidence regarding  
10 measures taken after injury inadmissible; requiring  
11 filing of certain affidavit and procedures therefor;  
12 requiring plaintiff to attach certain affidavit in  
13 civil action for professional negligence; providing  
14 for dismissal of action under certain circumstances;  
15 creating the Asbestos and Silica Claims Priorities  
16 Act; providing short title; stating legislative  
17 findings; stating purposes; defining terms; stating  
18 elements of proof for asbestos or silica claim;  
19 stating procedures with respect to preliminary  
20 proceedings; requiring certain sworn information be  
21 included with claim; requiring individual filing;  
22 stating requirements with respect to prima facie  
23 showing and evidence; providing for compliance with  
24 certain technical standards; providing for certain  
procedures, presumptions, admissibility of evidence,  
discovery, consolidation, forum non conveniens; and  
venue; providing statute of limitations; providing an  
effective date; providing severability; amending 47  
O.S. 2001, Section 230.30, which relates to common  
carrier licenses; providing procedures for civil  
actions against motor carriers; prohibiting action  
before final judgment in certain circumstances;  
repealing Section 8, Chapter 368, O.S.L. 2004 (12  
O.S. Supp. 2006, Section 832.1), which relates to  
indemnification product liability actions; repealing  
Section 9, Chapter 390, O.S.L. 2003 (12 O.S. Supp.  
2006, Section 150), which relates to medical  
liability actions; repealing 23 O.S. 2001, Section  
103, which relates to personal injury actions  
asserted in bad faith; repealing Section 5, Chapter  
390, O.S.L. 2003, 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. 2006, Sections 1-1708.1E, 1-1708.1F and 1-  
1708.1F-1), which relate to limits on noneconomic  
damages in medical liability actions; providing for  
codification; providing for noncodification;

1 providing severability; and providing an effective  
2 date.

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4  
5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

9 A. In class actions, if an award of attorney fees is available,  
10 the trial court shall use the Lodestar Rule to calculate the amount  
11 of fees to be awarded to class counsel. The court may increase or  
12 decrease the fee award calculated by using the Lodestar method by no  
13 more than three times based on specified factors as set out in  
14 subsection C of this section.

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

20 C. As used in this section, "Lodestar Rule" means the number of  
21 hours reasonably expended multiplied by the prevailing hourly rate  
22 in the community and then adjusted for other factors. In arriving  
23 at just compensation, the court shall consider the following  
24 factors:

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

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

18 A. As used in this section, "product liability action" means  
19 any action against a manufacturer or seller for recovery of damages  
20 or other relief for harm allegedly caused by a defective product,  
21 whether the action is based in strict tort liability, strict  
22 products liability, negligence, misrepresentation, breach of express  
23 or implied warranty, or any other theory or combination of theories,  
24 and whether the relief sought is recovery of damages or any other

1 legal or equitable relief, including, but not limited to, an action  
2 for:

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

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

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

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

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

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

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

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

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

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

16           H. This section shall not apply to any claim to which the  
17 General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298,  
18 108 Stat. 1552) (1994), 49 U.S.C., Section 40101 or its exceptions  
19 are applicable.

20           SECTION 3.           AMENDATORY           Section 2, Chapter 368, O.S.L.  
21 2004 (12 O.S. Supp. 2006, Section 130), is amended to read as  
22 follows:

23           Section 130. The venue of civil actions for damages brought  
24 pursuant to the Affordable Access to Health Care Act, ~~Section 1-~~

1 ~~1708.1A et seq. of Title 63 of the Oklahoma Statutes,~~ shall be in a  
2 county where the cause of action or any portion thereof arose, or in  
3 any county in which any of the defendants reside, or in the case of  
4 a corporation, in a county in which it is situated, or has its  
5 principal office or place of business, ~~or in any county where a~~  
6 ~~codefendant of such corporation may be sued.~~ Upon a finding of lack  
7 of venue, the court shall transfer or dismiss the action; provided,  
8 however, that if the court finds lack of venue and that a dismissal  
9 would operate as a dismissal with prejudice, the court shall  
10 transfer the action.

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

13 Section 134. An action, other than one of those mentioned in  
14 ~~first three sections of this article~~ Section 131, 132 or 133 of this  
15 title, against a corporation created by the laws of this state, may  
16 be brought in the county in which it is situated, or has its  
17 principal office or place of business, or in which any of the  
18 principal officers thereof may reside, ~~or be summoned,~~ or in the  
19 county where the cause of action or some part thereof arose, ~~or in~~  
20 ~~any county where a codefendant of such corporation created by the~~  
21 ~~laws of this state may properly be sued.~~

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

24

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

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

11 C. If such defendant ~~be~~ is a foreign insurance company the  
12 action may be brought in any county ~~where such cause of action, or~~  
13 ~~any part thereof, arose, or where the plaintiff resides or where~~  
14 ~~such company has an~~ its principal office or place of business or in  
15 which any of the principal officers thereof reside, or where such  
16 company has a service agent.

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

20 A. If the court, upon motion by a party or on the court's own  
21 motion, finds that, in the interest of justice and for the  
22 convenience of the parties, a claim or action would be more properly  
23 heard in another forum either in this state or outside this state,  
24 the court shall decline to exercise jurisdiction under the doctrine

1 of forum non conveniens and shall stay or dismiss the claim or  
2 action.

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

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

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

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

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

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

16 6. Whether the stay or dismissal would prevent unreasonable  
17 duplication or proliferation of litigation.

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

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

23

24

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

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

13           1. Joinder of that plaintiff or intervention in the suit by  
14 that plaintiff is proper under Oklahoma law and applicable court  
15 rules;

16           2. Maintaining venue as to that plaintiff in the county of suit  
17 does not unfairly prejudice another party to the suit;

18           3. There is an essential need to have that plaintiff's claim  
19 tried in the county in which the suit is pending; and

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

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

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

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

6 C. The court of appeals shall:

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

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

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

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

18 a. the plaintiff has consulted and reviewed the facts of  
19 the claim with a qualified expert,

20 b. the plaintiff has obtained a written opinion from a  
21 qualified expert that clearly identifies the plaintiff  
22 and includes the expert's determination that, based  
23 upon a review of the pertinent records, facts or other  
24 relevant material, a reasonable interpretation of the

1 facts supports a finding that the acts or omissions of  
2 the defendant against whom the action is brought  
3 constituted professional negligence, and

4 c. on the basis of the qualified expert's review and  
5 consultation, the plaintiff has concluded that the  
6 claim is meritorious and based on good cause.

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

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

10 b. no extension of time is subsequently granted by the  
11 court, pursuant to subsection B of this section, the  
12 court shall, upon motion of the defendant, dismiss the  
13 action without prejudice to its refiling.

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

22 B. 1. The court may, upon application of the plaintiff for  
23 good cause shown, grant the plaintiff an extension of time, not  
24 exceeding ninety (90) days after the date the petition is filed,

1 except for good cause shown, to file in the action an affidavit  
2 attesting that the plaintiff has obtained a written opinion from a  
3 qualified expert as described in paragraph 1 of subsection A of this  
4 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 B. ~~Such dismissal shall be in writing and signed by the party~~  
21 ~~or the attorney for the party, and shall be filed with the clerk of~~  
22 ~~the district court where the action is pending, who shall note the~~  
23 ~~fact on the proper record: Provided, such dismissal shall be held to~~

24

1 ~~be without prejudice, unless the words "with prejudice" be expressed~~  
2 ~~therein.~~

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

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

1 for independent adjudication by the court. Unless otherwise  
2 specified in the order, a dismissal under this paragraph is without  
3 prejudice.

4 C. For failure of the plaintiff to prosecute or to comply with  
5 these rules or any order of court, a defendant may move for  
6 dismissal of an action or of any claim against the defendant.

7 Unless the court in its order for dismissal otherwise specifies, a  
8 dismissal under this subsection and any dismissal not provided for  
9 in this section, other than a dismissal for lack of jurisdiction,  
10 for improper venue, or for failure to join a party, operates as an  
11 adjudication upon the merits.

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

18 If a plaintiff who has once dismissed an action in any court  
19 commences an action based upon or including the same claim against  
20 the same defendant, the court may make such order for the payment of  
21 costs of the action previously dismissed as it may deem proper and  
22 may stay the proceedings in the action until the plaintiff has  
23 complied with the order. If an action is refiled and the plaintiff  
24 does not comply with the time limits for service required by

1 subsection I of Section 2004 of this title, the action shall be  
2 dismissed with prejudice.

3 SECTION 12. AMENDATORY Section 7, Chapter 368, O.S.L.  
4 2004 (12 O.S. Supp. 2006, Section 727.1), is amended to read as  
5 follows:

6 Section 727.1

7 POSTJUDGMENT INTEREST

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

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

17 B. Judgments, including costs and attorney fees authorized by  
18 statute or otherwise and allowed by the court, against this state or  
19 its political subdivisions, including counties, municipalities,  
20 school districts, and public trusts of which this state or a  
21 political subdivision of this state is a beneficiary, shall bear  
22 interest during the term of judgment at a rate prescribed pursuant  
23 to this section from the date of rendition. No judgment against  
24 this state or its political subdivisions, including counties,

1 municipalities, school districts, and public trusts of which this  
2 state or a political subdivision of this state is a beneficiary,  
3 inclusive of postjudgment interest, shall exceed the total amount of  
4 liability of the governmental entity pursuant to The Governmental  
5 Tort Claims Act.

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

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

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

18 PREJUDGMENT INTEREST

19 E. Except as provided by subsection F of this section or  
20 Section 1-1708.1G of Title 63 of the Oklahoma Statutes, in actions  
21 filed before November 1, 2007, if a verdict for damages by reason of  
22 personal injuries or injury to personal rights including, but not  
23 limited to, injury resulting from bodily restraint, personal insult,  
24 defamation, invasion of privacy, injury to personal relations, or

1 detriment due to an act or omission of another is accepted by the  
2 trial court, the court in rendering judgment shall add interest on  
3 the verdict at a rate prescribed pursuant to subsection I of this  
4 section from the date the suit resulting in the judgment was  
5 commenced to the earlier of the date the verdict is accepted by the  
6 trial court as expressly stated in the judgment, or the date the  
7 judgment is filed with the court clerk. The interest rate for  
8 computation of prejudgment interest shall begin with the rate  
9 prescribed by subsection I of this section which is in effect for  
10 ~~the calendar year in which the suit resulting in the judgment is~~  
11 ~~commenced. This rate shall be in effect until the end of the~~  
12 ~~calendar year in which the suit resulting in judgment was filed or~~  
13 ~~until the date judgment is filed, whichever first occurs. Beginning~~  
14 ~~on January 1 of the next succeeding calendar year until the end of~~  
15 ~~that calendar year, or until the date the judgment is filed,~~  
16 ~~whichever first occurs, and for each succeeding calendar year~~  
17 ~~thereafter, the prejudgment interest rate shall be the rate in~~  
18 ~~effect for judgments rendered during each 2007 calendar year as~~  
19 certified by the Administrative Director of the Courts pursuant to  
20 subsection I of this section. After the computation of all  
21 prejudgment interest has been completed, the total amount of  
22 prejudgment interest shall be added to the amount of the judgment  
23 rendered pursuant to the trial of the action, and the total amount  
24 of the resulting judgment shall become the amount upon which

1 postjudgment interest is computed pursuant to subsection A of this  
2 section.

3 F. If, for an action filed prior to November 1, 2007, a verdict  
4 of the type described by subsection E of this section is rendered  
5 against this state or its political subdivisions, including  
6 counties, municipalities, school districts, and public trusts of  
7 which this state or a political subdivision of this state is a  
8 beneficiary, the judgment shall bear interest at the rate prescribed  
9 pursuant to subsection I of this section from the date the suit was  
10 commenced to the earlier of the date the verdict is accepted by the  
11 trial court as expressly stated in the judgment or the date the  
12 judgment is filed with the court clerk. The interest rate for  
13 computation of prejudgment interest shall ~~begin with~~ be the rate  
14 prescribed by subsection I of this section which is in effect for  
15 the 2007 calendar year ~~in which the suit resulting in the judgment~~  
16 ~~is commenced. This rate shall be in effect until the end of the~~  
17 ~~calendar year in which the suit resulting in judgment was filed or~~  
18 ~~until the date the judgment is rendered as expressly stated in the~~  
19 ~~judgment, whichever first occurs. Beginning on January 1 of the~~  
20 ~~next succeeding calendar year until the end of that calendar year,~~  
21 ~~or until the date judgment is rendered, whichever first occurs, and~~  
22 ~~for each succeeding calendar year thereafter, the prejudgment~~  
23 ~~interest rate shall be the rate in effect for judgments rendered~~  
24 ~~during each calendar year as certified by the Administrative~~

1 Director of the Courts pursuant to subsection I of this section.  
2 After the computation of prejudgment interest has been completed,  
3 the amount shall be added to the amount of the judgment rendered  
4 pursuant to the trial of the action, and the total amount of the  
5 resulting judgment shall become the amount upon which postjudgment  
6 interest is computed pursuant to subsection B of this section. No  
7 award of prejudgment interest against this state or its political  
8 subdivisions, including counties, municipalities, school districts,  
9 and public trusts of which this state or a political subdivision of  
10 this state is a beneficiary, including the amount of the judgment  
11 awarded pursuant to trial of the action, shall exceed the total  
12 amount of liability of the governmental entity pursuant to The  
13 Governmental Tort Claims Act.

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

22 H. If, for an action filed prior to November 1, 2007, a  
23 judgment is rendered establishing the existence of a lien against  
24 property and no rate of interest exists, the court shall allow

1 prejudgment interest at a rate prescribed pursuant to subsection I  
2 of this section from the date the lien is filed to the date of  
3 verdict.

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

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

17 K. For purposes of computing prejudgment interest, the  
18 provisions of this section shall be applicable to all actions which  
19 are filed in the district courts on or after January 1, 2005, and  
20 prior to November 1, 2007, for which an award of prejudgment  
21 interest is authorized by the provisions of this section.

