

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1603

By: Sullivan

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to civil procedure; requiring appointment of attorney for
9 specified purpose; providing for award of certain fees; requiring plaintiff to
10 attach certain affidavit in civil action for negligence; defining term; providing
11 statute of repose for product liability actions; providing exclusions; clarifying
12 scope and application; amending Section 2, Chapter 368, O.S.L. 2004 and 12
13 O.S. 2001, Sections 134 and 137 (12 O.S. Supp. 2008, Section 130), which
14 relate to venue; modifying venue for certain actions; authorizing the court to
15 decline to exercise jurisdiction under the doctrine of forum non conveniens;
16 providing that bringing action in county in which venue does not lie does not toll
17 statute of limitations; requiring each plaintiff to establish venue in cases in
18 which there are multiple plaintiffs; providing for interlocutory appeals;
19 providing requirements for Oklahoma Uniform Jury Instructions; amending 12
20 O.S. 2001, Section 588, which relates to general and specific findings;
21 modifying procedure; amending 12 O.S. 2001, Sections 683 and 684, as
22 amended by Sections 3 and 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008,
23 Sections 683 and 684), which relate to dismissal; modifying procedure for
24 dismissal without court order; providing for dismissal of action under certain
circumstances; allowing for extension under certain circumstances; requiring
plaintiff to provide certain information; amending Section 7, Chapter 368,
O.S.L. 2004 (12 O.S. Supp. 2008, Section 727.1), which relates to interest on
judgments; modifying time of accrual of prejudgment interest on certain actions;
modifying method of computing interest; amending 12 O.S. 2001, Sections
990.4, as last amended by Section 6, Chapter 1, O.S.L. 2005, 993, 2004, as
amended by Section 7, Chapter 402, O.S.L. 2002, 2008, 2009, 2011, as amended
by Section 10, Chapter 368, O.S.L. 2004, Section 1, Chapter 370, O.S.L. 2004,
as amended by Section 10, Chapter 12, O.S.L. 2007, 2023 and 2702 (12 O.S.
Supp. 2008, Sections 990.4, 2004, 2011 and 2011.1), which relate to stays of
enforcement, interlocutory appeals, the Oklahoma Pleading Code, frivolous
claims or defenses, class actions and expert testimony; modifying certain appeal
bond procedures; modifying grounds and procedure for interlocutory appeals;
modifying time limit for service of process; modifying monetary threshold for
which amount of damages is not specified; limiting amount of damages that may

1 be recovered under certain circumstances; modifying procedure for petition for
2 special damages; modifying definitions; providing procedure for pretrial
3 conferences; requiring certain standard of review upon appeal of order
4 maintaining a class action; requiring stay of discovery while appeal is pending;
5 requiring potential class members to request inclusion in the class; providing for
6 determination of attorney fees in class actions; requiring plaintiffs to sign
7 representation agreements; providing method of calculating attorney fees for
8 class action cases; providing for judicial discretion to modify the fee award;
9 requiring attorney fees to include noncash benefits in certain circumstances;
10 defining term; providing class membership limitations; providing procedure for
11 summary judgment; providing that certain evidence is admissible in certain
12 actions; providing requirements for expert testimony; providing role of the
13 court; providing for interpretation; stating legislative intent; amending 12 O.S.
14 2001, Section 3226, as last amended by Section 3, Chapter 519, O.S.L. 2004 (12
15 O.S. Supp. 2008, Section 3226), which relates to discovery; eliminating
16 requirement that a party produce certain agreement; requiring certain disclosures
17 prior to discovery request; amending 15 O.S. 2001, Sections 754 and 761.1,
18 which relate to the Oklahoma Consumer Protection Act; updating statutory
19 reference; excepting certain actions, transactions, and claims from the Oklahoma
20 Consumer Protection Act; requiring certain losses to be ascertainable; providing
21 for private right of action for actual damages; providing for determination of
22 actual damages; allowing court to order reimbursement of certain costs and fees;
23 providing for maximum amount that court may order as reimbursement of
24 certain costs and fees; requiring certain proof in order to recover damages;
defining terms; amending 23 O.S. 2001, Section 9.1, as amended by Section 1,
Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2008, Section 9.1), which relates to
punitive damages; modifying factors to be considered in awarding punitive
damages; requiring presentation of prima facie evidence for punitive damages
claims prior to certain discovery; prohibiting punitive damages in product
liability actions under certain conditions; providing restrictions and procedures
for punitive damages in medical liability actions; providing for periodic payment
of certain damages; amending Section 18, Chapter 368, O.S.L. 2004 and 23 O.S.
2001, Section 61 (23 O.S. Supp. 2008, Section 15), which relate to joint and
several liability and obligations not arising from contract; modifying exceptions
to severability; providing limits of liability for noneconomic damages for certain
actions; requiring certain adjustment; defining term; requiring admission of
evidence of certain payments; limiting evidence to amounts paid; excluding
certain payments; allowing discretion in limiting award of certain damages;
providing exception; defining term; providing that proof of certain losses must
be in the form of a net loss after reduction for income tax payments or unpaid
tax liability; amending 47 O.S. 2001, Sections 11-1112, as last amended by
Section 1, Chapter 361, O.S.L. 2005 and 12-420, as amended by Section 13,
Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2008, Sections 11-1112 and 12-420),
which relate to child passenger restraint systems and seat belts; eliminating
prohibitions against admissibility of certain evidence in civil actions; amending
51 O.S. 2001, Section 155, as last amended by Section 1, Chapter 381, O.S.L.

1 2004 (51 O.S. Supp. 2008, Section 155), which relates to exemptions from
liability; adding certain exemptions; amending Section 7, Chapter 390, O.S.L.
2 2003 (63 O.S. Supp. 2008, Section 1-1708.1G), which relates to prejudgment
interest for medical liability actions; providing time that prejudgment interest
3 accrues; amending 63 O.S. 2001, Section 1-1709.1, as last amended by Section
2, Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2008, Section 1-1709.1), which
4 relates to peer review information; providing that certain information is not
subject to discovery or admissible at trial; requiring certain findings for certain
5 information to be admissible; creating the Uniform Emergency Volunteer Health
Practitioners Act; providing short title; defining terms; providing for application;
6 authorizing the State Department of Health to regulate volunteer health
practitioners in a declared emergency; requiring certain consultation and
7 compliance of specified host entities; setting requirements for a volunteer health
practitioner registration system; permitting certain confirmation; requiring
8 certain notification; authorizing host entities to refuse the services of a volunteer
health practitioner; permitting certain volunteer health practitioners to practice
9 in this state during a declared emergency; prohibiting certain volunteer health
practitioners from certain protections; defining terms; clarifying credentialing or
10 privileging standards; requiring adherence to certain scopes of practice;
prohibiting the providing of services outside a practitioner's scope of practice;
11 authorizing the Department or a host entity to restrict certain services; providing
certain protection; permitting certain licensing boards to impose administrative
12 sanctions; requiring certain reporting; requiring certain consideration; providing
for certain rights, privileges or immunities; permitting the Department to
13 incorporate certain volunteer health practitioners; authorizing the State Board of
Health to promulgate rules; requiring consideration for uniformity; amending 63
14 O.S. 2001, Sections 683.9 and 683.13, as amended by Sections 9 and 12,
Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008, Sections 683.9 and 683.13),
15 which relate to the Emergency Management Act of 2003; modifying definition;
providing certain exclusion; stating legislative findings; defining terms;
16 providing for confidentiality of certain records; prohibiting certain testimony;
limiting liability of certain persons; prohibiting submission of certain
17 information into evidence; amending 76 O.S. 2001, Sections 5.5, 25 and 31,
which relate to limitations for certain actions, professional review bodies, civil
18 immunity for volunteers, charitable organizations, and not-for-profit
corporations; establishing a statute of repose for certain actions; providing that
19 peer review information is private, confidential and privileged; providing
exception; providing notice requirement; providing that certain information is
20 not subject to discovery or admissible at trial; prohibiting testimony by certain
persons; modifying definition; creating the Common Sense Consumption Act;
21 providing short title; stating legislative intent; defining terms; providing
immunity from civil liability for certain claims; providing exception; providing
22 pleading requirements; providing for stay of discovery and other proceedings in
certain circumstances; providing scope of claims covered; stating legislative
23 findings; limiting liability of certain manufacturers; limiting liability of certain
associations; clarifying applicability of certain provisions; creating the Product
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1 Liability Act; providing short title; defining terms; providing that a manufacturer
2 or seller shall not be liable for inherently unsafe products; providing procedures
3 and requirements in actions alleging design defect; limiting liability of
4 nonmanufacturing sellers; providing rebuttable presumption in actions relating
5 to pharmaceutical products; providing rebuttable presumption concerning
6 compliance with government standards; defining term; making evidence
7 regarding measures taken after injury inadmissible; requiring filing of certain
8 affidavit and procedures therefor; creating the Asbestos and Silica Claims
9 Priorities Act; providing legislative findings; stating purposes; defining terms;
10 providing elements of proof and proceedings for asbestos or silica claims;
11 providing that certain evidence does not create a presumption; providing that
12 certain evidence is inadmissible; providing for discovery; providing for
13 consolidation of claims; authorizing the court to decline to exercise jurisdiction
14 in certain circumstances; providing for venue; providing a statute of limitations;
15 establishing two-disease rule; providing scope of applicability of the Asbestos
16 and Silica Claims Priorities Act; creating the Innocent Successor Asbestos-
17 Related Liability Fairness Act; defining terms; providing limitations on
18 successor asbestos-related liabilities; providing method for establishing fair
19 market value of gross assets; providing for adjustment of fair market value;
20 providing scope of act; providing date of application; repealing Section 1,
21 Chapter 368, O.S.L. 2004 (5 O.S. Supp. 2008, Section 7.1), which relates to the
22 award of attorney fees in class actions; repealing Section 4, Chapter 390, O.S.L.
23 2003, Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter
24 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp.
2008, Sections 1-1708.1D, 1-1708.1F and 1-1708.1F-1), which relate to limits
on noneconomic damages in medical liability actions; repealing Section 19,
Chapter 473, O.S.L. 2003 (63 O.S. Supp. 2008, Section 6602), which relates to
emergency powers regarding licensing and appointment of health personnel;
providing for codification; providing for noncodification; providing for
severability; and providing an effective date.