22 Prejudgment interest shall not be applicable to any action filed  
23 on or after November 1, 2007.

24

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

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

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

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

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

22 E. A liability insurer which by payment has discharged, in full  
23 or in part, the liability of a tortfeasor and has thereby discharged  
24 in full its obligation as insurer, is subrogated to the tortfeasor's

1 right of contribution to the extent of the amount it has paid in  
2 excess of the tortfeasor's pro rata share of the common liability.  
3 This provision does not limit or impair any right of subrogation  
4 arising from any other relationship.

5 F. This ~~act~~ section does not impair any contractual or  
6 statutory right of indemnity under existing law. When one  
7 tortfeasor is entitled to a contractual or statutory indemnity from  
8 another, the right of the indemnity obligee is for indemnity and not  
9 contribution, and the indemnity obligor is not entitled to  
10 contribution from the obligee for any portion of the indemnity  
11 obligation.

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

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

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

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

1 SECTION 14. AMENDATORY 12 O.S. 2001, Section 990.4, as  
2 last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp.  
3 2006, Section 990.4), is amended to read as follows:

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

- 7 1. While a post-trial motion is pending;
- 8 2. During the time in which an appeal may be commenced; or
- 9 3. While an appeal is pending.

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

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

24

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

3           3. If an appeal is no longer pending.

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

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

8           a. subject to the limitations hereinafter provided, the  
9           bond shall be double the amount of the judgment,  
10           decree or final order, unless the bond is executed or  
11           guaranteed by a surety as hereinafter provided. ~~The~~  
12           Subject to the limitations hereinafter provided, the  
13           bond shall be for the amount of the judgment, decree  
14           or order including costs and interest on appeal where  
15           it is executed or guaranteed by an entity with  
16           suretyship powers as provided by the laws of Oklahoma.  
17           In no case shall the bond exceed Twenty-five Million  
18           Dollars (\$25,000,000.00) regardless of the value of  
19           the judgment. If the party posting the supersedeas  
20           bond is a small business within the terms of Oklahoma  
21           law, the supersedeas bond may under no circumstances  
22           governed by any part of this section exceed One  
23           Million Dollars (\$1,000,000.00). On a showing to the  
24           court by the judgment debtor that the judgment debtor

1 is likely to suffer substantial economic harm if  
2 required to post bond in the amount required by this  
3 paragraph, the court shall balance the likely  
4 substantial economic harm to the judgment debtor with  
5 the ability of the judgment creditor to collect the  
6 judgment in the event the judgment is affirmed on  
7 appeal and may lower the bond accordingly.

8 "Substantial economic harm" means insolvency or  
9 creating a significant risk of insolvency. ~~The court  
10 shall not lower a bond as provided in this paragraph  
11 to the extent there is in effect an insurance policy,  
12 or agreement under which a third party is liable to  
13 satisfy part or all of the judgment entered and such  
14 party is required to post all or part of the bond.~~

15 ~~Upon lowering the bond as provided in this paragraph,  
16 the court shall enter an order enjoining a judgment  
17 debtor from dissipating or transferring assets to  
18 avoid satisfaction of the judgment, but the court  
19 shall not make any order that interferes with the  
20 judgment debtor's use of assets in the normal course  
21 of business~~ If it is proved by a preponderance of the  
22 evidence to a court that the appellant for whom the  
23 bond has been limited pursuant to this subparagraph is  
24 intentionally dissipating or diverting assets outside

1 of the ordinary course of its business for the purpose  
2 of avoiding payment of the judgment, the court shall  
3 enter such orders as are necessary to prevent  
4 dissipation or diversion, including, but not limited  
5 to, requiring that a bond be posted equal to the full  
6 amount of security required pursuant to this section  
7 (dissipation of assets shall not include expenditures,  
8 including payments to the owners of a business, of the  
9 kind that the appellant made in the regular course of  
10 business prior to the entry of the judgment being  
11 appealed), and

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

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

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

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

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

23 5. In order to protect any monies payable to the Tobacco  
24 Settlement Fund as set forth in Section 50 of Title 62 of the

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

24

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

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

22 E. The trial court shall have continuing jurisdiction during  
23 the pendency of any post-trial motion and appeal to modify any order  
24

1 it has entered regarding security or other conditions in connection  
2 with a stay.

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

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

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

20 I. As used in this section, "legal, equitable or any other form  
21 of relief" means all forms of relief including without limitation  
22 compensatory, special, punitive, exemplary or other damages,  
23 injunctive relief, and any other form of relief.

24

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

3 Section 993. A. When an order:

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

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

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

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

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

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

22 7. Denies a motion in a class action asserting lack of  
23 jurisdiction because an agency of this state has exclusive or  
24 primary jurisdiction of the action or a part of the action, or

1 asserting that a party has failed to exhaust administrative  
2 remedies;

3 8. Determines whether or not a plaintiff has established proper  
4 venue pursuant to Section 144 of this title; or

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

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

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

11 D. If the order determines whether or not a plaintiff has  
12 established proper venue pursuant to Section 144 of this title, the  
13 Supreme Court shall determine whether the order of the trial court  
14 is proper based on an independent determination of the record and  
15 not under either an abuse of discretion or substantial evidence  
16 standard and shall render judgment within one hundred twenty (120)  
17 days after the date the appeal is perfected.

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

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

23 Section 1101. The defendant, in an action for the recovery of  
24 money only, may, at any time before the trial, serve upon the

1 plaintiff or ~~his~~ the attorney for the plaintiff an offer, in  
2 writing, to allow judgment to be taken against ~~him~~ the defendant for  
3 the sum specified therein. If the plaintiff ~~accept~~ accepts the  
4 offer and ~~give~~ gives notice thereof to the defendant or ~~his~~ the  
5 attorney for the defendant, within five (5) days after the offer was  
6 served, the offer, and an affidavit that the notice of acceptance  
7 was delivered within the time limited, may be filed by the  
8 plaintiff, or the defendant may file the acceptance, with a copy of  
9 the offer, verified by affidavit; and in either case, the offer and  
10 acceptance shall be noted in the journal, and judgment shall be  
11 rendered accordingly. If the notice of acceptance ~~be~~ is not given  
12 in the period limited, the offer shall be deemed withdrawn, and  
13 shall not be given in evidence or mentioned on the trial. If the  
14 plaintiff fails to obtain judgment for more than was offered by the  
15 defendant, ~~he~~ the plaintiff shall pay the defendant's costs from the  
16 time of the offer.

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

20 Section 2004.

21 PROCESS

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

1 B. SUMMONS: FORM.

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

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

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

19 1. SERVICE BY PERSONAL DELIVERY.

20 a. At the election of the plaintiff, process, other than  
21 a subpoena, shall be served by a sheriff or deputy  
22 sheriff, a person licensed to make service of process  
23 in civil cases, or a person specially appointed for  
24 that purpose. The court shall freely make special

1           appointments to serve all process, other than a  
2           subpoena, under this paragraph.

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

21          c.    Service shall be made as follows:

22               (1) Upon an individual other than an infant who is  
23               less than fifteen (15) years of age or an  
24               incompetent person, by delivering a copy of the

1 summons and of the petition personally or by  
2 leaving copies thereof at the person's dwelling  
3 house or usual place of abode with some person  
4 then residing therein who is fifteen (15) years  
5 of age or older or by delivering a copy of the  
6 summons and of the petition to an agent  
7 authorized by appointment or by law to receive  
8 service of process;

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

18 (3) Upon a domestic or foreign corporation or upon a  
19 partnership or other unincorporated association  
20 which is subject to suit under a common name, by  
21 delivering a copy of the summons and of the  
22 petition to an officer, a managing or general  
23 agent, or to any other agent authorized by  
24 appointment or by law to receive service of

1 process and, if the agent is one authorized by  
2 statute to receive service and the statute so  
3 requires, by also mailing a copy to the  
4 defendant;

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

8 (5) Upon a state, county, school district, public  
9 trust or municipal corporation or other  
10 governmental organization thereof subject to  
11 suit, by delivering a copy of the summons and of  
12 the petition to the officer or individual  
13 designated by specific statute; however, if there  
14 is no statute, then upon the chief executive  
15 officer or a clerk, secretary, or other official  
16 whose duty it is to maintain the official records  
17 of the organization; and

18 (6) Upon an inmate incarcerated in an institution  
19 under the jurisdiction and control of the  
20 Department of Corrections, by delivering a copy  
21 of the summons and of the petition to the warden  
22 or superintendent or the designee of the warden  
23 or superintendent of the institution where the  
24 inmate is housed. It shall be the duty of the

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

7 2. SERVICE BY MAIL.

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

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

15 c. Service by mail shall not be the basis for the entry  
16 of a default or a judgment by default unless the  
17 record contains a return receipt showing acceptance by  
18 the defendant or a returned envelope showing refusal  
19 of the process by the defendant. Acceptance or  
20 refusal of service by mail by a person who is fifteen  
21 (15) years of age or older who resides at the  
22 defendant's dwelling house or usual place of abode  
23 shall constitute acceptance or refusal by the party  
24 addressed. In the case of an entity described in

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

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

14 3. SERVICE BY PUBLICATION.

15 a. Service of summons upon a named defendant may be made  
16 by publication when it is stated in the petition,  
17 verified by the plaintiff or the plaintiff's attorney,  
18 or in a separate affidavit by the plaintiff or the  
19 plaintiff's attorney filed with the court, that with  
20 due diligence service cannot be made upon the  
21 defendant by any other method.

22 b. Service of summons upon the unknown successors of a  
23 named defendant, a named decedent, or a dissolved  
24 partnership, corporation, or other association may be

1 made by publication when it is stated in a petition,  
2 verified by the plaintiff or the plaintiff's attorney,  
3 or in a separate affidavit by the plaintiff or the  
4 plaintiff's attorney filed with the court, that the  
5 person who verified the petition or the affidavit does  
6 not know and with due diligence cannot ascertain the  
7 following:

- 8 (1) whether a person named as defendant is living or  
9 dead, and, if dead, the names or whereabouts of  
10 the person's successors, if any,
- 11 (2) the names or whereabouts of the unknown  
12 successors, if any, of a named decedent,
- 13 (3) whether a partnership, corporation, or other  
14 association named as a defendant continues to  
15 have legal existence or not; or the names or  
16 whereabouts of its officers or successors,
- 17 (4) whether any person designated in a record as a  
18 trustee continues to be the trustee; or the names  
19 or whereabouts of the successors of the trustee,  
20 or
- 21 (5) the names or whereabouts of the owners or holders  
22 of special assessment or improvement bonds, or  
23 any other bonds, sewer warrants or tax bills.

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

1 be attached or garnished must be described in the  
2 notice.

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

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

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

1 in or to the property is sought or will be  
2 entered if the defendant does not answer.

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

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

20 e. Before entry of a default judgment or order against a  
21 party who has been served solely by publication under  
22 this paragraph, the court shall conduct an inquiry to  
23 determine whether the plaintiff, or someone acting in  
24 his behalf, made a distinct and meaningful search of

1 all reasonably available sources to ascertain the  
2 whereabouts of any named parties who have been served  
3 solely by publication under this paragraph. Before  
4 entry of a default judgment or order against the  
5 unknown successors of a named defendant, a named  
6 decedent, or a dissolved partnership, corporation or  
7 association, the court shall conduct an inquiry to  
8 ascertain whether the requirements described in  
9 subparagraph b of this paragraph have been satisfied.

10 f. A party against whom a default judgment or order has  
11 been rendered, without other service than by  
12 publication in a newspaper, may, at any time within  
13 three (3) years after the filing of the judgment or  
14 order, have the judgment or order set aside in the  
15 manner prescribed in Sections 1031.1 and 1033 of this  
16 title. Before the judgment or order is set aside, the  
17 applicant shall notify the adverse party of the  
18 intention to make an application and shall file a full  
19 answer to the petition, pay all costs if the court  
20 requires them to be paid, and satisfy the court by  
21 affidavit or other evidence that during the pendency  
22 of the action the applicant had no actual notice  
23 thereof in time to appear in court and make a defense.  
24 The title to any property which is the subject of and

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

13          g.    The term "successors" includes all heirs, executors,  
14               administrators, devisees, trustees, and assigns,  
15               immediate and remote, of a named individual,  
16               partnership, corporation, or association.

17          h.    Service outside of the state does not give the court  
18               in personal jurisdiction over a defendant who is not  
19               subject to the jurisdiction of the courts of this  
20               state or who has not, either in person or through an  
21               agent, submitted to the jurisdiction of the courts of  
22               this state.

23          4.    SERVICE ON THE SECRETARY OF STATE.

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

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

6 or

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

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

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

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

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

23 If any of these addresses are the same, the plaintiff  
24 is not required to attempt service more than once at

1 any address. The plaintiff shall furnish the  
2 Secretary of State with a certified copy of the return  
3 or returns showing the attempted service.

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

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

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

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

1 judgment or order but in no event more than two (2)  
2 years after the filing of the default judgment or  
3 order.

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

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

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

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

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

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

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

20 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

24

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

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

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

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

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

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

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

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

23  
24

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

4 G. RETURN.

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

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

18 3. If service was by mail, the person mailing the summons and  
19 petition shall endorse on the copy of the summons or order of the  
20 court that is filed in the action the date and place of mailing and  
21 the date when service was receipted or service was rejected, and  
22 shall attach to the copy of the summons or order a copy of the  
23 return receipt or returned envelope, if and when received, showing  
24 whether the mailing was accepted, refused, or otherwise returned.

1 If the mailing was refused, the return shall also show the date and  
2 place of any subsequent mailing pursuant to paragraph 2 of  
3 subsection C of this section. When the summons and petition are  
4 mailed by the court clerk, the court clerk shall notify the  
5 plaintiff's attorney within three (3) days after receipt of the  
6 returned card or envelope showing that the card or envelope has been  
7 received.

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

13 I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is  
14 not made upon a defendant within ~~one hundred eighty (180)~~ one  
15 hundred twenty (120) days after the filing of the petition and the  
16 plaintiff cannot show good cause why such service was not made  
17 within that period, the action ~~may~~ shall be deemed dismissed as to  
18 that defendant ~~without prejudice upon the court's own initiative~~  
19 ~~with notice to the plaintiff or upon motion.~~ The action shall not  
20 be dismissed ~~where~~ if a summons was served on the defendant within  
21 ~~one hundred eighty (180)~~ one hundred twenty (120) days after the  
22 filing of the petition and a court later holds that the summons or  
23 its service was invalid. After a court quashes a summons or its  
24 service, a new summons may be served on the defendant within a time

1 specified by the judge. If the new summons is not served within the  
2 specified time, the action shall be deemed to have been dismissed  
3 without prejudice as to that defendant. This subsection shall not  
4 apply with respect to a defendant who has been outside of this state  
5 ~~one hundred eighty (180)~~ one hundred twenty (120) days following the  
6 filing of the petition.

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

9 Section 2008.

10 GENERAL RULES OF PLEADING

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

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

16 2. A demand for judgment for the relief to which he deems  
17 himself entitled. Every pleading demanding relief for damages in  
18 money in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ the amount  
19 required for diversity jurisdiction in 28 U.S.C. § 1332 shall,  
20 without demanding any specific amount of money, set forth only that  
21 the amount sought as damages is in excess of ~~Ten Thousand Dollars~~  
22 ~~(\$10,000.00)~~ the amount required for diversity jurisdiction in 28  
23 U.S.C. § 1332, except in actions sounding in contract. Every  
24 pleading demanding relief for damages in money in an amount of ~~Ten~~

1 ~~Thousand Dollars (\$10,000.00)~~ that required for diversity  
2 jurisdiction in 28 U.S.C. § 1332 or less shall specify the amount of  
3 such damages sought to be recovered. If the amount of damages  
4 sought to be recovered is the same as the amount required for  
5 diversity jurisdiction in 28 U.S.C. § 1332, or less, the amount of  
6 damages that may be recovered shall not exceed the amount set forth  
7 in the pleadings.

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

10 B. DEFENSES; FORM OF DENIALS. A party shall state in short and  
11 plain terms his defenses to each claim asserted and shall admit or  
12 deny the averments upon which the adverse party relies. If he is  
13 without knowledge or information sufficient to form a belief as to  
14 the truth of an averment, he shall so state and this statement has  
15 the effect of a denial. Denials shall fairly meet the substance of  
16 the averments denied. When a pleader intends in good faith to deny  
17 only a part or a qualification of an averment, he shall specify so  
18 much of it as is true and material and shall deny only the  
19 remainder. Unless the pleader intends in good faith to controvert  
20 all the averments of the preceding pleading, he may make his denials  
21 as specific denials of designated averments or paragraphs or he may  
22 generally deny all the averments except such designated averments or  
23 paragraphs as he expressly admits; but, when he does so intend to

24

1 controvert all its averments, he may do so by general denial subject  
2 to the obligations set forth in Section 2011 of this title.

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

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

24

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

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

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

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

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

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

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

3 SECTION 19. AMENDATORY 12 O.S. 2001, Section 2009, is  
4 amended to read as follows:

5 Section 2009.

6 PLEADING SPECIAL MATTERS

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

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

21 C. CONDITIONS PRECEDENT. In pleading the performance or  
22 occurrence of conditions precedent, it is sufficient to aver  
23 generally that all conditions precedent have been performed or have  
24

1 occurred. A denial of performance or occurrence shall be made  
2 specifically and with particularity.

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

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

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

13 G. SPECIAL DAMAGE. When items of special damage are claimed,  
14 their nature shall be specifically stated. In actions where  
15 exemplary or punitive damages are sought, the petition shall ~~not~~  
16 state a specific dollar amount for damages sought to be recovered  
17 ~~but shall state whether the amount of damages sought to be recovered~~  
18 ~~is in excess of or not in excess of Ten Thousand Dollars~~  
19 ~~(\$10,000.00).~~ If the amount of damages sought to be recovered is in  
20 excess of Ten Thousand Dollars (\$10,000.00) but less than the amount  
21 required for diversity jurisdiction in 28 U.S.C. § 1332, the amount  
22 of damages that may be recovered shall not exceed the amount set  
23 forth in the pleadings unless a good faith based change in  
24 circumstances arises. The party may seek, by application to the

1 court prior to the Pretrial Order, an amendment to change the amount  
2 plead for good cause. If the amount sought exceeds the amount  
3 required to satisfy diversity jurisdiction in 28 U.S.C. § 1332, the  
4 specific amount must be included in the petition.

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

8 Section 2011.

9 SIGNING OF PLEADINGS

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

20 B. REPRESENTATIONS TO COURT. By presenting to the court,  
21 whether by signing, filing, submitting, or later advocating, a  
22 pleading, written motion, or other paper, an attorney or  
23 unrepresented party is certifying that to the best of the person's  
24

1 knowledge, information, and belief, formed after an inquiry  
2 reasonable under the circumstances:

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

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

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

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

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

23 1. HOW INITIATED.  
24

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

18 b. On Court's Initiative. On its own initiative, the  
19 court may enter an order describing the specific  
20 conduct that appears to violate subsection B of this  
21 section and directing an attorney, law firm, or party  
22 to show cause why it has not violated subsection B of  
23 this section with respect thereto.  
24

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

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

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

19           c. Monetary sanctions shall be awarded for any violations  
20 of paragraph 1 of subsection B of this section. The  
21 sanctions shall consist of an order directing payment  
22 of reasonable costs, including attorney fees, incurred  
23 by the movant with respect to the conduct for which  
24 the sanctions are imposed. In addition, the court may

1 impose any other sanctions authorized by this  
2 paragraph.

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

6 D. INAPPLICABILITY TO DISCOVERY. This section does not apply  
7 to disclosures and discovery requests, responses, objections, and  
8 motions that are subject to the provisions of Sections 3226 through  
9 3237 of this title.

10 E. DEFINITION. As used in this section, "frivolous" means the  
11 action or pleading was knowingly asserted in bad faith, ~~was~~  
12 ~~unsupported by any credible evidence, was not grounded in fact, or~~  
13 ~~was unwarranted by existing law or a good faith argument for the~~  
14 ~~extension, modification, or reversal of existing law or the~~  
15 ~~establishment of new law~~ or without any rational argument based in  
16 law or facts to support the litigant's position.

17 SECTION 21. AMENDATORY Section 1, Chapter 370, O.S.L.  
18 2004 (12 O.S. Supp. 2006, Section 2011.1), is amended to read as  
19 follows:

20 Section 2011.1 In any action not arising out of contract, the  
21 court shall, upon granting a motion to dismiss an action or a motion  
22 for summary judgment or subsequent to adjudication on the merits,  
23 determine whether a claim or defense asserted in the action by a  
24 nonprevailing party was frivolous. As used in this section,

1 "frivolous" means the action was knowingly asserted in bad faith,  
2 ~~was unsupported by any credible evidence, was not grounded in fact,~~  
3 ~~or was unwarranted by existing law or a good faith argument for the~~  
4 ~~extension, modification, or reversal of existing law or the~~  
5 ~~establishment of new law~~ or without any rational argument based in  
6 law or facts to support the litigant's position. Upon so finding,  
7 the court shall enter a judgment ordering such nonprevailing party  
8 to reimburse the prevailing party for reasonable costs, including  
9 attorney fees, incurred with respect to such claim or defense. In  
10 addition, the court may impose any sanction authorized by Section  
11 2011 of ~~Title 12 of the Oklahoma Statutes~~ this title.

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

15 PRETRIAL CONFERENCE

16 A. PRETRIAL ORDER. After any pretrial conference, a pretrial  
17 order shall be entered reciting the action taken. This order shall  
18 control the subsequent course of action unless modified by  
19 subsequent order. The order following a pretrial conference shall  
20 be modified only to prevent manifest injustice.

21 B. COMPULSORY REQUIREMENTS. The pretrial order shall include,  
22 among other things, a specific itemization of damages for each party  
23 claiming monetary damages. The amount of damages that may be  
24 recovered shall not exceed the amount set forth in the order. The

1 trial court shall by written order remit any amounts that exceed the  
2 itemized amounts contained in the pretrial order.

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

5 Section 2023.

6 CLASS ACTIONS

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

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

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

13 3. The claims or defenses of the representative parties are  
14 typical of the claims or defenses of the class; and

15 4. The representative parties will fairly and adequately  
16 protect the interests of the class.

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

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

22 a. inconsistent or varying adjudications with respect to  
23 individual members of the class which would establish  
24

1 incompatible standards of conduct for the party  
2 opposing the class, or

- 3 b. adjudications with respect to individual members of  
4 the class which would as a practical matter be  
5 dispositive of the interests of the other members not  
6 parties to the adjudications or substantially impair  
7 or impede their ability to protect their interests; or

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

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

- 17 a. the interest of members of the class in individually  
18 controlling the prosecution or defense of separate  
19 actions,  
20 b. the extent and nature of any litigation concerning the  
21 controversy already commenced by or against members of  
22 the class,  
23  
24

- 1 c. the desirability or undesirability of concentrating  
2 the litigation of the claims in the particular forum,  
3 and  
4 d. the difficulties likely to be encountered in the  
5 management of a class action.

6 C. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY; STATE  
7 AGENCY WITH EXCLUSIVE OR PRIMARY JURISDICTION. Before hearing or  
8 deciding a motion to certify a class action, the court shall hear  
9 and rule on all pending motions asserting lack of jurisdiction  
10 because an agency of this state has exclusive or primary  
11 jurisdiction of the action or a part of the action, or asserting  
12 that a party has failed to exhaust administrative remedies. The  
13 ruling of the court shall be reflected in a written order. If a  
14 motion provided for in this subsection is denied and a class is  
15 subsequently certified, a person may obtain appellate review of the  
16 order denying the motion as part of an appeal of the order  
17 certifying the class action.

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

21 1. As soon as practicable after the commencement of an action  
22 brought as a class action, the court shall determine by order  
23 whether it is to be so maintained. An order under this subsection  
24

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

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

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

19 ~~Where~~ If the class contains more than five hundred (500)  
20 potential members who can be identified through reasonable effort,  
21 it shall not be necessary to direct individual notice to more than  
22 five hundred (500) potential members, but the potential members to  
23 whom individual notice is not directed shall be given notice in such  
24 manner as the court shall direct, which may include publishing

1 notice in newspapers, magazines, trade journals or other  
2 publications, posting it in appropriate places, and taking other  
3 steps that are reasonably calculated to bring the notice to the  
4 attention of such members, provided that the cost of giving such  
5 notice shall be reasonable in view of the amounts that may be  
6 recovered by the class ~~members who are being notified.~~ ~~Members~~  
7 Potential members to whom individual notice was not directed may  
8 request ~~exclusion from~~ inclusion in the class at any time before the  
9 issue of liability is determined, ~~and;~~ provided, commencing an  
10 individual action before the issue of liability is determined in the  
11 class action shall ~~be the equivalent of requesting~~ result in  
12 exclusion from the class.

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

23 4. When appropriate:  
24

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

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

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

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

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

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

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

1 5. Dealing with similar procedural matters.

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

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

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

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

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

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

12 D. NOT FULLY ADJUDICATED ON MOTION. If, on motion under this  
13 section, judgment is not rendered upon the whole case or for all the  
14 relief asked and a trial is necessary, the court at the hearing of  
15 the motion, by examining the pleadings and the evidence before it  
16 and by interrogating counsel, shall ascertain, if practicable, what  
17 material facts exist without substantial controversy and what  
18 material facts are actually and in good faith controverted. It  
19 shall make thereupon an order specifying the facts that appear  
20 without substantial controversy, including the extent to which the  
21 amount of damages or other relief is not in controversy, and  
22 directing such further proceedings in the action as are just. Upon  
23 the trial of the action, the facts so specified shall be deemed  
24 established, and the trial shall be conducted accordingly.

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

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

20 F. WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the  
21 affidavits of a party opposing the motion that the party cannot for  
22 reasons stated present by affidavit facts essential to justify the  
23 party's opposition, the court may refuse the application for  
24 judgment or may order a continuance to permit affidavits to be

1 obtained or depositions to be taken or discovery to be had or may  
2 make such other order as is just. Upon request of a party opposing  
3 a motion for summary judgment, the court shall allow a reasonable  
4 amount of time to conclude discovery sufficient to allow the party  
5 to adequately respond to the motion for summary judgment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 D. BARS TO EXPERT TESTIMONY.

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

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

1 testimony of an expert witness shall not be admitted if any such  
2 compensation is contingent on the outcome of any claim or case with  
3 respect to which the testimony is being offered.

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

16 F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

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

21 2. Except as otherwise stipulated or directed by the court,  
22 this disclosure shall, with respect to a witness who is retained or  
23 specially employed to provide expert testimony in the case or whose  
24 duties as an employee of the party regularly involve giving expert

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

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

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

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

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

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

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

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

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

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

5 I. STANDARD OF REVIEW.

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

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

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

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

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

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

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

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

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

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

12 2. INITIAL DISCLOSURES.

13 a. Except in categories of proceedings specified in  
14 subparagraph b of this paragraph, or to the extent  
15 otherwise stipulated or directed by order, a party,  
16 without awaiting a discovery request, must provide to  
17 other parties a computation of any category of damages  
18 claimed by the disclosing party, making available for  
19 inspection and copying the documents or other  
20 evidentiary material, not privileged or protected from  
21 disclosure, on which such computation is based,  
22 including materials bearing on the nature and extent  
23 of injuries suffered.

1           b. The following categories of proceedings are exempt  
2           from initial disclosure under subparagraph a of this  
3           paragraph:

4           (1) an action for review on an administrative record,

5           (2) a petition for habeas corpus or other proceeding  
6           to challenge a criminal conviction or sentence,

7           (3) an action brought without counsel by a person in  
8           custody of the United States, a state, or a state  
9           subdivision,

10          (4) an action to enforce or quash an administrative  
11          summons or subpoena,

12          (5) an action by the United States to recover benefit  
13          payments,

14          (6) an action by the United States to collect on a  
15          student loan guaranteed by the United States,

16          (7) a proceeding ancillary to proceedings in other  
17          courts, and

18          (8) an action to enforce an arbitration award.