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

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

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

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

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

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

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

20 C. If a manufacturer or seller expressly warrants in writing that the product has a useful safe life
21 of longer than ten (10) years, a plaintiff must commence a product liability action against that
22 manufacturer or seller of the product before the end of the number of years warranted after the date of
23 the sale of the product by that seller.
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1 D. This section shall not apply to a product liability action seeking damages for personal injury
2 or wrongful death in which the claimant alleges:

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

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

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

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

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

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

14 H. This section shall not apply to any claim to which the General Aviation Revitalization Act of
15 1994 (Pub. L. No. 103-298, 108 Stat. 1552) (1994), 49 U.S.C., Section 40101 or its exceptions are
16 applicable.

17 SECTION 3. AMENDATORY Section 2, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008,
18 Section 130), is amended to read as follows:

19 Section 130. The venue of civil actions for damages brought pursuant to the Affordable Access
20 to Health Care Act, Section 1-1708.1A et seq. of Title 63 of the Oklahoma Statutes, shall be in a
21 county where the cause of action or any portion thereof arose, or in any county in which any of the
22 defendants reside, or in the case of a corporation, in a county in which it is situated, or has its principal
23 office or place of business, ~~or in any county where a codefendant of such corporation may be sued.~~

1 Upon a finding of lack of venue, the court shall transfer or dismiss the action; provided, however, that
2 if the court finds lack of venue and that a dismissal would operate as a dismissal with prejudice, the
3 court shall transfer the action.

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

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

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

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

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

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

1 SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
2 Section 140.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

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

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

- 9 1. Whether an alternate forum exists in which the claim or action may be tried;
- 10 2. Whether the alternate forum provides an adequate remedy;
- 11 3. Whether maintenance of the claim in the court in which the case is filed would work a
12 substantial injustice to the moving party;
- 13 4. Whether the alternate forum can exercise jurisdiction over all the defendants properly joined
14 in the claim of the plaintiff;
- 15 5. Whether the balance of the private interests of the parties and the public interest of the state
16 predominate in favor of the claim or action being brought in an alternate forum; and
- 17 6. Whether the stay or dismissal would prevent unreasonable duplication or proliferation of
18 litigation.

19 SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
20 Section 140.3 of Title 12, unless there is created a duplication in numbering, reads as follows:

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

22 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
23 Section 144 of Title 12, unless there is created a duplication in numbering, reads as follows:
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1 A. In a suit in which there is more than one plaintiff, whether the plaintiffs are included by
2 joinder, by intervention, because the lawsuit was begun by more than one plaintiff, or otherwise, each
3 plaintiff shall, independently of every other plaintiff, establish proper venue. If a plaintiff cannot
4 independently establish proper venue, that plaintiff's part of the suit, including all of that plaintiff's
5 claims and causes of action, shall be transferred to a county of proper venue or dismissed, as is
6 appropriate, unless that plaintiff, independently of every other plaintiff, establishes that:

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

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

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

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

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

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

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

20 C. The court of appeals shall:

21 1. Determine whether the trial court's order is proper, based on an independent determination
22 from the record and not under either an abuse of discretion or substantial evidence standard; and
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1 2. Render judgment not later than one hundred twenty (120) days after the date the appeal is
2 perfected.

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

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

- 8 a. the party has consulted and reviewed the facts of the claim with a qualified expert,
- 9 b. the party has obtained a written opinion from a qualified expert that clearly
10 identifies the party and includes the expert's determination that, based upon a
11 review of the pertinent records, facts or other relevant material, a reasonable
12 interpretation of the facts supports a finding of liability of the adverse party
13 against whom the action is brought, and
- 14 c. on the basis of the qualified expert's review and consultation, the party has
15 concluded that the claim is meritorious and based on good cause.

16 2. If the civil action is filed:

- 17 a. without an affidavit being attached to the petition, as required in paragraph 1 of
18 this subsection, and
- 19 b. no extension of time is subsequently granted by the court, pursuant to subsection
20 B of this section,

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

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

8 2. If on the expiration of an extension period described in paragraph 1 of this subsection, the
9 party has failed to file in the action an affidavit as described above, the court shall, upon motion of the
10 adverse party, dismiss the action.

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

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

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

21 SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
22 Section 577.4 of Title 12, unless there is created a duplication in numbering, reads as follows:
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1 The Oklahoma Uniform Jury Instructions (OUJI) applicable in a civil case shall include an
2 instruction notifying the jury as to that part of an award which is not subject to federal or state income
3 tax. Any amount that the jury determines to be proper compensation for personal injury or wrongful
4 death shall not be increased or decreased by any consideration for income taxes.

5 SECTION 11. AMENDATORY 12 O.S. 2001, Section 588, is amended to read as follows:

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

11 SECTION 12. AMENDATORY 12 O.S. 2001, Section 683, as amended by Section 3,
12 Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008, Section 683), is amended to read as follows:

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

- 15 1. By the plaintiff, before the final submission of the case to the jury, or to the court, where the
16 trial is by the court;
 - 17 2. By the court, where the plaintiff fails to appear on the trial;
 - 18 3. By the court, for the want of necessary parties;
 - 19 4. By the court, on the application of some of the defendants, where there are others whom the
20 plaintiff fails to prosecute with diligence;
 - 21 5. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the
22 action; and
 - 23 6. In all other cases, upon the trial of the action, the decision must be upon the merits.
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1 SECTION 13. AMENDATORY 12 O.S. 2001, Section 684, as amended by Section 4,
2 Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008, Section 684), is amended to read as follows:

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

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

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

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

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

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

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

3 SECTION 14. AMENDATORY Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008,
4 Section 727.1), is amended to read as follows:

5 Section 727.1

6 POSTJUDGMENT INTEREST

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

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

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

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

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

22 PREJUDGMENT INTEREST

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1 E. Except as provided by subsection F of this section ~~or Section 1-1708.1G of Title 63 of the~~
2 ~~Oklahoma Statutes~~, beginning November 1, 2009, if a verdict for damages by reason of personal
3 injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint,
4 personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act
5 or omission of another is accepted by the trial court, the court in rendering judgment shall add interest
6 on the verdict at a rate prescribed pursuant to subsection I of this section from the date which is thirty-
7 six (36) months after the suit resulting in the judgment was commenced to the earlier of the date the
8 verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is
9 filed with the court clerk. No prejudgment interest shall begin to accrue until thirty-six (36) months
10 after the suit resulting in the judgment was commenced. The interest rate for computation of
11 prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in
12 effect for the calendar year ~~in~~ which is thirty-six (36) months after the suit resulting in the judgment ~~is~~
13 was commenced. This rate shall be in effect until the end of the calendar year in which ~~the suit~~
14 ~~resulting in judgment was filed~~ interest begins to accrue or until the date judgment is filed, whichever
15 first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar
16 year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar
17 year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during
18 each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of
19 this section. After the computation of all prejudgment interest has been completed, the total amount of
20 prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the
21 action, and the total amount of the resulting judgment shall become the amount upon which
22 postjudgment interest is computed pursuant to subsection A of this section.
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1 F. If a verdict of the type described by subsection E of this section is rendered against this state
2 or its political subdivisions, including counties, municipalities, school districts, and public trusts of
3 which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest
4 at the rate prescribed pursuant to subsection I of this section from the date the suit was commenced to
5 the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment or the
6 date the judgment is filed with the court clerk. The interest rate for computation of prejudgment
7 interest shall begin with the rate prescribed by subsection I of this section which is in effect for the
8 calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect
9 until the end of the calendar year in which the suit resulting in judgment was filed or until the date the
10 judgment is rendered as expressly stated in the judgment, whichever first occurs. Beginning on
11 January 1 of the next succeeding calendar year until the end of that calendar year, or until the date
12 judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the
13 prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as
14 certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the
15 computation of prejudgment interest has been completed, the amount shall be added to the amount of
16 the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment
17 shall become the amount upon which postjudgment interest is computed pursuant to subsection B of
18 this section. No award of prejudgment interest against this state or its political subdivisions, including
19 counties, municipalities, school districts, and public trusts of which this state or a political subdivision
20 of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the
21 action, shall exceed the total amount of liability of the governmental entity pursuant to The
22 Governmental Tort Claims Act.

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

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

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

16 J. For purposes of computing postjudgment interest, the provisions of this section shall be
17 applicable to all judgments of the district courts rendered on or after January 1, ~~2005~~ 2010. Effective
18 January 1, ~~2005~~ 2010, the method for computing postjudgment interest prescribed by this section shall
19 be applicable to all judgments remaining unpaid rendered prior to January 1, ~~2005~~ 2010.

20 K. For purposes of computing prejudgment interest, the provisions of this section shall be
21 applicable to all actions which are filed in the district courts on or after January 1, ~~2005~~ 2010, for
22 which an award of prejudgment interest is authorized by the provisions of this section.
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1 SECTION 15. AMENDATORY 12 O.S. 2001, Section 990.4, as last amended by Section 6,
2 Chapter 1, O.S.L. 2005 (12 O.S. Supp. 2008, Section 990.4), is amended to read as follows:

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

- 5 1. While a ~~post-trial~~ posttrial motion is pending;
- 6 2. During the time in which an appeal may be commenced in any court in or outside of this
7 state; or
- 8 3. While an appeal is pending in any court in or outside of this state.

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

- 17 1. If neither a ~~post-trial~~ posttrial motion nor a petition in error is filed, and the time for appeal
18 has expired;
- 19 2. If a ~~post-trial~~ posttrial motion is no longer pending, no petition in error has been filed, and the
20 time for appeal has expired; or
- 21 3. If an appeal is no longer pending.

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

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

1 a. subject to the limitations hereinafter provided, the bond shall be double the
2 amount of the judgment, decree or final order, unless the bond is executed or
3 guaranteed by a surety as hereinafter provided. The bond shall be for the amount
4 of the judgment, decree or order including costs and interest on appeal where it is
5 executed or guaranteed by an entity with suretyship powers as provided by the
6 laws of Oklahoma. In no case shall the bond exceed Twenty-five Million Dollars
7 (\$25,000,000.00). If the party posting the supersedeas bond is an individual or a
8 business with two hundred fifty employees or less on the date of the judgment, the
9 supersedeas bond shall not exceed One Million Dollars (\$1,000,000.00). On a
10 showing by the judgment debtor that the judgment debtor is likely to suffer
11 substantial economic harm if required to post bond in the amount required by this
12 paragraph, the court shall balance the likely substantial economic harm to the
13 judgment debtor with the ability of the judgment creditor to collect the judgment
14 in the event the judgment is affirmed on appeal and may lower the bond
15 accordingly. “Substantial economic harm” means insolvency or creating a
16 significant risk of insolvency. ~~The court shall not lower a bond as provided in this~~
17 ~~paragraph to the extent there is in effect an insurance policy, or agreement under~~
18 ~~which a third party is liable to satisfy part or all of the judgment entered and such~~
19 ~~party is required to post all or part of the bond. Upon lowering the bond as~~
20 ~~provided in this paragraph, the court shall enter an order enjoining a judgment~~
21 ~~debtor from dissipating or transferring assets to avoid satisfaction of the~~
22 ~~judgment, but the court shall not make any order that interferes with the judgment~~
23 ~~debtor’s use of assets in the normal course of business~~ If it is proven by a
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1 preponderance of the evidence that the appellant for whom the bond has been
2 limited pursuant to this subparagraph is intentionally dissipating or diverting
3 assets outside of the ordinary course of its business for the purpose of avoiding
4 payment of the judgment, the court shall enter such orders as are necessary to
5 prevent dissipation or diversion including, but not limited to, requiring that a bond
6 be posted equal to the full amount of security required pursuant to this section,
7 and

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

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

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

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

7 5. In order to protect any monies payable to the Tobacco Settlement Fund as set forth in Section
8 50 of Title 62 of the Oklahoma Statutes, the bond in any action or litigation brought under any legal
9 theory involving a signatory, successor of a signatory or an affiliate of a signatory to the Master
10 Settlement Agreement dated November 23, 1998, or a signatory, successor of a signatory or an affiliate
11 of a signatory to the Smokeless Tobacco Master Settlement Agreement, also dated November 23,
12 1998, shall be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of
13 interest and costs, ten percent (10%) of the net worth of the judgment debtor, or Twenty-five Million
14 Dollars (\$25,000,000.00), whichever is less. However, if it is proved by a preponderance of the
15 evidence that the appellant for whom the bond has been limited pursuant to this paragraph is
16 intentionally dissipating or diverting assets outside of the ordinary course of its business for the
17 purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to
18 prevent dissipation or diversion, including, but not limited to, requiring that a bond be posted equal to
19 the full amount of security required pursuant to this section. For purposes of this paragraph, “Master
20 Settlement Agreement” shall have the same meaning as that term is defined in paragraph 5 of Section
21 600.22 of Title 37 of the Oklahoma Statutes, and “Smokeless Tobacco Master Settlement Agreement”
22 means the settlement agreement and related documents entered into on November 23, 1998, by this
23 state and leading United States smokeless tobacco product manufacturers.
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1 C. Subsections A and B of this section shall not apply in actions involving temporary or
2 permanent injunctions, actions for divorce, separate maintenance, annulment, paternity, custody,
3 adoption, or termination of parental rights, or in juvenile matters, ~~post-decree~~ postdecree matrimonial
4 proceedings or habeas corpus proceedings. The trial or appellate court, in its discretion, may stay the
5 enforcement of any provision in a judgment, decree or final order in any of the types of actions or
6 proceedings listed in this subsection during the pendency of the appeal or while any post-trial motion is
7 pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of
8 the parties. If a temporary or permanent injunction is denied or dissolved, the trial or appellate court,
9 in its discretion, may restore or grant an injunction during the pendency of the appeal and while any
10 ~~post-trial~~ posttrial motions are pending upon such terms as to bond or otherwise as it considers proper
11 for the security of the rights of the parties.

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

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

19 F. The execution of a supersedeas bond shall not be a condition for the granting of a stay of
20 judgment, decree or final order of any judicial tribunal against any county, municipality, or other
21 political subdivision of the State of Oklahoma.
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1 G. Executors, administrators and guardians who have given bond in this state, with sureties,
2 according to law, are not required to provide a supersedeas bond if they are granted a stay of
3 enforcement of a judgment, decree or final order.