19          3. TIME FOR DISCLOSURES. These disclosures must be made at or  
20          within fourteen (14) days after the discovery conference provided  
21          for in subsection F of this section unless a different time is set  
22          by stipulation or court order, or unless a party objects during the  
23          conference that initial disclosures are not appropriate in the  
24          circumstances of the action and states the objection in the

1 discovery plan. In ruling on the object, the court must determine  
2 what disclosures, if any, are to be made and set the time for  
3 disclosure. Any party first served or otherwise joined after the  
4 discovery conference must make these disclosures within thirty (30)  
5 days after being served or joined unless a different time is set by  
6 stipulation or court order. A party must make its initial  
7 disclosures based on the information then reasonably available to it  
8 and is not excused from making its disclosures because it has not  
9 fully completed its investigation of the case or because it  
10 challenges the sufficiency of another party's disclosures or because  
11 another party has not made its disclosures.

12 4. TRIAL PREPARATION: MATERIALS. Subject to the provisions of  
13 paragraph 3 5 of this subsection, discovery may be obtained of  
14 documents and tangible things otherwise discoverable under paragraph  
15 1 of this subsection and prepared in anticipation of litigation or  
16 for trial by or for another party or by or for the representative of  
17 that other party, including his attorney, consultant, surety,  
18 indemnitor, only upon a showing that the party seeking discovery has  
19 substantial need of the materials in the preparation of his case and  
20 that he is unable, without undue hardship, to obtain the substantial  
21 equivalent of the materials by other means. In ordering discovery  
22 of such materials when the required showing has been made, the court  
23 shall protect against disclosure of the mental impressions,

24

1 conclusions, opinions or legal theories of an attorney or other  
2 representative of a party concerning the litigation.

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

13 a. A written statement signed or otherwise adopted or  
14 approved by the person making it, or

15 b. A stenographic, mechanical, electrical, or other  
16 recording, or a transcription thereof, which  
17 substantially recites an oral statement by the person  
18 making it and contemporaneously recorded.

19 ~~3-~~ 5. TRIAL PREPARATION: EXPERTS.

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

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

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

18 (3) In addition to taking the depositions of expert  
19 witnesses the party may, through interrogatories,  
20 require the party who expects to call the expert  
21 witnesses to state the subject matter on which  
22 each expert witness is expected to testify; the  
23 substance of the facts and opinions to which the  
24 expert is expected to testify and a summary of

1 the grounds for each opinion; the qualifications  
2 of each expert witness, including a list of all  
3 publications authored by the expert witness  
4 within the preceding ten (10) years; the  
5 compensation to be paid to the expert witness for  
6 the testimony and preparation for the testimony;  
7 and a listing of any other cases in which the  
8 expert witness has testified as an expert at  
9 trial or by deposition within the preceding four  
10 (4) years. An interrogatory seeking the  
11 information specified above shall be treated as a  
12 single interrogatory for purposes of the  
13 limitation on the number of interrogatories in  
14 Section 3233 of this title.

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

1 c. Unless manifest injustice would result:

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

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

13 ~~4~~ 6. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION  
14 MATERIALS. When a party withholds information otherwise  
15 discoverable under the Oklahoma Discovery Code by claiming that it  
16 is privileged or subject to protection as trial preparation  
17 material, the party shall make the claim expressly and shall  
18 describe the nature of the documents, communications, or things not  
19 produced or disclosed in a manner that, without revealing  
20 information itself privileged or protected, will enable other  
21 parties to assess the applicability of the privilege or protection.

22 C. PROTECTIVE ORDERS.

23 1. Upon motion by a party or by the person from whom discovery  
24 is sought, accompanied by a certification that the movant has in

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

- 10 a. that the discovery not be had,
- 11 b. that the discovery may be had only on specified terms  
12 and conditions, including a designation of the time or  
13 place,
- 14 c. that the discovery may be had only by a method of  
15 discovery other than that selected by the party  
16 seeking discovery,
- 17 d. that certain matters not be inquired into, or that the  
18 scope of the disclosure or discovery be limited to  
19 certain matters,
- 20 e. that discovery be conducted with no one present except  
21 persons designated by the court,
- 22 f. that a deposition after being sealed be opened only by  
23 order of the court,

24

- 1           g.    that a trade secret or other confidential research,  
2                    development or commercial information not be disclosed  
3                    or be disclosed only in a designated way, and
- 4           h.    that the parties simultaneously file specified  
5                    documents or information enclosed in sealed envelopes  
6                    to be opened as directed by the court;

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

- 15           a.    a statement that the court has determined it is  
16                    necessary in the interests of justice to remove the  
17                    material from the public record,
- 18           b.    specific identification of the material which is to be  
19                    removed or withdrawn from the public record, or which  
20                    is to be filed but not placed in the public record,  
21                    and
- 22           c.    a requirement that any party obtaining a protective  
23                    order place the protected material in a sealed manila  
24                    envelope clearly marked with the caption and case

1 number and is clearly marked with the word  
2 "CONFIDENTIAL", and stating the date the order was  
3 entered and the name of the judge entering the order;

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

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

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

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

16 7. When a case is filed in which a party intends to seek a  
17 protective order removing material from the public record, the  
18 plaintiff(s) and defendant(s) shall be initially designated on the  
19 petition under pseudonym such as "John or Jane Doe", or "Roe", and  
20 the petition shall clearly indicate that the party designations are  
21 fictitious. The party seeking confidentiality or other order  
22 removing the case, in whole or in part, from the public record,  
23 shall immediately present application to the court, seeking  
24

1 instructions for the conduct of the case, including confidentiality  
2 of the records.

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

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

- 13 1. A party is under a duty seasonably to supplement the  
14 response with respect to any question directly addressed to:
  - 15 a. the identity and location of persons having knowledge  
16 of discoverable matters, and
  - 17 b. the identity of each person expected to be called as  
18 an expert witness at trial, the subject matter on  
19 which the person is expected to testify, and the  
20 substance of the testimony of the person.

- 21 2. A party is under a duty seasonably to amend a prior response  
22 to an interrogatory, request for production, or request for  
23 admission if the party obtains information upon the basis of which:  
24

1 a. (i) the party knows that the response was incorrect  
2 in some material respect when made, or

3 (ii) the party knows that the response, which was  
4 correct when made, is no longer true in some  
5 material respect; and

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

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

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

16 1. A statement of the issues as they then appear;

17 2. A proposed plan and schedule of discovery;

18 3. Any limitations proposed to be placed on discovery;

19 4. Any other proposed orders with respect to discovery; and

20 5. A statement showing that the attorney making the motion has  
21 made a reasonable effort to reach agreement with opposing attorneys  
22 on the matters set forth in the motion.

23 Each party and his attorney are under a duty to participate in  
24 good faith in the framing of a discovery plan if a plan is proposed

1 by the attorney for any party. Notice of the motion shall be served  
2 on all parties. Objections or additions to matters set forth in the  
3 motion shall be served not later than ten (10) days after service of  
4 the motion.

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

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

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

19 Every request for discovery, response or objection thereto made  
20 by a party represented by an attorney shall be signed by at least  
21 one of his attorneys of record in his individual name whose address  
22 shall be stated. A party who is not represented by an attorney  
23 shall sign the request, response or objection and state his address.

24

1 The signature of the attorney or party constitutes a certification  
2 that he has read the request, response or objection, and that it is:

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

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

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

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

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

24

1 It is the intent of the Legislature that in construing the  
2 Oklahoma Consumer Protection Act, courts shall be guided by the  
3 policies of the Federal Trade Commission and interpretations given  
4 by the Federal Trade Commission and the federal courts to Section  
5 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., Section  
6 45(a)(1)), as from time to time amended.

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

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

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

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

23 3. Claims seeking damages for conduct that results in bodily  
24 injury, death, or damage to property other than the property that is

1 the subject of the practice claimed to be a violation of the  
2 Oklahoma Consumer Protection Act.

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

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

1 so finding, the court shall enter a judgment ordering such  
2 nonprevailing party to reimburse the prevailing party an amount not  
3 to exceed Ten Thousand Dollars (\$10,000.00) for reasonable costs,  
4 including ~~attorney's~~ attorney fees, incurred with respect to such  
5 claim or defense.

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

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

22 1. Whether the violator knowingly or with reason to know, took  
23 advantage of a consumer reasonably unable to protect his or her  
24 interests because of his or her age, physical infirmity, ignorance,

1 illiteracy, inability to understand the language of an agreement or  
2 similar factor; ~~(2) whether~~

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

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

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

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

24

1 acting in the name of the state, or a district attorney may petition  
2 for recovery of civil penalties.

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

10 ~~E.~~ F. In addition to other penalties imposed by the Oklahoma  
11 Consumer Protection Act, any person convicted in a criminal  
12 proceeding of violating the Oklahoma Consumer Protection Act shall  
13 be guilty of a misdemeanor for the first offense and upon conviction  
14 thereof shall be subject to a fine not to exceed One Thousand  
15 Dollars (\$1,000.00), or imprisonment in the county jail for not more  
16 than one (1) year, or both such fine and imprisonment. If the value  
17 of the money, property or valuable thing referred to in this section  
18 is Five Hundred Dollars (\$500.00) or more or if the conviction is  
19 for a second or subsequent violation of the provisions of the  
20 Oklahoma Consumer Protection Act, any person convicted pursuant to  
21 this subsection shall be deemed guilty of a felony and shall be  
22 subject to imprisonment in the State Penitentiary, for not more than  
23 ten (10) years, or a fine not to exceed Five Thousand Dollars  
24 (\$5,000.00), or both such fine and imprisonment.

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

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

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

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

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

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

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

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

23 7. The financial condition of the defendant.  
24

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

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

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

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

11 b. the amount of the actual damages awarded.

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

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

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

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

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

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

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

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

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

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

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

8 E. In any civil action in which an entitlement to punitive  
9 damages shall have been established, no award of punitive damages  
10 shall exceed two percent of the net worth not to exceed Two Million  
11 Dollars (\$2,000,000).

12 F. In a claim for punitive damages, a plaintiff shall present  
13 prima facie evidence for the punitive damages claim before  
14 conducting discovery regarding the financial assets or financial  
15 condition of the defendant. For the purposes of determining the  
16 defendant's net worth in subsection E of this section, the amount of  
17 the net worth shall be determined in accordance with generally  
18 accepted accounting principles. The limitation on the amount of  
19 punitive damages imposed by subsection E of this section shall not  
20 be disclosed to the jury, but shall be applied by the court to any  
21 punitive damages verdict.

22 G. In determining the amount, if any, of punitive damages to be  
23 awarded under either subsection B, C or D of this section, the jury  
24

1 shall make the award based upon the factors set forth in subsection  
2 A of this section.

3 H. 1. In a case involving injury or harm allegedly caused by a  
4 product, the manufacturer, distributor or seller of the product  
5 shall not be subject to exemplary or punitive damages if, at the  
6 time the product left the control of the manufacturer, distributor  
7 or seller, the product or the aspect, component, warning or absence  
8 of warning contained in or accompanying the product that allegedly  
9 caused the injury or harm either:

10 a. was in material compliance with statute or with the  
11 standards, rules, regulations, requirements or  
12 specifications of a federal or state agency  
13 responsible for regulating, evaluating or approving  
14 the project, or

15 b. was approved by a federal or state agency responsible  
16 for regulating, evaluating or approving the product.

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

20 a. intentionally withheld or intentionally misrepresented  
21 information which it was required at any time to  
22 submit to the agency and the withholding or  
23 misrepresentation of such information was causally  
24 related to the injury or harm alleged; or

1           b. made an illegal payment to an official or employee of  
2           the federal or state government for the purpose of  
3           securing or maintaining approval of the product.

4           3. This subsection shall apply to every case pending on or  
5           after the date of enactment regardless of when the case was filed.

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

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

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

15           SECTION 32.           AMENDATORY           Section 18, Chapter 368, O.S.L.  
16 2004 (23 O.S. Supp. 2006, Section 15), is amended to read as  
17 follows:

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

23           B. ~~A defendant shall be jointly and severally liable for the~~  
24 ~~damages recoverable by the plaintiff if the percentage of~~

1 ~~responsibility attributed to the defendant with respect to a cause~~  
2 ~~of action is greater than fifty percent (50%).~~

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

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

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

16 SECTION 33. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 9.2 of Title 23, unless there is  
18 created a duplication in numbering, reads as follows:

19 A. Notwithstanding the provisions of Section 9.1 of Title 23 of  
20 the Oklahoma Statutes or any other provision of the Oklahoma  
21 Statutes to the contrary, in a medical liability action the jury may  
22 only award punitive damages, in addition to actual damages, if the  
23 jury finds by clear and convincing evidence that the defendant has  
24

1 | been guilty of intentional or impaired conduct (e.g., conduct  
2 | influenced by drugs or alcohol).

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

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

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

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

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

22 |       C. In every medical liability action, the plaintiff shall,  
23 | within sixty (60) days after the commencement of the action, serve  
24 | written notice to the defendant(s) of any amount paid or payable as

1 a medical benefit pursuant to any health, sickness, or accident  
2 insurance or plan, which provides health benefits, or any contract  
3 or agreement of any group, organization, partnership, or corporation  
4 to provide, pay for, or reimburse the cost of medical, hospital,  
5 dental, or other health care services, and shall file a copy thereof  
6 with the court or arbitrator.

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

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

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

21 B. For the breach of an obligation not arising from contract,  
22 if the plaintiff receives compensation or is to receive compensation  
23 in the future for the injuries or harm that gave rise to the cause  
24 of action from a source wholly independent of the defendant, such

1 fact shall be admitted into evidence and the amount may be deducted  
2 from the amount of damages that the plaintiff recovers from the  
3 defendant.

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

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

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

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

18 A. Except as provided in subsection B of this section, in any  
19 action not arising out of contract, the amount of noneconomic  
20 damages awarded shall not exceed Three Hundred Thousand Dollars  
21 (\$300,000.00), regardless of the number of parties against whom the  
22 action is brought or the number of actions brought with respect to  
23 the personal injury.