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

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

11 SECTION 16. AMENDATORY 12 O.S. 2001, Section 993, is amended to read as follows:

12 Section 993. A. When an order:

- 13 1. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment;
- 14 2. Denies a temporary or permanent injunction, grants a temporary or permanent injunction
15 except where granted at an ex parte hearing, or discharges, vacates, or modifies or refuses to discharge,
16 vacate, or modify a temporary or permanent injunction;
- 17 3. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify a provisional
18 remedy which affects the substantial rights of a party;
- 19 4. Appoints a receiver except where the receiver was appointed at an ex parte hearing, refuses to
20 appoint a receiver, or vacates or refuses to vacate the appointment of a receiver;
- 21 5. Directs the payment of money pendente lite except where granted at an ex parte hearing,
22 refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing
23 the payment of money pendente lite;
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1 6. Certifies or refuses to certify an action to be maintained as a class action; or

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

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

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

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

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

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

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

12 SECTION 17. AMENDATORY 12 O.S. 2001, Section 2004, as amended by Section 7,
13 Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2008, Section 2004), is amended to read as follows:

14 Section 2004.

15 PROCESS

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

19 B. SUMMONS: FORM.

20 1. The summons shall be signed by the clerk, be under the seal of the court, contain the name of
21 the court and the names of the parties, be directed to the defendant, state the name and address of the
22 plaintiff's attorney, if any, otherwise, the plaintiff's address, and the time within which these rules
23 require the defendant to appear and defend, and shall notify the defendant that in case of failure to
24

1 appear, judgment by default will be rendered against the defendant for the relief demanded in the
2 petition.

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

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

9 1. SERVICE BY PERSONAL DELIVERY.

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

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

4 c. Service shall be made as follows:

- 5 (1) Upon an individual other than an infant who is less than fifteen (15) years
6 of age or an incompetent person, by delivering a copy of the summons and
7 of the petition personally or by leaving copies thereof at the person's
8 dwelling house or usual place of abode with some person then residing
9 therein who is fifteen (15) years of age or older or by delivering a copy of
10 the summons and of the petition to an agent authorized by appointment or
11 by law to receive service of process;
- 12 (2) Upon an infant who is less than fifteen (15) years of age, by serving the
13 summons and petition personally and upon either of the infant's parents or
14 guardian, or if they cannot be found, then upon the person having the care
15 or control of the infant or with whom the infant lives; and upon an
16 incompetent person by serving the summons and petition personally and
17 upon the incompetent person's guardian;
- 18 (3) Upon a domestic or foreign corporation or upon a partnership or other
19 unincorporated association which is subject to suit under a common name,
20 by delivering a copy of the summons and of the petition to an officer, a
21 managing or general agent, or to any other agent authorized by
22 appointment or by law to receive service of process and, if the agent is one
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1 authorized by statute to receive service and the statute so requires, by also
2 mailing a copy to the defendant;

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

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

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

20 **2. SERVICE BY MAIL.**

21 a. At the election of the plaintiff, a summons and petition may be served by mail by
22 the plaintiff's attorney, any person authorized to serve process pursuant to
23 subparagraph a of paragraph 1 of this subsection, or by the court clerk upon a
24

1 defendant of any class referred to in division (1), (3), or (5) of subparagraph c of
2 paragraph 1 of this subsection. Service by mail shall be effective on the date of
3 receipt or if refused, on the date of refusal of the summons and petition by the
4 defendant.

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

19 c. Service by mail shall not be the basis for the entry of a default or a judgment by
20 default unless the record contains a return receipt showing acceptance by the
21 defendant or a returned envelope showing refusal of the process by the defendant.
22 Acceptance or refusal of service by mail by a person who is fifteen (15) years of
23 age or older who resides at the defendant's dwelling house or usual place of abode
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1 shall constitute acceptance or refusal by the party addressed. In the case of an
2 entity described in division (3) of subparagraph c of paragraph 1 of this
3 subsection, acceptance or refusal by any officer or by any employee of the
4 registered office or principal place of business who is authorized to or who
5 regularly receives certified mail shall constitute acceptance or refusal by the party
6 addressed. A return receipt signed at such registered office or principal place of
7 business shall be presumed to have been signed by an employee authorized to
8 receive certified mail. In the case of a state municipal corporation, or other
9 governmental organization thereof subject to suit, acceptance or refusal by an
10 employee of the office of the officials specified in division (5) of subparagraph c
11 of paragraph 1 of this subsection who is authorized to or who regularly receives
12 certified mail shall constitute acceptance or refusal by the party addressed. If
13 delivery of the process is refused, upon the receipt of notice of such refusal and at
14 least ten (10) days before applying for entry of default, the person elected by
15 plaintiff pursuant to subparagraph a of this paragraph to serve the process shall
16 mail to the defendant by first-class mail a copy of the summons and petition and a
17 notice prepared by the plaintiff that despite such refusal the case will proceed and
18 that judgment by default will be rendered against him unless he appears to defend
19 the suit. Any default or judgment by default shall be set aside upon motion of the
20 defendant in the manner prescribed in Section 1031.1 of this title, or upon petition
21 of the defendant in the manner prescribed in Section 1033 of this title if the
22 defendant demonstrates to the court that the return receipt was signed or delivery
23 was refused by an unauthorized person. A petition shall be filed within one (1)
24

1 year after the defendant has notice of the default or judgment by default but in no
2 event more than two (2) years after the filing of the judgment.

3 **3. SERVICE BY PUBLICATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **4. SERVICE ON THE SECRETARY OF STATE.**

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

- 17 (1) there is no registered agent for the corporation listed in the records of the
18 Secretary of State; or
19 (2) neither the registered agent nor an officer of the corporation could be
20 found at the registered office of the corporation, when service of process
21 was attempted.

22 b. Before resorting to service on the Secretary of State the plaintiff must have
23 attempted service either in person or by mail on the corporation at:
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- (1) the corporation's last-known address shown on the records of the Franchise Tax Division of the Oklahoma Tax Commission, if any is listed there; and
- (2) the corporation's last-known address shown on the records of the Secretary of State, if any is listed there; and
- (3) the corporation's last address known to the plaintiff.

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

- c. Service on the Secretary of State shall be made by filing two (2) copies of the summons and petition with the Secretary of State, notifying the Secretary of State that service is being made pursuant to the provisions of this paragraph, and paying the Secretary of State the fee prescribed in paragraph 7 of Section 1142 of Title 18 of the Oklahoma Statutes, which fee shall be taxed as part of the costs of the action, suit or proceeding if the plaintiff shall prevail therein. If a registered agent for the corporation is listed in the records of the Secretary of State, the plaintiff must also furnish a certified copy of the return showing that service on the registered agent has been attempted either in person or by mail, and that neither the registered agent nor an officer of the corporation could be found at the registered office of the corporation.
- d. Within three (3) working days after receiving the summons and petition, the Secretary of State shall send notice by letter, certified mail, return receipt requested, directed to the corporation at its registered office or the last-known

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

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

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

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

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

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

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

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

22 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.
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1 1. Service of the summons and petition may be made anywhere within this state in the manner
2 provided by subsection C of this section.

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

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

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

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

20 5. When subsection C of this section requires that in order to effect service one or more
21 designated individuals be served, service outside this state under this section must be made upon the
22 designated individual or individuals.
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- 1 6. a. A court of this state may order service upon any person who is domiciled or can
2 be found within this state of any document issued in connection with a proceeding
3 in a tribunal outside this state. The order may be made upon application of any
4 interested person or in response to a letter rogatory issued by a tribunal outside
5 this state and shall direct the manner of service.
 - 6 b. Service in connection with a proceeding in a tribunal outside this state may be
7 made within this state without an order of court.
 - 8 c. Service under this paragraph does not, of itself, require the recognition or
9 enforcement of an order, judgment, or decree rendered outside this state.

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

12 G. RETURN.

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

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

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

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

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

22 SECTION 18. AMENDATORY 12 O.S. 2001, Section 2008, is amended to read as follows:
23 Section 2008.
24

1 GENERAL RULES OF PLEADING

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

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

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

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

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

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

- 8 1. Accord and satisfaction;
- 9 2. Arbitration and award;
- 10 3. Assumption of risk;
- 11 4. Contributory negligence;
- 12 5. Discharge in bankruptcy;
- 13 6. Duress;
- 14 7. Estoppel;
- 15 8. Failure of consideration;
- 16 9. Fraud;
- 17 10. Illegality;
- 18 11. Injury by fellow servant;
- 19 12. Laches;
- 20 13. License;
- 21 14. Payment;
- 22 15. Release;
- 23 16. Res judicata;
- 24

- 1 17. Statute of frauds;
- 2 18. Statute of limitations;
- 3 19. Waiver; and
- 4 20. Any other matter constituting an avoidance or affirmative defense.

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

8 D. EFFECT OF FAILURE TO DENY. Averments in a pleading to which a responsive pleading
9 is required, other than those as to the amount of damage, are admitted when not denied in the
10 responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted
11 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 direct. No technical forms of
14 pleadings or motions are required.