24

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

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

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

12 SECTION 38. AMENDATORY 47 O.S. 2001, Section 11-1112, as  
13 last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp.  
14 2006, Section 11-1112), is amended to read as follows:

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

23  
24

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

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

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

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

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

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

13 5. The transportation of a child who weighs more than forty  
14 (40) pounds and who is being transported in the back seat of a  
15 vehicle while wearing only a lap safety belt when the back seat of  
16 the vehicle is not equipped with combination lap and shoulder safety  
17 belts, or when the combination lap and shoulder safety belts in the  
18 back seat are being used by other children who weigh more than forty  
19 (40) pounds. Provided, however, for purposes of this paragraph,  
20 back seat shall include all seats located behind the front seat of a  
21 vehicle operated by a licensed child care facility or church.

22 Provided further, there shall be a rebuttable presumption that a  
23 child has met the weight requirements of this paragraph if at the  
24 request of any law enforcement officer, the licensed child care

1 facility or church provides the officer with a written statement  
2 verified by the parent or legal guardian that the child weighs more  
3 than forty (40) pounds.

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

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

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

18 ~~G.~~ Any person convicted of violating subsection A or B of this  
19 section shall be punished by a fine of Fifty Dollars (\$50.00) and  
20 shall pay all court costs thereof. Revenue from such fine shall be  
21 apportioned to the Department of Public Safety Revolving Fund and  
22 used by the Oklahoma Highway Safety Office to promote the use of  
23 child passenger restraint systems as provided in Section 11-1113 of  
24 this title. This fine shall be suspended and the court costs

1 limited to a maximum of Fifteen Dollars (\$15.00) in the case of the  
2 first offense upon proof of purchase or acquisition by loan of a  
3 child passenger restraint system. Provided, the Department of  
4 Public Safety shall not assess points to the driving record of any  
5 person convicted of a violation of this section.

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

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

13 SECTION 40. AMENDATORY Section 4, Chapter 390, O.S.L.  
14 2003 (63 O.S. Supp. 2006, Section 1-1708.1D), is amended to read as  
15 follows:

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

23 B. In every medical liability action, the court shall admit  
24 evidence of payments of medical bills made to the injured party,

1 ~~unless the court makes the finding described in paragraph B of this~~  
2 ~~section. Recovery for payment of medical bills shall be limited to~~  
3 ~~the amount actually paid, not the amount billed. In case of~~  
4 ~~unreimbursed care, payment shall be paid according to Medicare~~  
5 ~~reimbursement rates at the time care was provided.~~

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

14 SECTION 41. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 1-1708.1F-2 of Title 63, unless  
16 there is created a duplication in numbering, reads as follows:

17 A. Except as provided in subsection B of this section, in any  
18 civil action brought against a hospital or hospital system, or its  
19 employees, officers, directors, or volunteers, for damages based on  
20 an act or omission by the hospital or hospital system, or its  
21 employees, officers, directors, or volunteers, the liability of the  
22 hospital or hospital system is limited to money damages in a maximum  
23 amount of Five Hundred Thousand Dollars (\$500,000.00) for any act or  
24 omission resulting in damage or injury to a patient if the patient

1 or, if the patient is a minor or is otherwise legally incompetent,  
2 the person responsible for the patient, signs a written statement  
3 that acknowledges:

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

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

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

11 SECTION 42. AMENDATORY Section 7, Chapter 390, O.S.L.  
12 2003 (63 O.S. Supp. 2006, Section 1-1708.1G), is amended to read as  
13 follows:

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

23

24

1 SECTION 43. AMENDATORY Section 24, Chapter 368, O.S.L.  
2 2004 (63 O.S. Supp. 2006, Section 1-1708.1I), is amended to read as  
3 follows:

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

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

19 ~~B.~~ C. In determining whether a witness is qualified on the  
20 basis of training or experience, the court shall consider whether,  
21 at the time the claim arose or at the time the testimony is given,  
22 the witness+

23 ~~1. Is licensed to practice medicine~~ is certified by a licensing  
24 agency of one or more states of the United States or a national

1 professional certifying agency, or has other substantial training or  
2 experience, in ~~any~~ the area of health care relevant to the claim,  
3 ~~and~~

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

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

9 SECTION 44. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1-1708.1J of Title 63, unless  
11 there is created a duplication in numbering, reads as follows:

12 A. As used in this section:

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

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

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

- 22 a. loss of income, wages, or earning capacity and other
- 23 pecuniary losses, and
- 24 b. loss of inheritance; and

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

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

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

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

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

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

- 23           1. Recipient of the payments;  
24           2. Dollar amount of the payments;

1 3. Interval between payments; and

2 4. Number of payments or the period of time over which payments  
3 must be made.

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

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

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

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

15 2. An obligation of the United States;

16 3. Applicable and collectible liability insurance from one or  
17 more qualified insurers; or

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

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

23 K. On the death of the recipient, money damages awarded for  
24 loss of future earnings shall continue to be paid to the estate of

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

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

16 SECTION 45. AMENDATORY 63 O.S. 2001, Section 1-1709.1,  
17 as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S.  
18 Supp. 2006, Section 1-1709.1), is amended to read as follows:

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

20 1. "Credentialing or recredentialing data" means:

21 a. the application submitted by a health care  
22 professional requesting appointment or reappointment  
23 to the medical staff of a health care facility or  
24 requesting clinical privileges or other permission to

1 provide health care services at a health care  
2 facility,

3 b. any information submitted by the health care  
4 professional in support of such application,

5 c. any information, unless otherwise privileged, obtained  
6 by the health care facility during the credentialing  
7 or recredentialing process regarding such application,  
8 and

9 d. the decision made by the health care facility  
10 regarding such application;

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

15 3. "Health care facility" means:

16 a. any hospital or related institution offering or  
17 providing health care services under a license issued  
18 pursuant to Section 1-706 of this title,

19 b. any ambulatory surgical center offering or providing  
20 health care services under a license issued pursuant  
21 to Section 2660 of this title, and

22 c. the clinical practices of accredited allopathic and  
23 osteopathic state medical schools;

24

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

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

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

1 which factual statements were generated outside the  
2 peer review process,

3 e. the identity of all documents and raw data previously  
4 created elsewhere and considered during the peer  
5 review process,

6 f. copies of all documents and raw data previously  
7 created elsewhere and considered during the peer  
8 review process, whether available elsewhere or not, or

9 g. credentialing or recredentialing data regarding the  
10 health care professional who provided the health care  
11 services being reviewed or who is the subject of a  
12 credentialing or recredentialing process; and

13 6. "Peer review process" means any process, program or  
14 proceeding, including a credentialing or recredentialing process,  
15 utilized by a health care facility or county medical society to  
16 assess, review, study or evaluate the credentials, competence,  
17 professional conduct or health care services of a health care  
18 professional.

19 B. 1. Peer review information shall be private, confidential  
20 and privileged-

21 a- except that a health care facility or county medical  
22 society shall be permitted to provide relevant peer  
23 review information to the state agency or board which  
24 licensed the health care professional who provided the

1 health care services being reviewed in a peer review  
2 process or who is the subject of a credentialing or  
3 recredentialing process, with notice to the health  
4 care professional, ~~and~~

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

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

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

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

1 a. that

2 1. That the patient has suffered injuries resulting from  
3 negligence by a health care professional in providing health care  
4 services to the patient in a health care facility<sup>7</sup>; or

5 b. that

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

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

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

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

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

1 SECTION 46. AMENDATORY 76 O.S. 2001, Section 18, as amended  
2 by Section 4, Chapter 462, O.S.L. 2002 (76 O.S. Supp. 2006, Section  
3 18), is amended to read as follows:

4 Section 18. A. Except as provided in subsection B of this  
5 section, an action for damages for injury or death against any  
6 physician, health care provider or hospital licensed under the laws  
7 of this state, whether based in tort, breach of contract or  
8 otherwise, arising out of patient care, shall be brought within two  
9 (2) years of the date the plaintiff knew or should have known,  
10 through the exercise of reasonable diligence, of the existence of  
11 the death, injury or condition complained of; provided, however, the  
12 minority or incompetency when the cause of action arises will extend  
13 said period of limitation.

14 B. Any action for damages for injury or death against any  
15 physician, health care provider, or hospital licensed under the laws  
16 of this state, based in tort and arising out of patient care, shall  
17 be brought within eight (8) years after the date of the act or  
18 omission that gives rise to the claim. This subsection is intended  
19 as a statute of repose and all actions which are not brought within  
20 eight (8) years after the act or omission giving rise to the claim  
21 are time barred.

22 SECTION 47. AMENDATORY 76 O.S. 2001, Section 25, is  
23 amended to read as follows:

24

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

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

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

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

1 recommendations made and action taken as a result of any peer review  
2 process shall not be subject to discovery.

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

7 SECTION 48. AMENDATORY 76 O.S. 2001, Section 31, is  
8 amended to read as follows:

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

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

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

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

22 C. Any person who, in good faith and without compensation, or  
23 expectation of compensation, donates or loans emergency service  
24 equipment to a volunteer shall not be liable for damages resulting

1 from the use of such equipment by the volunteer, except when the  
2 donor of the equipment knew or should have known that the equipment  
3 was dangerous or faulty in a way which could result in bodily  
4 injury, death or damage to property.

5 D. Definitions.

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

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

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

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

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

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

14 SECTION 49. AMENDATORY Section 34, Chapter 368, O.S.L.  
15 2004 (76 O.S. Supp. 2006, Section 32), is amended to read as  
16 follows:

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

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

22 1. The volunteer medical professional services were provided ~~at~~  
23 ~~a free clinic where neither the professional nor the clinic receives~~

24

1 without any kind of compensation being paid for any the treatment  
2 provided at the clinic;

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

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

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

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

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

22 b. an understanding of the limitations on the recovery of  
23 damages from the volunteer medical professional in  
24

1 exchange for receiving free professional medical  
2 services.

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

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

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

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

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

18 5. Before the referred volunteer medical professional provides  
19 professional services, the referred volunteer medical professional  
20 and the person receiving the services or, if that person is a minor  
21 or otherwise legally incapacitated, the person's parent,  
22 conservator, legal guardian, or other person with legal  
23 responsibility for the care of the person signs a written statement  
24 that acknowledges:

1           a.    that the referred volunteer medical professional  
2                    providing professional medical services has no  
3                    expectation of and will receive no compensation of any  
4                    kind for providing the professional medical services,  
5                    and

6           b.    an understanding of the limitations on the recovery of  
7                    damages from the volunteer medical professional in  
8                    exchange for receiving free professional medical  
9                    services.

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

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

22          F.    For the purpose of this section, the term "volunteer medical  
23                professional" and "referred volunteer medical professional" means a  
24                person who voluntarily provides professional medical services

1 without compensation or expectation of compensation of any kind. A  
2 volunteer medical professional or a referred volunteer medical  
3 professional shall include the following licensed professionals:

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

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

16 G. Any person participating in a Medical Reserve Corps and  
17 assisting with emergency management, emergency operations, or hazard  
18 mitigation in response to any emergency, man-made disaster, or  
19 natural disaster, or participating in public health initiatives  
20 endorsed by a city, county or state health department in the State  
21 of Oklahoma, shall not be liable for civil damages on the basis of  
22 any act or omission, if:

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

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

3        H. This section shall apply to all civil actions filed on or  
4 after November 1, 2007.

5        SECTION 50.        NEW LAW        A new section of law to be codified  
6 in the Oklahoma Statutes as Section 33 of Title 76, unless there is  
7 created a duplication in numbering, reads as follows:

8        Sections 50 through 53 of this act shall be known and may be  
9 cited as the "Common Sense Consumption Act".

10       SECTION 51.        NEW LAW        A new section of law to be codified  
11 in the Oklahoma Statutes as Section 34 of Title 76, unless there is  
12 created a duplication in numbering, reads as follows:

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

18       SECTION 52.        NEW LAW        A new section of law to be codified  
19 in the Oklahoma Statutes as Section 35 of Title 76, unless there is  
20 created a duplication in numbering, reads as follows:

21       As used in the Common Sense Consumption Act:

22       1. "Claim" means any claim by or on behalf of a natural person,  
23 as well as any derivative or other claim arising therefrom asserted  
24 by or on behalf of any other individual, corporation, company,

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

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

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

10 a. the conduct constituting the violation was committed  
11 with the intent to deceive or injure consumers or with  
12 actual knowledge that such conduct was injurious to  
13 consumers, and

14 b. the conduct constituting the violation was not  
15 required by regulations, orders, rules or other  
16 pronouncement of, or any statute administered by, a  
17 federal, state, or local government agency.

18 SECTION 53. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 36 of Title 76, unless there is  
20 created a duplication in numbering, reads as follows:

21 A. Except as provided in subsection B of this section, a  
22 manufacturer, packer, distributor, carrier, holder, seller, marketer  
23 or advertiser of a food, as defined in Section 201(f) of the Federal  
24 Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an

1 association of one or more such entities, shall not be subject to  
2 civil liability arising under any law of this state, including all  
3 statutes, regulations, rules, common law, public policies, court or  
4 administrative decisions or decrees, or other state action having  
5 the effect of law, for any claim arising out of weight gain,  
6 obesity, a health condition associated with weight gain or obesity,  
7 or other generally known condition allegedly caused by or allegedly  
8 likely to result from long-term consumption of food.

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

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

18 2. Any other material violation of federal or state law  
19 applicable to the manufacturing, marketing, distribution,  
20 advertising, labeling, or sale of food, provided that such violation  
21 is knowing and willful, and the claimed injury was proximately  
22 caused by such violation.

23 C. In any action exempted under paragraph 1 of subsection B of  
24 this section, the complaint initiating such action shall state with

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

16 D. In any action exempted under subsection B of this section,  
17 all discovery and other proceedings shall be stayed during the  
18 pendency of any motion to dismiss unless the court finds upon the  
19 motion of any party that particularized discovery is necessary to  
20 preserve evidence or to prevent undue prejudice to that party.  
21 During the pendency of any stay of discovery pursuant to this  
22 subsection, unless otherwise ordered by the court, any party to the  
23 action with actual notice of the allegations contained in the  
24 complaint shall treat all documents, data compilations, including

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

6 E. The provisions of the Common Sense Consumption Act shall  
7 apply to all covered claims pending on November 1, 2006, and all  
8 claims filed thereafter, regardless of when the claim arose.

9 SECTION 54. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 101 of Title 76, unless there is  
11 created a duplication in numbering, reads as follows:

12 Sections 54 through 63 of this act shall be known and may be  
13 cited as the "Product Liability Act".

14 SECTION 55. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 102 of Title 76, unless there is  
16 created a duplication in numbering, reads as follows:

17 As used in the Product Liability Act:

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

20 2. "Product liability action" means any action against a  
21 manufacturer or seller for recovery of damages arising out of  
22 personal injury, death, or property damage allegedly caused by a  
23 defective product whether the action is based in strict tort  
24 liability, strict products liability, negligence, misrepresentation,

1 breach of express or implied warranty, or any other theory or  
2 combination of theories;

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

7 4. "Manufacturer" means a person who is a designer, formulator,  
8 constructor, rebuilder, fabricator, producer, compounder, processor,  
9 or assembler of any product or any component part thereof and who  
10 places the product or any component part thereof in the stream of  
11 commerce.

12 SECTION 56. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 103 of Title 76, unless there is  
14 created a duplication in numbering, reads as follows:

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

17 1. The product is inherently unsafe and the product is known to  
18 be unsafe by the ordinary consumer who consumes the product with the  
19 ordinary knowledge common to the community; and

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

22 B. For purposes of this section, the term "product liability  
23 action" does not include an action based on manufacturing defect or  
24 breach of an express warranty.

1           SECTION 57.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 104 of Title 76, unless there is  
3 created a duplication in numbering, reads as follows:

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

- 7           1. There was a safer alternative design; and
- 8           2. The defect was a producing cause of the personal injury,  
9 property damage, or death for which the claimant seeks recovery.

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

- 13          1. Would have prevented or significantly reduced the risk of  
14 the claimant's personal injury, property damage, or death without  
15 substantially impairing the product's utility; and
- 16          2. Was economically and technologically feasible at the time  
17 the product left the control of the manufacturer or seller by the  
18 application of existing or reasonably achievable scientific  
19 knowledge.

20          C. This section does not supersede or modify any statute,  
21 regulation, or other law of this state or of the United States that  
22 relates to liability for, or to relief in the form of, abatement of  
23 nuisance, civil penalties, cleanup costs, cost recovery, an  
24

1 injunction, or restitution that arises from contamination or  
2 pollution of the environment.

3 D. This section does not apply to:

- 4 1. A cause of action based on a toxic or environmental tort; or
- 5 2. A drug or device, as those terms are defined in the federal  
6 Food, Drug, and Cosmetic Act (21 U.S.C., Section 321).

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

12 SECTION 58. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 105 of Title 76, unless there is  
14 created a duplication in numbering, reads as follows:

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

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

24

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

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

8           SECTION 59.           NEW LAW           A new section of law to be codified  
9 in the Oklahoma Statutes as Section 106 of Title 76, unless there is  
10 created a duplication in numbering, reads as follows:

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

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

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

17           3. That the seller installed the product, or had the product  
18 installed, on another product and the claimant's harm resulted from  
19 the product's installation onto the assembled product;

20           4. That:

21               a. the seller exercised substantial control over the  
22 content of a warning or instruction that accompanied  
23 the product,

24               b. the warning or instruction was inadequate, and

1 c. the claimant's harm resulted from the inadequacy of  
2 the warning or instruction;

3 5. That:

4 a. the seller made an express factual representation  
5 about an aspect of the product,

6 b. the representation was incorrect,

7 c. the claimant relied on the representation in obtaining  
8 or using the product, and

9 d. if the aspect of the product had been as represented,  
10 the claimant would not have been harmed by the product  
11 or would not have suffered the same degree of harm;

12 6. That:

13 a. the seller actually knew of a defect to the product at  
14 the time the seller supplied the product, and

15 b. the claimant's harm resulted from the defect; or

16 7. That the manufacturer of the product is:

17 a. insolvent, or

18 b. not subject to the jurisdiction of the court.

19 SECTION 60. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 107 of Title 76, unless there is  
21 created a duplication in numbering, reads as follows:

22 A. In a product liability action alleging that an injury was  
23 caused by a failure to provide adequate warnings or information with  
24 regard to a pharmaceutical product, there is a rebuttable

1 presumption that the defendant or defendants, including a health  
2 care provider, manufacturer, distributor, and prescriber, are not  
3 liable with respect to the allegations involving failure to provide  
4 adequate warnings or information if:

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

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

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

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

23 2. The pharmaceutical product as sold or prescribed in the  
24 United States by the defendant after the effective date of an order

1 of the United States Food and Drug Administration to remove the  
2 product from the market or to withdraw its approval of the product;

- 3 3. a. The defendant recommended, promoted, or advertised the  
4 pharmaceutical product for an indication not approved  
5 by the United States Food and Drug Administration,  
6 b. The product was used as recommended, promoted, or  
7 advertised, and  
8 c. The claimant's injury was causally related to the  
9 recommended, promoted, or advertised use of the  
10 product;

- 11 4. a. The defendant prescribed the pharmaceutical product  
12 for an indication not approved by the United States  
13 Food and Drug Administration, and  
14 b. The product was used as prescribed, and  
15 c. The claimant's injury was causally related to the  
16 prescribed use of the product; or

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

22 SECTION 61. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 108 of Title 76, unless there is  
24 created a duplication in numbering, reads as follows:

1           A. In a product liability action brought against a product  
2 manufacturer or seller, there is a rebuttable presumption that the  
3 product manufacturer or seller is not liable for any injury to a  
4 claimant caused by some aspect of the formulation, labeling, or  
5 design of a product if the product manufacturer or seller  
6 establishes that the formula, labeling, or design for the product  
7 complied with mandatory safety standards or regulations adopted and  
8 promulgated by the federal government, or an agency of the federal  
9 government, that were applicable to the product at the time of  
10 manufacture and that governed the product risk that allegedly caused  
11 harm.

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

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

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

21           C. In a product liability action brought against a product  
22 manufacturer or seller, there is a rebuttable presumption that the  
23 product manufacturer or seller is not liable for any injury to a  
24 claimant allegedly caused by some aspect of the formulation,

1 labeling, or design of a product if the product manufacturer or  
2 seller establishes that the product was subject to premarket  
3 licensing or approval by the federal government, or an agency of the  
4 federal government, that the manufacturer complied with all of the  
5 government's or agency's procedures and requirements with respect to  
6 premarket licensing or approval, and that after full consideration  
7 of the product's risks and benefits the product was approved or  
8 licensed for sale by the government or agency. The claimant may  
9 rebut this presumption by establishing that:

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

13 2. The manufacturer, before or after premarket approval or  
14 licensing of the product, withheld from or misrepresented to the  
15 government or agency information that was material and relevant to  
16 the performance of the product and was causally related to the  
17 claimant's injury.

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

22 E. This section does not extend to products covered by Section  
23 56 of this act.

24

1           SECTION 62.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 109 of Title 76, unless there is  
3 created a duplication in numbering, reads as follows:

4           In a product liability action, if measures are taken which, if  
5 taken previously, would have made an event less likely to occur,  
6 evidence of the subsequent measures is not admissible to prove a  
7 defect in a product, negligence, or culpable conduct in connection  
8 with the event. In a product liability action brought under any  
9 theory or doctrine, if the feasibility of a design or change in  
10 warnings is not controverted, then a subsequent design change or  
11 change in warnings shall not be admissible into evidence. This  
12 section shall not require the exclusion of evidence of subsequent  
13 measures when offered for another purpose such as proving ownership,  
14 control, or impeachment.

15           SECTION 63.           NEW LAW           A new section of law to be codified  
16 in the Oklahoma Statutes as Section 110 of Title 76, unless there is  
17 created a duplication in numbering, reads as follows:

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

23           1. That the plaintiff or attorney has consulted and reviewed  
24 the facts of the case with a qualified expert, as defined in

1 subsection C of this section, who has determined in a written  
2 report, after examination of the product or a review of literature  
3 pertaining to the product, that:

4 a. in any action based on strict tort liability, the  
5 product contained specific identifiable defects having  
6 a potential for injury beyond that which would be  
7 contemplated by the ordinary user of the product and  
8 was unreasonably dangerous and in a defective  
9 condition when it left the control of the  
10 manufacturer, or

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

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

16 2. That the plaintiff or attorney was unable to obtain a  
17 consultation required by paragraph 1 of this subsection because a  
18 statute of limitations would impair the action and the consultation  
19 required could not be obtained before the expiration of the statute  
20 of limitations. If an affidavit is executed pursuant to this  
21 paragraph, the affidavit required by this subsection shall be filed  
22 within ninety (90) days after the filing of the complaint. The  
23 defendant shall be excused from answering or otherwise pleading  
24 until thirty (30) days after being served with an affidavit required

1 by this subsection. No plaintiff shall be afforded the ninety-day  
2 extension of time provided by this paragraph if the plaintiff has  
3 voluntarily dismissed an action and has subsequently commenced a new  
4 action.

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

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

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

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

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

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

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

24

1 SECTION 64. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 111 of Title 76, unless there is  
3 created a duplication in numbering, reads as follows:

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

7 a. the plaintiff has consulted and reviewed the facts of  
8 the claim with a qualified expert,

9 b. the plaintiff has obtained a written opinion from a  
10 qualified expert that clearly identifies the plaintiff  
11 and includes the expert's determination that, based  
12 upon a review of the available medical records, facts  
13 or other relevant material, a reasonable  
14 interpretation of the facts supports a finding that  
15 the acts or omissions of the defendant against whom  
16 the action is brought constituted professional  
17 negligence, and

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

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

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

1           b. no extension of time is subsequently granted by the  
2           court, pursuant to subsection B of this section, the  
3           court shall, upon motion of the defendant, dismiss the  
4           action without prejudice to its refiling.

5           3. The written opinion from the qualified expert shall state  
6           the acts or omissions of the defendant(s) that the expert then  
7           believes constituted professional negligence and shall include  
8           reasons explaining why the acts or omissions constituted  
9           professional negligence. The written opinion from the qualified  
10          expert shall not be admissible at trial for any purpose nor shall  
11          any inquiry be permitted with regard to the written opinion for any  
12          purpose either in discovery or at trial.

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

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

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

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

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

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

23 Sections 65 through 72 of this act shall be known and may be  
24 cited as the "Asbestos and Silica Claims Priorities Act".

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

4 FINDINGS AND PURPOSES.

5 A. FINDINGS. The legislature finds that:

6 1. Asbestos is a mineral that was widely used prior to the mid-  
7 1970's for insulation, fireproofing, and other purposes;

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

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

14 4. The United States Supreme Court has said that this country  
15 is experiencing an "asbestos-litigation crisis";

16 5. Reports indicate that up to ninety percent of asbestos  
17 claims are filed by individuals who allege that they have been  
18 exposed to asbestos, but who suffer no demonstrable asbestos-related  
19 impairment. Lawyer-sponsored X-ray screenings of workers at  
20 occupational locations are used to amass large numbers of claimants,  
21 the vast majority of whom are unimpaired;

22 6. The costs of compensating unimpaired claimants and  
23 litigating their claims jeopardizes the ability of defendants to  
24 compensate people with cancer and other serious diseases; threatens

1 the savings, retirement benefits, and jobs of current and retired  
2 employees; and adversely affects the communities in which the  
3 defendants operate;

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

9 8. Bankruptcies have led plaintiffs and their lawyers to expand  
10 their search for solvent peripheral defendants. The number of  
11 asbestos defendants now includes over 8,500 companies, affecting  
12 many small and medium size companies in industries that cover  
13 eighty-five percent of the U.S. economy;

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

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

19 11. Silica-related illness, including silicosis, can develop  
20 from the prolonged inhalation of respirable silica dust. Silicosis  
21 was widely recognized as an occupational disease many years ago;

22 12. Silica claims, like asbestos claims, often involve  
23 individuals with no demonstrable impairment. Claimants frequently  
24

1 are identified through the use of interstate, for-profit, screening  
2 companies;

3 13. Silica screening processes have been found subject to  
4 substantial abuse and potential fraud in federal silica litigation  
5 (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d  
6 563 (S.D. Tex. 2005));

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

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

16 16. Claimant consolidations, joinders, and similar procedures  
17 used by some courts to deal with the mass of asbestos and silica  
18 cases can undermine the appropriate functioning of the court system,  
19 deny due process to plaintiffs and defendants, and further encourage  
20 the filing of thousands of cases by persons who are not sick and  
21 likely will never develop an impairing condition caused by exposure  
22 to asbestos or silica.

23 B. PURPOSES - The purposes of the Asbestos and Silica Claims  
24 Priorities Act are to:

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

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

7 3. Enhance the ability of the courts to supervise and control  
8 asbestos and silica litigation.