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

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

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

3 PLEADING SPECIAL MATTERS

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

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

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

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

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

22 F. TIME AND PLACE. For the purpose of testing the sufficiency of a pleading, averments of
23 time and place are material and shall be considered like all other averments of material matter.
24

1 G. SPECIAL DAMAGE. When items of special damage are claimed, their nature shall be
2 specifically stated. In actions where exemplary or punitive damages are sought, the petition shall ~~not~~
3 state a specific dollar amount for damages sought to be recovered ~~but shall state whether the amount of~~
4 ~~damages sought to be recovered is in excess of or not in excess of Ten Thousand Dollars (\$10,000.00).~~
5 If the amount of damages sought to be recovered is in excess of Ten Thousand Dollars (\$10,000.00)
6 but less than the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the
7 United States Code, the amount of damages that may be recovered shall not exceed the amount set
8 forth in the pleadings, unless a good-faith-based change in circumstances arises. The party may seek,
9 by application to the court prior to the pretrial order, an amendment to change the amount pled for
10 good cause. If the amount sought exceeds the amount required to satisfy diversity jurisdiction pursuant
11 to Section 1332 of Title 28 of the United States Code, the specific amount must be included in the
12 petition.

13 SECTION 20. AMENDATORY 12 O.S. 2001, Section 2011, as amended by Section 10,
14 Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008, Section 2011), is amended to read as follows:

15 Section 2011.

16 SIGNING OF PLEADINGS

17 A. SIGNATURE. Every pleading, written motion, and other paper shall be signed by at least
18 one attorney of record in ~~his~~ the attorney's individual name of the attorney, whose Oklahoma Bar
19 Association identification number shall be stated, or, if the party is not represented by an attorney,
20 shall be signed by the party. Each paper shall state the address of the signer and telephone number, if
21 any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or
22 accompanied by affidavit. An unsigned paper shall be stricken unless the omission of the signature is
23 corrected promptly after being called to the attention of the attorney or party.
24

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

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

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

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

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

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

19 1. HOW INITIATED.

20 a. By Motion. A motion for sanctions under this rule shall be made separately from
21 other motions or requests and shall describe the specific conduct alleged to violate
22 subsection B of this section. It shall be served as provided in Section 2005 of this
23 title, but shall not be filed with or presented to the court unless, within twenty-one
24

1 (21) days after service of the motion or such other period as the court may
2 prescribe, the challenged paper, claim, defense, contention, allegation, or denial is
3 not withdrawn or appropriately corrected. If warranted, the court may award to
4 the party prevailing on the motion the reasonable expenses and attorneys fees
5 incurred in presenting or opposing the motion. Absent exceptional circumstances,
6 a law firm shall be held jointly responsible for violations committed by its
7 partners, associates, and employees.

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

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

- 19 a. Monetary sanctions shall not be awarded against a represented party for a
20 violation of paragraph 2 of subsection B of this section.
21 b. Monetary sanctions shall not be awarded on the court's initiative unless the court
22 issues its order to show cause before a voluntary dismissal or settlement of the
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1 claims made by or against the party which is, or whose attorneys are, to be
2 sanctioned.

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

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

10 D. INAPPLICABILITY TO DISCOVERY. This section does not apply to disclosures and
11 discovery requests, responses, objections, and motions that are subject to the provisions of Sections
12 3226 through 3237 of this title.

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

18 SECTION 21. AMENDATORY Section 1, Chapter 370, O.S.L. 2004, as amended by
19 Section 10, Chapter 12, O.S.L. 2007 (12 O.S. Supp. 2008, Section 2011.1), is amended to read as
20 follows:

21 Section 2011.1 In any action not arising out of contract, if requested the court shall, upon ruling
22 on a motion to dismiss an action or a motion for summary judgment or subsequent to adjudication on
23 the merits, determine whether a claim or defense asserted in the action by a nonprevailing party was
24

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

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

11 PRETRIAL CONFERENCE

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

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

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

21 Section 2023.

22 CLASS ACTIONS

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

- 3 1. The class is so numerous that joinder of all members is impracticable;
- 4 2. There are questions of law or fact common to the class;
- 5 3. The claims or defenses of the representative parties are typical of the claims or defenses of the
6 class; and
- 7 4. The representative parties will fairly and adequately protect the interests of the class.

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

- 10 1. The prosecution of separate actions by or against individual members of the class would
11 create a risk of:
 - 12 a. inconsistent or varying adjudications with respect to individual members of the
13 class which would establish incompatible standards of conduct for the party
14 opposing the class, or
 - 15 b. adjudications with respect to individual members of the class which would as a
16 practical matter be dispositive of the interests of the other members not parties to
17 the adjudications or substantially impair or impede their ability to protect their
18 interests; or
- 19 2. The party opposing the class has acted or refused to act on grounds generally applicable to the
20 class, thereby making appropriate final injunctive relief or corresponding declaratory relief with
21 respect to the class as a whole; or
- 22 3. The court finds that the questions of law or fact common to the members of the class
23 predominate over any questions affecting only individual members, and that a class action is superior
24

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

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

10 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED;
11 NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.

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

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

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

- 22 a. the court will ~~exclude him from~~ include the potential member in the class only if
23 he the potential member so requests by a specified date,

- 1 b. the judgment, whether favorable or not, will include ~~all~~ only members who ~~do not~~
2 ~~request exclusion~~ have advised the court by the specified date that they desire to
3 be included in the class, and
- 4 c. any member who ~~does not request exclusion~~ requests inclusion may, ~~if he desires,~~
5 enter an appearance through ~~his~~ counsel.

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

18 ~~3.~~ 4. The judgment in an action maintained as a class action under ~~paragraphs~~ paragraph 1 or 2
19 of subsection B of this section, whether or not favorable to the class, shall include and describe those
20 whom the court finds to be members of the class. The judgment in an action maintained as a class
21 action under paragraph 3 of subsection B of this section, whether or not favorable to the class, shall
22 include and specify or describe those to whom the notice provided in paragraph ~~2~~ 3 of this subsection
23
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1 ~~C of this section~~ was directed, and who have not requested ~~exclusion~~ inclusion, and whom the court
2 finds to be members of the class.

3 ~~4. 5.~~ When appropriate:

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

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

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

- 10 1. Determining the course of proceedings or prescribing measures to prevent undue repetition or
11 complication in the presentation of evidence or argument;
- 12 2. Requiring, for the protection of the members of the class or otherwise for the fair conduct of
13 the action, that notice be given in such manner as the court may direct to some or all of the members of
14 any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to
15 signify whether they consider the representation fair and adequate, to intervene and present claims or
16 defenses, or otherwise to come into the action;
- 17 3. Upon certification of a class, requiring for the sole purpose of class notice, parties to the
18 action provide such names and addresses of potential members of the class as they possess;
- 19 ~~4.~~ Imposing conditions on the representative parties or on intervenors;
- 20 ~~4. 5.~~ Requiring that the pleadings be amended to eliminate therefrom allegations as to
21 representation of absent persons, and that the action proceed accordingly; and
- 22 ~~5. 6.~~ Dealing with similar procedural matters.
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24

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

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

6 F. ATTORNEY FEES. 1. In class actions, if an award of attorney fees is available, the trial
7 court shall use the Lodestar Rule to calculate the amount of fees to be awarded to class counsel. The
8 court may increase or decrease the fee award calculated by using the Lodestar method by no more than
9 three times based on specified factors established by rule of the Supreme Court.

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

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

- 16 a. time and labor required,
 - 17 b. the novelty and difficulty of the case,
 - 18 c. the skill required to perform the legal service properly,
 - 19 d. the preclusion of other employment by the attorney due to acceptance of the case,
 - 20 e. the customary fee,
 - 21 f. whether the fee is fixed or contingent,
 - 22 g. time limitations imposed by the client or the circumstances,
 - 23 h. the amount in controversy and the results obtained,
- 24

- i. the experience, reputation and ability of the attorney,
- j. whether or not the case is an undesirable case,
- k. the nature and length of the professional relationship with the client, and
- l. awards in similar cases.

G. CLASS MEMBERSHIP LIMITATIONS. Class membership shall be limited only to individuals who are:

1. Residents of this state; or

2. Nonresidents of Oklahoma who:

a. own property located in this state, and

b. the property is relevant to the class action.

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

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

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

C. MOTIONS AND PROCEEDINGS THEREON. The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions,

1 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there
2 is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a
3 matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of
4 liability alone although there is a genuine issue as to the amount of damages.

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

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

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

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

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

17 H. STANDARD OF PROOF. Summary judgment shall be granted in favor of a party only if
18 there is no genuine issue as to any material fact and upon a finding that the moving party is entitled to
19 a judgment as a matter of law. If a standard of proof beyond a preponderance of the evidence applies
20 at trial, the heightened standard shall be taken into account by the court in ruling on a motion for
21 summary judgment.

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

4 J. SUPERSESSON. The provisions of this section supersede any court rules otherwise
5 applicable to the subject matter of this section.

6 SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
7 Section 2415 of Title 12, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

23 1. The testimony is based upon sufficient facts or data;
24

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

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

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

11 D. BARS TO EXPERT TESTIMONY.

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

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

19 E. MANDATORY PRETRIAL HEARING. If the witness is testifying as an expert, then upon
20 motion of a party, the court shall hold a pretrial hearing to determine whether the witness qualifies as
21 an expert and whether the expert's testimony satisfies the requirements of subsections B through D of
22 this section. The court shall allow sufficient time for a hearing and shall rule on the qualifications of
23 the witness to testify as an expert and whether or not the testimony satisfies the requirements of
24

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

4 F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

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

8 2. Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a
9 witness who is retained or specially employed to provide expert testimony in the case or whose duties
10 as an employee of the party regularly involve giving expert testimony, be accompanied by a written
11 report prepared and signed by the witness. The report shall contain a complete statement of all
12 opinions to be expressed and the basis and reasons therefor; the data or other information relied upon
13 by the witness in forming the opinions; any exhibits to be used as a summary of or support for the
14 opinions; the qualifications of the witness, including a list of all publications authored by the witness
15 within the preceding ten (10) years; the compensation to be paid for the study and testimony; and a
16 listing of any other cases in which the witness has testified as an expert at trial or by deposition within
17 the preceding four (4) years.

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

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

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

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

14 1. The ruling involved any challenge to the constitutionality of this section;
15 2. The ruling will help prove or disprove criminal liability; or
16 3. The ruling will help establish civil liability at or above Seventy-five Thousand Dollars
17 (\$75,000.00), where the testimony could be outcome-determinative for establishing liability or
18 determining damages. Neither a party's failure to seek interlocutory appeal or an appellate court's
19 decision to deny a motion for interlocutory appeal shall waive a party's right to appeal a ruling on the
20 admissibility of expert evidence after an entry of judgment in the case.

21 I. STANDARD OF REVIEW.

22 1. As the proper construction of the expert evidence admissibility framework prescribed by this
23 section is a question of law, the courts of appeals shall apply a de novo standard of review in
24

1 determining whether the trial court fully applied the proper legal standard in considering the
2 admissibility of expert evidence.

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

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

10 K. EFFECTIVE DATE. This section shall become effective upon enactment and shall apply to
11 all actions commenced on or after November 1, 2009, and to all pending actions in which trial has not
12 been scheduled or in which trial has been scheduled in excess of ninety (90) days after November 1,
13 2009.

14 SECTION 27. AMENDATORY 12 O.S. 2001, Section 3226, as last amended by Section 3,
15 Chapter 519, O.S.L. 2004 (12 O.S. Supp. 2008, Section 3226), is amended to read as follows:

16 Section 3226. A. DISCOVERY METHODS. Parties may obtain discovery by one or more of
17 the following methods: Depositions upon oral examination or written questions; written
18 interrogatories; production of documents or things or permission to enter upon land or other property,
19 for inspection and other purposes; physical and mental examinations; and requests for admission.

20 Unless the court orders otherwise under this section, the frequency of use of these methods is not
21 limited.

22 B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in
23 accordance with the Oklahoma Discovery Code, the scope of discovery is as follows:
24

1 1. IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, which is
2 relevant to the subject matter involved in the pending action, whether it relates to the claim or defense
3 of the party seeking discovery or to the claim or defense of any other party, including the existence,
4 description, nature, custody, condition and location of any books, documents or other tangible things
5 and the identity and location of persons having knowledge of any discoverable matter. It is not a
6 ground for objection that the information sought will be inadmissible at the trial if the information
7 sought appears reasonably calculated to lead to the discovery of admissible evidence. ~~A party shall~~
8 ~~produce upon request pursuant to Section 3234 of this title, any insurance agreement under which any~~
9 ~~person carrying on an insurance business may be liable to satisfy part or all of a judgment which may~~
10 ~~be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.~~
11 ~~Information concerning the insurance agreement is not by reason of disclosure admissible in evidence~~
12 ~~at trial. For purposes of this section, an application for insurance shall not be treated as a part of an~~
13 ~~insurance agreement.~~

14 2. INITIAL DISCLOSURES.

- 15 a. Except in categories of proceedings specified in subparagraph b of this paragraph,
16 or to the extent otherwise stipulated or directed by order, a party, without awaiting
17 a discovery request, must provide to other parties a computation of any category
18 of damages claimed by the disclosing party, making available for inspection and
19 copying the documents or other evidentiary material, not privileged or protected
20 from disclosure, on which such computation is based, including materials bearing
21 on the nature and extent of injuries suffered.
- 22 b. The following categories of proceedings are exempt from initial disclosure under
23 subparagraph a of this paragraph:
24

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

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

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

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

- 17 a. A written statement signed or otherwise adopted or approved by the person
18 making it, or
- 19 b. A stenographic, mechanical, electrical, or other recording, or a transcription
20 thereof, which substantially recites an oral statement by the person making it and
21 contemporaneously recorded.

22 ~~3.~~ 5. TRIAL PREPARATION: EXPERTS.
23
24

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

- 4 (1) A party may, through interrogatories, require any other party to identify
5 each person whom that other party expects to call as an expert witness at
6 trial and give the address at which that expert witness may be located.
- 7 (2) After disclosure of the names and addresses of the expert witnesses, the
8 other party expects to call as witnesses, the party, who has requested
9 disclosure, may depose any such expert witnesses subject to scope of this
10 section. Prior to taking the deposition the party must give notice as
11 required in subsections A and C of Section 3230 of this title. If any
12 documents are provided to such disclosed expert witnesses, the documents
13 shall not be protected from disclosure by privilege or work product
14 protection and they may be obtained through discovery.
- 15 (3) In addition to taking the depositions of expert witnesses the party may,
16 through interrogatories, require the party who expects to call the expert
17 witnesses to state the subject matter on which each expert witness is
18 expected to testify; the substance of the facts and opinions to which the
19 expert is expected to testify and a summary of the grounds for each
20 opinion; the qualifications of each expert witness, including a list of all
21 publications authored by the expert witness within the preceding ten (10)
22 years; the compensation to be paid to the expert witness for the testimony
23 and preparation for the testimony; and a listing of any other cases in which
24

1 the expert witness has testified as an expert at trial or by deposition within
2 the preceding four (4) years. An interrogatory seeking the information
3 specified above shall be treated as a single interrogatory for purposes of
4 the limitation on the number of interrogatories in Section 3233 of this title.

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

12 c. Unless manifest injustice would result:

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

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

20 **4. 6. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION**

21 **MATERIALS.** When a party withholds information otherwise discoverable under the Oklahoma
22 Discovery Code by claiming that it is privileged or subject to protection as trial preparation material,
23 the party shall make the claim expressly and shall describe the nature of the documents,
24

1 communications, or things not produced or disclosed in a manner that, without revealing information
2 itself privileged or protected, will enable other parties to assess the applicability of the privilege or
3 protection.

4 C. PROTECTIVE ORDERS.

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

- 12 a. that the discovery not be had,
- 13 b. that the discovery may be had only on specified terms and conditions, including a
14 designation of the time or place,
- 15 c. that the discovery may be had only by a method of discovery other than that
16 selected by the party seeking discovery,
- 17 d. that certain matters not be inquired into, or that the scope of the disclosure or
18 discovery be limited to certain matters,
- 19 e. that discovery be conducted with no one present except persons designated by the
20 court,
- 21 f. that a deposition after being sealed be opened only by order of the court,
- 22 g. that a trade secret or other confidential research, development or commercial
23 information not be disclosed or be disclosed only in a designated way, and
24

1 h. that the parties simultaneously file specified documents or information enclosed
2 in sealed envelopes to be opened as directed by the court;

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

8 a. a statement that the court has determined it is necessary in the interests of justice
9 to remove the material from the public record,

10 b. specific identification of the material which is to be removed or withdrawn from
11 the public record, or which is to be filed but not placed in the public record, and

12 c. a requirement that any party obtaining a protective order place the protected
13 material in a sealed manila envelope clearly marked with the caption and case
14 number and is clearly marked with the word "CONFIDENTIAL", and stating the
15 date the order was entered and the name of the judge entering the order;

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

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

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

22 6. Counsel for the respective parties shall be responsible for informing witnesses, as necessary,
23 of the contents of the protective order; and
24

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

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

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

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

16 a. the identity and location of persons having knowledge of discoverable matters,
17 and

18 b. the identity of each person expected to be called as an expert witness at trial, the
19 subject matter on which the person is expected to testify, and the substance of the
20 testimony of the person.