9 SECTION 67. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 73 of Title 76, unless there is  
11 created a duplication in numbering, reads as follows:

12 DEFINITIONS.

13 As used in the Asbestos and Silica Claims Priorities Act:

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

19 2. "Asbestos" means chrysotile, amosite, crocidolite, tremolite  
20 asbestos, anthophyllite asbestos, actinolite asbestos, winchite,  
21 richterite, asbestiform amphibole minerals, and any of these  
22 minerals that have been chemically treated or altered, including all  
23 minerals defined as asbestos in 29 CFR 1910 at the time an asbestos  
24 claim is made;

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

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

16       Asbestos claim does not include a claim for compensatory  
17 benefits pursuant to a workers' compensation law or a veterans'  
18 benefits program;

19       4. "Asbestosis" means bilateral diffuse interstitial fibrosis  
20 of the lungs caused by inhalation of asbestos;

21       5. "Board-certified internist" means a qualified physician:

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

- (1) the performance of any examination, and
- (2) rendition of any report required under the  
Asbestos and Silica Claims Priorities Act;

6. "Board-certified occupational medicine specialist" means a qualified physician:

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

7. "Board-certified pathologist" means a qualified physician:

- a. who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology,
- b. whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post-mortem specimens, and
- c. whose certification was current at the time of:
  - (1) any slide or tissue examination, and
  - (2) rendition of any report required under the  
Asbestos and Silica Claims Priorities Act;

1 8. "Board-certified pulmonologist" means a qualified physician:

2 a. who is certified in the subspecialty of pulmonary  
3 medicine by the American Board of Internal Medicine,  
4 and

5 b. whose certification was current at the time of:

6 (1) the performance of any examination, and

7 (2) rendition of any report required under the  
8 Asbestos and Silica Claims Priorities Act;

9 9. "Certified B-reader" means a person who has successfully  
10 passed the B-reader certification examination for X-ray

11 interpretation sponsored by the National Institute for Occupational  
12 Safety and Health, and whose certification was current at the time  
13 of any readings required under the Asbestos and Silica Claims  
14 Priorities Act;

15 10. "Chest X-rays" means radiographic films taken in accordance  
16 with all applicable state and federal standards and in the  
17 posterior-anterior view;

18 11. "Claimant" means any party asserting an asbestos or silica  
19 claim, including a plaintiff, counterclaimant, cross-claimant, or  
20 third-party plaintiff; if a claim is brought through or on behalf of  
21 an estate, the term includes the claimant's decedent; if a claim is  
22 brought through or on behalf of a minor or incompetent, the term  
23 includes the claimant's parent or guardian;

1 12. "DLCO" means diffusing capacity of the lung for carbon  
2 monoxide, which is the measurement of carbon monoxide transfer from  
3 inspired gas to pulmonary capillary blood;

4 13. "Exposed person" means a person whose claimed exposure to  
5 respirable asbestos or respirable silica is the basis for an  
6 asbestos or silica claim;

7 14. "FEV-1" means forced expiratory volume in the first second,  
8 which is the maximal volume of air expelled in one second during  
9 performance of simple spirometric tests;

10 15. "FVC" means forced vital capacity, which is the maximal  
11 volume of air expired with maximum effort from a position of full  
12 inspiration;

13 16. "ILO scale" means the system for the classification of  
14 chest X-rays set forth in the International Labor Office's  
15 Guidelines for the Use of ILO International Classification of  
16 Radiographs of Pneumoconioses in effect at the time of the  
17 performance of any examination or test on the exposed person  
18 required under the Asbestos and Silica Claims Priorities Act;

19 17. "Pathological evidence of asbestosis" means pathological  
20 asbestosis graded 1(B) or higher under the criteria published in the  
21 Asbestos-Associated Diseases, Special Issue of the Archives of  
22 Pathological and Laboratory Medicine, Vol. 106, No. 11, Appendix 3  
23 (Oct. 8, 1982);  
24

1 18. "Pathological evidence of silicosis" mean demonstration of  
2 classic silicotic nodules exceeding one centimeter in diameter as  
3 set forth in 112 Archives of Pathology & Laboratory Medicine 673-720  
4 (1988);

5 19. "Predicted lower limit of normal" means the calculated  
6 standard convention lying at the fifth percentile, below the upper  
7 ninety-five percent of the reference population, based on age,  
8 height, and gender, according to the recommendations of the American  
9 Thoracic Society as referenced in the AMA's Guides to the Evaluation  
10 of Permanent Impairment;

11 20. "Qualified physician" means a licensed, board-certified  
12 internist, occupational medicine specialist, pathologist or  
13 pulmonologist:

14 a. who has personally conducted a physical examination of  
15 the exposed person, or in the case of a board-  
16 certified pathologist, has examined tissue samples or  
17 pathological slides of the exposed person, or if the  
18 exposed person is deceased, based upon a detailed  
19 review of the medical records and existing tissue  
20 samples and pathological slides of the deceased  
21 person,

22 b. who is treating or treated the exposed person and has  
23 or had a doctor-patient relationship with the exposed  
24 person at the time of the physical examination, or in

1 the case of a board certified pathologist, has  
2 examined tissue samples or pathological slides of the  
3 exposed person at the request of such treating  
4 physician,

5 c. who receives or received payment for the exposed  
6 person's diagnosis, examination, and treatment from  
7 the exposed person or claimant or from the exposed  
8 person's health maintenance organization or other  
9 medical provider, and such payment is not subject to  
10 reimbursement by or on behalf of anyone providing  
11 legal services to the claimant, and

12 d. whose diagnosing, examining, testing, screening or  
13 treating of the exposed person was not, directly or  
14 indirectly, premised upon and did not require the  
15 exposed person or claimant to retain the legal  
16 services of an attorney or law firm;

17 21. "Radiological evidence of asbestosis" means an ILO quality  
18 1 or 2 chest X-ray read by a certified B-reader as showing,  
19 according to the ILO scale, bilateral small irregular opacities (s,  
20 t, or u) graded 1/1 or higher;

21 22. "Radiological evidence of diffuse bilateral pleural  
22 thickening" means an ILO quality 1 or 2 chest X-ray read by a  
23 certified B-reader as showing, according to the ILO scale, diffuse  
24

1 bilateral pleural thickening graded b2 or higher including blunting  
2 of the costophrenic angle;

3 23. "Radiological evidence of silicosis" means an ILO quality 1  
4 or 2 chest X-ray read by a certified B-reader as showing, according  
5 to the ILO scale, either:

6 a. bilateral predominantly nodular opacities (p, q, or r)  
7 occurring primarily in the upper lung fields, graded  
8 1/1 or higher, or

9 b. A, B, or C sized opacities representing complicated  
10 silicosis (also known as progressive massive  
11 fibrosis);

12 24. "Silica" means a respirable crystalline form of the  
13 naturally occurring mineral form of silicon dioxide, including  
14 quartz, cristobalite, and tridymite;

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

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

23

24

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

7 Silica claim does not include a claim for compensatory benefits  
8 pursuant to a workers' compensation law or a veterans' benefits  
9 program;

10 26. "Silicosis" means fibrosis of the lung produced by  
11 inhalation of silica, including acute silicosis, accelerated  
12 silicosis, and chronic silicosis;

13 27. "Substantial contributing factor":

14 a. in the context of an asbestos claim, means that:

15 (1) the claimant must identify:

16 (a) the specific asbestos product to which the  
17 exposed person was exposed or the specific  
18 premises at which the exposed person was  
19 exposed,

20 (b) the location and duration of such exposure,  
21 and

22 (c) the specific circumstances of such exposure,

23 (2) such exposure:  
24

- 1 (a) was more than incidental contact with the
- 2 product and location, and
- 3 (b) took place on a regular basis over an
- 4 extended period of time in physical
- 5 proximity to the exposed person,
- 6 (c) the exposed person inhaled respirable
- 7 asbestos fibers in sufficient quantities to
- 8 be capable of causing harm, and
- 9 (d) a qualified physician has determined with a
- 10 reasonable degree of medical certainty that
- 11 the exposed person's impairment would not
- 12 have occurred but for the specific asbestos
- 13 exposure, and

14 b. in the context of a silica claim, means that:

15 (1) the claimant must identify:

- 16 (a) the specific silica product to which the
- 17 exposed person was exposed,
- 18 (b) the location and duration of such exposure,
- 19 and
- 20 (c) the specific circumstances of such exposure;

21 (2) such exposure:

- 22 (a) was more than incidental contact with the
- 23 product and location, and

1 (b) took place on a regular basis over an  
2 extended period of time in physical  
3 proximity to the exposed person,

4 (3) the exposed person inhaled respirable silica  
5 particles in sufficient quantities to be capable  
6 of causing harm, and

7 (4) a qualified physician has determined with a  
8 reasonable degree of medical certainty that the  
9 exposed person's impairment would not have  
10 occurred but for the specific silica exposure;

11 28. "Supporting test results" means copies of the B-reading,  
12 pulmonary function tests (including printouts of the flow volume  
13 loops, volume time curves, DLCO graphs, and data for all trials and  
14 all other elements required to demonstrate compliance with the  
15 equipment, quality, interpretation and reporting standards set forth  
16 herein) lung volume tests, reports of X-ray examinations, diagnostic  
17 imaging of the chest, pathology reports, and all other tests  
18 reviewed by the diagnosing, qualified physician in reaching the  
19 physician's conclusions;

20 29. "Total lung capacity" means the volume of gas contained in  
21 the lungs at the end of a maximal inspiration;

22 30. "Veterans' benefits program" means a program for benefits  
23 in connection with military service administered by the Veterans'  
24 Administration under Title 38, United States Code; and

1 31. "Workers' compensation law":

2 a. means a law respecting a program administered by a  
3 State or the United States to provide compensatory  
4 benefits, funded by a responsible employer or its  
5 insurance carrier, for occupational diseases or  
6 injuries or for disability or death caused by  
7 occupational diseases or injuries,

8 b. includes the Longshore and Harbor Workers'  
9 Compensation Act (33 U.S.C. §§ 901 et seq.) and the  
10 Federal Employees' Compensation Act (chap. 81 of Title  
11 5, United States Code), and

12 c. does not include:

13 (1) the Act of April 22, 1908 commonly known as the  
14 Federal Employers' Liability Act (45 U.S.C. §§ 51  
15 et seq.), or

16 (2) any claim for exemplary or punitive damages by an  
17 employee, estate, heir, representative or any  
18 other person or entity against the employer of an  
19 exposed person arising out of or related to  
20 asbestos-related injury or silica-related injury.

21 SECTION 68. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 74 of Title 76, unless there is  
23 created a duplication in numbering, reads as follows:

24 ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

1           A.   IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.   To bring or maintain  
2 an asbestos or silica claim, an exposed person must have a physical  
3 impairment and present prima facie evidence that exposure to  
4 asbestos or silica was a substantial contributing factor to that  
5 impairment.   The prima facie showing shall be made as to each  
6 defendant against whom a claimant alleges an asbestos or silica  
7 claim.

8           B.   PRELIMINARY PROCEEDINGS.

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

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

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

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

6           C. NEW CLAIM REQUIRED INFORMATION.

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

11           a. the claimant's name, address, date of birth, social  
12 security number, and marital status,

13           b. the exposed person's name, last address, date of  
14 birth, social security number, and marital status,

15           c. if the claimant alleges exposure to asbestos or silica  
16 through another person, the name, address, date of  
17 birth, social security number, marital status, for  
18 each person by which claimant alleges exposure  
19 (hereafter the "index person") and the claimant's  
20 relationship to each such person,

21           d. for each alleged exposure of the exposed person and  
22 for each index person:

23           (1) the specific location and manner of each such  
24 exposure,

1 (2) the beginning and ending dates of each such  
2 exposure, and

3 (3) the identity of the manufacturer of the specific  
4 asbestos or silica product to which the exposed  
5 person or index person was exposed or the  
6 specific premises at which the exposed person or  
7 index person was exposed,

8 e. the occupation and name of employer of the exposed  
9 person at the time of each alleged exposure,

10 f. the identity of the defendant or defendants against  
11 whom the claimant asserts a claim,

12 g. the specific disease related to asbestos or silica  
13 claimed to exist, and

14 h. any:

15 (1) supporting documentation of the condition claimed  
16 to exist, and

17 (2) documentation to support the claimant or index  
18 person's identification of the asbestos or silica  
19 product to which such person was exposed or the  
20 specific premises at which the such person was  
21 exposed.

22 2. INDIVIDUAL REQUIREMENTS. All asbestos claims and silica  
23 claims along with sworn information forms must be individually  
24

1 filed. No claims on behalf of a group or class of persons shall be  
2 permitted.

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

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

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

14 a. evidence verifying that the diagnosing, qualified  
15 physician has taken a detailed occupational, exposure,  
16 medical, and smoking history from the exposed person  
17 or, if that person is deceased, from a person who is  
18 knowledgeable regarding such history,

19 b. evidence sufficient to demonstrate that at least 15  
20 years have elapsed between the exposed person's first  
21 exposure to asbestos and the date of diagnosis,

22 c. a determination by the diagnosing, qualified  
23 physician, on the basis of a personal medical  
24 examination and pulmonary function testing of the

1 exposed person (or, if the exposed person is deceased,  
2 based upon the person's medical records) that the  
3 claimant has (or deceased person had) a permanent  
4 respiratory impairment rating of at least Class 2 as  
5 defined by and evaluated pursuant to the AMA's Guides  
6 to the Evaluation of Permanent Impairment,

7 d. evidence verifying that the exposed person has  
8 asbestosis or diffuse bilateral pleural thickening,  
9 based at a minimum on radiological or pathological  
10 evidence of asbestosis or radiological evidence of  
11 diffuse bilateral pleural thickening,

12 e. a determination by the diagnosing, qualified physician  
13 that asbestosis or diffuse bilateral pleural  
14 thickening, rather than chronic obstructive pulmonary  
15 disease, is a substantial contributing factor to the  
16 exposed person's physical impairment, based at a  
17 minimum on a determination that the exposed person  
18 has:

19 (1) forced vital capacity below the predicted lower  
20 limit of normal and FEV1/FVC ratio (using actual  
21 values) at or above the predicted lower limit of  
22 normal, or

1 (2) total lung capacity, by plethysmography or timed  
2 gas dilution, below the predicted lower limit of  
3 normal, and

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

13 E. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED CANCER OTHER THAN  
14 MESOTHELIOMA.

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

20 2. PRIMA FACIE SHOWING. The prima facie showing under  
21 paragraph 1 of this subsection shall be made as to each defendant  
22 and include a detailed narrative medical report and diagnosis by a  
23 qualified physician that includes all of the following:  
24

- 1 a. evidence verifying that the diagnosing, qualified  
2 physician has taken a detailed occupational, exposure,  
3 medical, and smoking history from the exposed person  
4 or, if that person is deceased, from a person who is  
5 knowledgeable regarding such history,
- 6 b. evidence sufficient to demonstrate that at least 15  
7 years have elapsed between the exposed person's first  
8 exposure to asbestos and the date of diagnosis,
- 9 c. evidence verifying that the exposed person has  
10 asbestosis, based at a minimum on radiological or  
11 pathological evidence of asbestosis, and
- 12 d. the diagnosing, qualified physician has concluded that  
13 the claimant's cancer was not more probably the result  
14 of causes other than asbestos exposure as revealed by  
15 the exposed person's occupational, exposure, medical,  
16 and smoking history. A conclusion which states that  
17 the cancer is consistent or compatible with asbestos  
18 exposure or asbestos-related disease does not meet the  
19 requirements of this paragraph.