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

- a. (i) the party knows that the response was incorrect in some material respect when made, or
- (ii) the party knows that the response, which was correct when made, is no longer true in some material respect; and
- b. the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

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

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

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

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

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on

1 discovery, if any; and determining such other matters, including the allocation of expenses, as are
2 necessary for the proper management of discovery in the action. In preparing the plan for discovery
3 the court shall protect the parties from excessive or abusive use of discovery. An order shall be altered
4 or amended whenever justice so requires.

5 Subject to the right of a party who properly moves for a discovery conference to prompt
6 convening of the conference, the court may combine the discovery conference with a pretrial
7 conference.

8 **G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS.** Every
9 request for discovery, response or objection thereto made by a party represented by an attorney shall be
10 signed by at least one of his attorneys of record in his individual name whose address shall be stated.
11 A party who is not represented by an attorney shall sign the request, response or objection and state his
12 address. The signature of the attorney or party constitutes a certification that he has read the request,
13 response or objection, and that it is:

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

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

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

22 If a certification is made in violation of the provisions of this subsection, the court, upon motion
23 or upon its own initiative, shall impose upon the person who made the certification, the party on whose
24

1 behalf the request, response or objection is made, or both, an appropriate sanction, which may include
2 an order to pay to the amount of the reasonable expenses occasioned thereby, including a reasonable
3 attorney fee.

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

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

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

11 Section 754. Nothing in the Oklahoma Consumer Protection Act shall apply to:

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

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

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

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

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

19 B. In order to recover damages in an action for a violation of the Oklahoma Consumer
20 Protection Act, a person shall be required to prove that the person reasonably relied to the detriment of
21 the person upon the practice alleged to be a violation of the Oklahoma Consumer Protection Act, and
22 that the damages were proximately caused by the practice alleged to be a violation of the Oklahoma
23 Consumer Protection Act.
24

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

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

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

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

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

19 ~~C.~~ D. Any person who is found to be in violation of the Oklahoma Consumer Protection Act in a
20 civil action or who willfully violates the terms of any injunction or court order issued pursuant to the
21 Oklahoma Consumer Protection Act shall forfeit and pay a civil penalty of not more than Ten
22 Thousand Dollars (\$10,000.00) per violation, in addition to other penalties that may be imposed by the
23 court, as the court shall deem necessary and proper. For the purposes of this section, the district court
24

1 issuing an injunction shall retain jurisdiction, and in such cases, the Attorney General, acting in the
2 name of the state, or a district attorney may petition for recovery of civil penalties.

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

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

19 SECTION 31. AMENDATORY 23 O.S. 2001, Section 9.1, as amended by Section 1,
20 Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2008, Section 9.1), is amended to read as follows:

21 Section 9.1 A. ~~In~~ Except as provided in Section 30 of this act, in an action for the breach of an
22 obligation not arising from contract, the jury, in addition to actual damages, may, subject to the
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1 provisions and limitations in subsections B, C ~~and~~ D, E and G of this section, award punitive damages
2 for the sake of example and by way of punishing the defendant based upon the following factors:

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

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

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

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

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

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

11 7. The financial condition of the defendant.

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

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

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

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

18 b. the amount of the actual damages awarded.

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

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

22 1. The defendant has acted intentionally and with malice towards others; or
23
24

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

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

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

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

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

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

21 the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual
22 damages, may award punitive damages in any amount the jury deems appropriate, without regard to
23 the limitations set forth in subsections B and C of this section. Any award of punitive damages under
24

1 this subsection awarded in any manner other than as required in this subsection shall be void and
2 reversible error.

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

5 F. In a claim for punitive damages, a plaintiff shall present prima facie evidence for the punitive
6 damages claim before conducting discovery regarding the financial assets or financial condition of the
7 defendant. For the purpose of determining the defendant's net worth in subsection E of this section,
8 the amount of the net worth shall be determined in accordance with generally accepted accounting
9 principles. The limitation on the amount of punitive damages imposed by subsection E of this section
10 shall not be disclosed to the jury, but shall be applied by the court to any punitive damages verdict.

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

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

- 19 a. was in material compliance with statute or with the standards, rules, regulations,
20 requirements or specifications of a federal or state agency responsible for
21 regulating, evaluating or approving the project, or
22 b. was approved by a federal or state agency responsible for regulating, evaluating
23 or approving the product.
24

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

3 a. intentionally withheld or intentionally misrepresented information which it was
4 required at any time to submit to the agency and the withholding or
5 misrepresentation of such information was causally related to the injury or harm
6 alleged, or

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

9 3. This subsection shall apply to every case pending on or after November 1, 2009, regardless of
10 when the case was filed.

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

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

16 K. The provisions of subsections E, F and H of this section shall apply to all civil actions filed
17 on or after November 1, 2009.

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

20 A. As used in this section:

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

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

23 b. physical pain and mental anguish, disfigurement, or physical impairment,
24

1 c. loss of consortium, companionship, or society, or

2 d. loss of earnings;

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

4 a. loss of income, wages, or earning capacity and other pecuniary losses, or

5 b. loss of inheritance; and

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

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

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

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

18 1. Recipient of the payments;

19 2. Dollar amount of the payments;

20 3. Interval between payments; and

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

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

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

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

8 2. An obligation of the United States;

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

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

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

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

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

21 SECTION 33. AMENDATORY Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp.
22 2008, Section 15), is amended to read as follows:
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1 Section 15. A. Except as provided in ~~subsections~~ subsection B and C of this section, in any civil
2 action based on fault and not arising out of contract, the liability for damages caused by two or more
3 persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages
4 allocated to that tortfeasor.

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

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

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

14 E. ~~C.~~ The provisions of this section shall apply to all civil actions based on fault and not arising
15 out of contract that accrue on or after November 1, ~~2004~~ 2009.

16 SECTION 34. AMENDATORY 23 O.S. 2001, Section 61, is amended to read as follows:

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

21 B. In every civil action arising out of bodily injury, the court shall admit evidence of payments
22 of medical bills made to the injured party, unless the court makes the finding described in subsection C
23 or D of this section. The evidence shall be limited to the actual amounts paid.
24

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

7 D. If the source of payment to the injured party, the family of the injured party, or the estate of
8 the injured party is in the form of a life insurance payment or disability payment, evidence of the
9 payment from the collateral source shall not be admitted.

10 SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
11 Section 61.2 of Title 23, unless there is created a duplication in numbering, reads as follows:

12 A. Except as provided in subsection B of this section, in any action not arising out of contract,
13 the amount of noneconomic damages awarded shall not exceed Three Hundred Thousand Dollars
14 (\$300,000.00), regardless of the number of parties against whom the action is brought or the number of
15 actions brought with respect to the personal injury. The dollar amount prescribed by this subsection
16 shall be adjusted annually based upon any positive increase in the Consumer Price Index that measures
17 the average changes in prices of goods and services purchased by urban wage earners and clerical
18 workers' families and single workers living alone (CPI-W) for the preceding calendar year. The
19 adjustment required by this subsection shall be made by the State Treasurer and certified to the
20 Administrative Director of the Courts on April 1 of each year or not later than thirty (30) days after the
21 date upon which the Bureau of Labor Statistics releases the CPI-W inflationary data for the preceding
22 calendar year, whichever date first occurs. No adjustment to the dollar amount prescribed by this
23 subsection shall be made for any year in which there is a decline in the Consumer Price Index.
24

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

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

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

15 E. The provisions of this section shall apply only to actions that accrue on or after November 1,
16 2009.

17 SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
18 Section 61.3 of Title 23, unless there is created a duplication in numbering, reads as follows:

19 A. If any plaintiff seeks recovery for loss of earnings, loss of earning capacity, loss of
20 contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented
21 in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any
22 state or federal income tax law.
23
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1 B. The court shall instruct the jury as to whether any recovery sought by the plaintiff is subject
2 to federal or state income taxes and shall require that any such damage calculations demonstrate the
3 effect of such taxes.