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

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

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

6           a. exposure to asbestos was a substantial contributing  
7 factor to the diagnosed mesothelioma, and

8           b. the mesothelioma was not more probably the result of  
9 causes other than asbestos exposure as revealed by the  
10 exposed person's occupational, exposure, medical, and  
11 smoking history.

12           G. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA  
13 CLAIMS.

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

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

23           a. evidence verifying that the diagnosing, qualified  
24 physician has taken a detailed occupational, exposure,

1 medical, and smoking history from the exposed person  
2 or, if that person is deceased, from a person who is  
3 knowledgeable regarding such history,

4 b. evidence verifying that the exposed person has  
5 silicosis, based at a minimum on radiological or  
6 pathological evidence of silicosis, or acute  
7 silicosis,

8 c. evidence verifying there has been a sufficient latency  
9 period for the applicable type of silicosis,

10 d. a determination by the diagnosing, qualified  
11 physician, on the basis of a personal medical  
12 examination and pulmonary function testing of the  
13 exposed person (or, if the exposed person is deceased,  
14 based upon the person's medical records) that the  
15 claimant has (or deceased person had) a permanent  
16 respiratory impairment rating of at least Class 2 as  
17 defined by and evaluated pursuant to the AMA's Guides  
18 to the Evaluation of Permanent Impairment, and

19 e. verification that the diagnosing, qualified physician  
20 has concluded that the exposed person's impairment was  
21 not more probably the result of causes other than  
22 silica exposure as revealed by the exposed person's  
23 occupational, exposure, medical, and smoking history.

24 A conclusion which states that the impairment is

1 consistent or compatible with silica exposure or  
2 silica-related disease does not meet the requirements  
3 of this paragraph.

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

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

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

- 13 a. evidence verifying that the diagnosing, qualified  
14 physician has taken a detailed occupational, exposure,  
15 medical, and smoking history from the exposed person  
16 or, if that person is deceased, from a person who is  
17 knowledgeable regarding such history,
- 18 b. evidence verifying that the exposed person has  
19 silicosis, based at a minimum on radiological or  
20 pathological evidence of silicosis,
- 21 c. evidence sufficient to demonstrate that at least 15  
22 years have elapsed between the exposed person's first  
23 exposure to silica and the date of diagnosis, and  
24

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

10           I.    COMPLIANCE WITH TECHNICAL STANDARDS. Evidence relating to  
11                   physical impairment under Section 68 of this act, including  
12                   pulmonary function testing and diffusing studies, shall:

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

20                2.   Not be obtained and may not be based on testing or  
21                   examinations that violate any law, regulation, licensing  
22                   requirement, or medical code of practice of the state in which the  
23                   examination, test, or screening was conducted, or of this state; and  
24

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

4 SECTION 69. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 75 of Title 76, unless there is  
6 created a duplication in numbering, reads as follows:

7 PROCEDURES.

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

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

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

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

21 C. DISCOVERY. Until such time as the trial court enters an  
22 order determining that the claimant has established prima facie  
23 evidence of impairment, no asbestos or silica claim shall be subject  
24 to discovery, except discovery related to establishing or

1 challenging the prima facie evidence or by order of the trial court  
2 upon motion of one of the parties and for good cause shown.

3 D. CONSOLIDATION.

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

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

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

15 E. FORUM NON CONVENIENS.

16 1. As to any asbestos or silica claim filed on or after the  
17 date of enactment of the Asbestos and Silica Claims Priorities Act,  
18 or that is pending on the date of enactment of the Asbestos and  
19 Silica Claims Priorities Act but that has not commenced trial or any  
20 new trial or retrial following motion, appeal, or otherwise with the  
21 presentation of evidence to the trier of fact prior to the date of  
22 enactment of the Asbestos and Silica Claims Priorities Act, if the  
23 court in which the asbestos or silica claim is pending, on written  
24 motion of a party, finds that in the interest of justice and for the

1 convenience of the parties a claim or action to which the Asbestos  
2 and Silica Claims Priorities Act applies would be more properly  
3 heard in a forum outside this state, the court shall decline to  
4 exercise jurisdiction under the doctrine of forum non conveniens and  
5 shall stay or dismiss the claim or action. In determining whether  
6 to grant a motion to stay or dismiss an action under the doctrine of  
7 forum non conveniens, the court shall consider whether:

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

24

1           2. A trial court may not abate or dismiss a claim under this  
2 paragraph until the defendant files with the court or with the clerk  
3 of the court a written stipulation that, with respect to a new  
4 action on the claim commenced by the plaintiff, the defendant waives  
5 the right to assert a statute of limitations defense in all other  
6 States of the United States in which the claim was not barred by  
7 limitations at the time the claim was filed in this state as  
8 necessary to effect a tolling of the limitations periods in those  
9 States beginning on the date the action originally was filed and  
10 ending on the date the claim is dismissed or an abatement period of  
11 one year ends. The court may not abate or dismiss a claim under  
12 this paragraph until the defendant files with the court or with the  
13 clerk of the court a written stipulation that, with respect to a new  
14 action on the claim commenced by the plaintiff in another State of  
15 the United States, the claimant may elect that the claimant and the  
16 defendant may rely on responses to discovery already provided under  
17 the rules of civil procedure of this state, plus any additional  
18 discovery that may be conducted under the rules of civil procedure  
19 in another State, or use responses to discovery already provided and  
20 conduct additional discovery as permitted under the rules of civil  
21 procedure in the other State.

22           F. VENUE.  
23  
24

1           1. An asbestos or silica claim filed after the effective date  
2 of the Asbestos and Silica Claims Priorities Act may be filed in  
3 this state only in the county where:

4           a. the claimant resided for a period of at least one  
5           hundred eighty (180) consecutive days immediately  
6           prior to filing suit, or

7           b. the exposed person had the most substantial cumulative  
8           exposure to asbestos for an asbestos claim or to  
9           silica for a silica claim, and that such exposure was  
10           a substantial contributing factor to the asbestos or  
11           silica related impairment on which the claim is based.

12           2. With respect to asbestos or silica claims pending as of the  
13 date of enactment of the Asbestos and Silica Claims Priorities Act,  
14 and in which the trial, or any new trial or retrial following  
15 motion, appeal, or otherwise, commences with the presentation of  
16 evidence to the trier of fact on or after the date of enactment of  
17 the Asbestos and Silica Claims Priorities Act, any claim as to which  
18 venue would not have been proper if the claim originally had been  
19 brought in accordance with paragraph 1 of this subsection shall be  
20 transferred within ninety (90) days of the date of enactment of the  
21 Asbestos and Silica Claims Priorities Act to the court of general  
22 civil jurisdiction in the county in which either:

23           a. the claimant was domiciled at the time the asbestos or  
24           silica claim originally was filed, or

1           b.    the exposed person had the most substantial cumulative  
2                    exposure to asbestos for an asbestos claim or to  
3                    silica for a silica claim, and that such exposure was  
4                    a substantial contributing factor to the asbestos or  
5                    silica related impairment on which the claim is based.

6           SECTION 70.        NEW LAW        A new section of law to be codified  
7 in the Oklahoma Statutes as Section 76 of Title 76, unless there is  
8 created a duplication in numbering, reads as follows:

9           STATUTE OF LIMITATIONS; TWO-DISEASE RULE.

10          A.    STATUTE OF LIMITATIONS.

11          1.    With respect to an asbestos or silica claim not barred by  
12 limitations in this state as of effective date of the Asbestos and  
13 Silica Claims Priorities Act, a claimant's cause of action shall not  
14 accrue, nor shall the running of limitations commence, prior to the  
15 earlier of the date:

16           a.    the exposed person received a medical diagnosis of an  
17                    asbestos-related impairment or silica-related  
18                    impairment,

19           b.    the exposed person discovered facts that would have  
20                    led a reasonable person to obtain a medical diagnosis  
21                    with respect to the existence of an asbestos-related  
22                    impairment or silica-related impairment, or

23           c.    the date of death of the exposed person having an  
24                    asbestos-related or silica-related impairment.

1           2. Nothing in this section shall be construed to revive or  
2 extend limitations with respect to any claim for asbestos-related  
3 impairment or silica-related impairment that was otherwise time-  
4 barred as a matter of applicable state law as of the date the  
5 Asbestos and Silica Claims Priorities Act is enacted.

6           3. Nothing in this section shall be construed so as to  
7 adversely affect, impair, limit, modify or nullify any settlement or  
8 other agreements with respect to an asbestos or silica claim entered  
9 into prior to the date of enactment of the Asbestos and Silica  
10 Claims Priorities Act.

11           B. TWO-DISEASE RULE. An asbestos or silica claim arising out  
12 of a nonmalignant condition shall be a distinct cause of action from  
13 a claim for an asbestos-related or silica-related cancer. Where  
14 otherwise permitted under state law, no damages shall be awarded for  
15 fear or increased risk of future disease in any civil action  
16 asserting an asbestos or silica claim.

17           SECTION 71.           NEW LAW           A new section of law to be codified  
18 in the Oklahoma Statutes as Section 77 of Title 76, unless there is  
19 created a duplication in numbering, reads as follows:

20           EFFECTIVE DATE.

21           The Asbestos and Silica Claims Priorities Act shall take effect  
22 on its date of enactment. The Asbestos and Silica Claims Priorities  
23 Act applies to all asbestos or silica claims filed on or after the  
24 effective date. The Asbestos and Silica Claims Priorities Act also

1 applies to any pending asbestos or silica claims in which trial has  
2 not commenced as of the effective date.

3 SECTION 72. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 78 of Title 76, unless there is  
5 created a duplication in numbering, reads as follows:

6 SEVERABILITY.

7 The provisions of this act are severable. If any portion of  
8 this act is declared unconstitutional or the application of any part  
9 of this act to any person or circumstance is held invalid, the  
10 remaining portions of the act and their applicability to any person  
11 or circumstance shall remain valid and enforceable.

12 SECTION 73. AMENDATORY 47 O.S. 2001, Section 230.30, is  
13 amended to read as follows:

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

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

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

24

1       Intrastate motor carriers of sand, rock, gravel, asphaltic  
2 mixtures or other similar road building materials shall not be  
3 required to file cargo insurance and shall be required to maintain  
4 liability insurance limits of Three Hundred Fifty Thousand Dollars  
5 (\$350,000.00) combined single limit.

6       No carrier, whose principal place of business is in Oklahoma,  
7 shall conduct any operations in this state unless the operations are  
8 covered by a valid primary bond or insurance policy issued by a  
9 provider authorized or approved by the State Insurance Commissioner.  
10 No carrier shall conduct any operations in this state unless the  
11 operations are covered by a valid bond or insurance policy issued by  
12 a provider authorized and approved by a National Association of  
13 Insurance Commissioners and certified by the State Insurance  
14 Commission.

15       C. Each carrier shall maintain on file, in full force, all  
16 insurance required by the laws of this state and the rules of the  
17 Commission during the operation of the carrier and that the failure  
18 for any cause to maintain the coverage in full force and effect  
19 shall immediately, without any notice from the Commission, suspend  
20 the rights of the carrier to operate until proper insurance is  
21 provided. Any carrier suspended for failure to maintain proper  
22 insurance shall have a reasonable time, not exceeding sixty (60)  
23 days, to have its license reactivated, and to provide proper  
24 insurance upon showing.

1           1. No operation during the period in which it did not have  
2 insurance; and

3           2. Furnishing of proper insurance coverage

4           D. Any carrier to reactivate its license within sixty (60) days  
5 after the suspension, as above provided, shall have the license  
6 canceled by operation of law, without any notice from the  
7 Commission. No license of a carrier upon proper showing that the  
8 carrier was actually covered by proper insurance during the  
9 suspension or cancellation period, and that failure to file with the  
10 Commission was not due to the negligence of the carrier. Any  
11 carrier desiring to file for reinstatement of its license shall do  
12 so within ninety (90) days of its cancellation by law.

13           E. The Commission shall, in its discretion, permit the filing  
14 of certificates of insurance coverage or such form as may be  
15 prescribed by the Commission, in lieu of copies of insurance  
16 policies or bonds, with the proviso that if the certificates are  
17 authorized the insurance company or carrier so filing it, upon  
18 request of the Commission, will, at any time, furnish an  
19 authenticated copy of the policy which the certificate represents,  
20 and further provided that thirty (30) days prior to effective  
21 cancellation or termination of the policy of insurance for any  
22 cause, the insurer shall so notify the Commission in writing of the  
23 facts or as deemed necessary by the Commission.

24

1 SECTION 74. REPEALER Section 8, Chapter 368, O.S.L. 2004  
2 (12 O.S. Supp. 2006, Section 832.1), is hereby repealed.

3 SECTION 75. REPEALER Section 9, Chapter 390, O.S.L. 2003  
4 (12 O.S. Supp. 2006, Section 150), is hereby repealed.

5 SECTION 76. REPEALER 23 O.S. 2001, Section 103, is  
6 hereby repealed.

7 SECTION 77. REPEALER Section 5, Chapter 390, O.S.L.  
8 2003, Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21,  
9 Chapter 368, O.S.L. 2004, and Section 22, Chapter 368, O.S.L. 2004  
10 (63 O.S. Supp. 2006, Sections 1-1708.1E, 1-1708.1F and 1-1708.1F-1),  
11 are hereby repealed.

12 SECTION 78. The provisions of this act are severable and if any  
13 part or provision shall be held void the decision of the court so  
14 holding shall not affect or impair any of the remaining parts or  
15 provisions of this act.

16 SECTION 79. This act shall become effective November 1, 2007.

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