4 SECTION 37. AMENDATORY 47 O.S. 2001, Section 11-1112, as last amended by
5 Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp. 2008, Section 11-1112), is amended to read as
6 follows:

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

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

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

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

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

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

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

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

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

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

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

18 ~~G.~~ F. Any person convicted of violating subsection A or B of this section shall be punished by a
19 fine of Fifty Dollars (\$50.00) and shall pay all court costs thereof. Revenue from such fine shall be
20 apportioned to the Department of Public Safety Revolving Fund and used by the Oklahoma Highway
21 Safety Office to promote the use of child passenger restraint systems as provided in Section 11-1113 of
22 this title. This fine shall be suspended and the court costs limited to a maximum of Fifteen Dollars
23 (\$15.00) in the case of the first offense upon proof of purchase or acquisition by loan of a child
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1 passenger restraint system. Provided, the Department of Public Safety shall not assess points to the
2 driving record of any person convicted of a violation of this section.

3 SECTION 38. AMENDATORY 47 O.S. 2001, Section 12-420, as amended by Section 13,
4 Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2008, Section 12-420), is amended to read as follows:

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

8 SECTION 39. AMENDATORY 51 O.S. 2001, Section 155, as last amended by Section 1,
9 Chapter 381, O.S.L. 2004 (51 O.S. Supp. 2008, Section 155), is amended to read as follows:

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

- 11 1. Legislative functions;
- 12 2. Judicial, quasi-judicial, or prosecutorial functions, other than claims for wrongful criminal
13 felony conviction resulting in imprisonment provided for in Section 154 of this title;
- 14 3. Execution or enforcement of the lawful orders of any court;
- 15 4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid,
16 including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or
17 written policy;
- 18 5. Performance of or the failure to exercise or perform any act or service which is in the
19 discretion of the state or political subdivision or its employees;
- 20 6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of
21 providing, police, law enforcement or fire protection;
- 22 7. Any claim based on the theory of attractive nuisance;
- 23
- 24

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

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

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

6 11. Assessment or collection of taxes or special assessments, license or registration fees, or other
7 fees or charges imposed by law;

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

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

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

17 15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning
18 device unless the absence, condition, location or malfunction is not corrected by the state or political
19 subdivision responsible within a reasonable time after actual or constructive notice or the removal or
20 destruction of such signs, signals or warning devices by third parties, action of weather elements or as
21 a result of traffic collision except on failure of the state or political subdivision to correct the same
22 within a reasonable time after actual or constructive notice. Nothing herein shall give rise to liability
23 arising from the failure of the state or any political subdivision to initially place any of the above signs,
24

1 signals or warning devices. The signs, signals and warning devices referred to herein are those used in
2 connection with hazards normally connected with the use of roadways or public ways and do not apply
3 to the duty to warn of special defects such as excavations or roadway obstructions;

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

5 17. Misrepresentation, if unintentional;

6 18. An act or omission of an independent contractor or consultant or ~~his~~ the employees, agents,
7 subcontractors or suppliers of an independent contractor or consultant or of a person other than an
8 employee of the state or political subdivision at the time the act or omission occurred;

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

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

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

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

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

23 a. in an effort to quell a riot,
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1 b. in response to a natural disaster or military attack, or

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

3 24. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or
4 injuries resulting from the parole or escape of a prisoner or injuries by a prisoner to any other prisoner;
5 provided, however, this provision shall not apply to claims from individuals not in the custody of the
6 Department of Corrections based on accidents involving motor vehicles owned or operated by the
7 Department of Corrections;

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

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

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

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

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

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

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

23 32. Any court-ordered community sentence; ør

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

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

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

9 SECTION 40. AMENDATORY Section 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2008,
10 Section 1-1708.1G), is amended to read as follows:

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

17 SECTION 41. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as last amended by
18 Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2008, Section 1-1709.1), is amended to read as
19 follows:

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

21 1. "Credentialing or recredentialing data" means:

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

1 privileges or other permission to provide health care services at a health care
2 facility,

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

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

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

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

11 3. "Health care facility" means:

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

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

16 c. the clinical practices of accredited allopathic and osteopathic state medical
17 schools;

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

21 5. "Peer review information" means all records, documents and other information generated
22 during the course of a peer review process, including any reports, statements, memoranda,
23
24

1 correspondence, record of proceedings, materials, opinions, findings, conclusions and
2 recommendations, credentialing data and recredentialing data, but does not include:

- 3 a. the medical records of a patient whose health care in a health care facility is being
4 reviewed,
- 5 b. incident reports and other like documents regarding health care services being
6 reviewed, regardless of how the reports or documents are titled or captioned,
- 7 c. the identity of any individuals who have personal knowledge regarding the facts
8 and circumstances surrounding the patient's health care in the health care facility,
- 9 d. factual statements regarding the patient's health care in the health care facility
10 from any individuals who have personal knowledge regarding the facts and
11 circumstances surrounding the patient's health care, which factual statements
12 were generated outside the peer review process,
- 13 e. the identity of all documents and raw data previously created elsewhere and
14 considered during the peer review process, or
- 15 f. copies of all documents and raw data previously created elsewhere and considered
16 during the peer review process, whether available elsewhere or not, ~~or~~
- 17 ~~g. credentialing or recredentialing data regarding the health care professional who~~
18 ~~provided the health care services being reviewed or who is the subject of a~~
19 ~~credentialing or recredentialing process; and~~

20 6. "Peer review process" means any process, program or proceeding, including a credentialing
21 or recredentialing process, utilized by a health care facility or county medical society to assess, review,
22 study or evaluate the credentials, competence, professional conduct or health care services of a health
23 care professional.
24

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

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

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

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

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

18 D. ~~4.~~ In any civil action in which a patient or patient's legal representative has alleged:

19 a. ~~that~~

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

22 b. ~~that~~

- 1 1. “Disaster relief organization” means an entity that provides emergency or disaster relief
2 services that include health or veterinary services provided by volunteer health practitioners and that:
- 3 a. is designated or recognized as a provider of those services pursuant to a disaster
4 response and recovery plan adopted by an agency of the federal government or
5 the State Department of Health, and
- 6 b. regularly plans and conducts its activities in coordination with an agency of the
7 federal government or the State Department of Health;
- 8 2. “Emergency” means an event or condition that is an emergency pursuant to the Oklahoma
9 Emergency Management Act of 2003 or the Catastrophic Health Emergency Powers Act;
- 10 3. “Emergency declaration” means a declaration of emergency issued by a person authorized to
11 do so under the laws of this state pursuant to the Oklahoma Emergency Management Act of 2003 or
12 the Catastrophic Health Emergency Powers Act;
- 13 4. “Emergency Management Assistance Compact” means the interstate compact approved by
14 Congress by Public Law No. 104-321, 110 Stat. 3877;
- 15 5. “Entity” means a person other than an individual;
- 16 6. “Health facility” means an entity licensed under the laws of this or another state to provide
17 health or veterinary services;
- 18 7. “Health practitioner” means an individual licensed under the laws of this or another state to
19 provide health or veterinary services;
- 20 8. “Health services” means the provision of treatment, care, advice or guidance, or other
21 services, or supplies, related to the health or death of individuals or human populations, to the extent
22 necessary to respond to an emergency, including:
- 23
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1 a. the following, concerning the physical or mental condition or functional status of
2 an individual or affecting the structure or function of the body:

3 (1) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or
4 palliative care, and

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

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

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

9 9. "Host entity" means an entity operating in this state which uses volunteer health practitioners
10 to respond to an emergency;

11 10. "License" means authorization by a state to engage in health or veterinary services that are
12 unlawful without the authorization and includes authorization under the laws of this state to an
13 individual to provide health or veterinary services based upon a national certification issued by a
14 public or private entity;

15 11. "Person" means an individual, corporation, business trust, trust, partnership, limited liability
16 company, association, joint venture, public corporation, government or governmental subdivision,
17 agency, or instrumentality, or any other legal or commercial entity;

18 12. "Scope of practice" means the extent of the authorization to provide health or veterinary
19 services granted to a health practitioner by a license issued to the practitioner in the state in which the
20 principal part of the practitioner's services are rendered, including any conditions imposed by the
21 licensing authority;

1 13. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United
2 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United
3 States;

4 14. "Veterinary services" means the provision of treatment, care, advice or guidance, or other
5 services, or supplies, related to the health or death of an animal or to animal populations, to the extent
6 necessary to respond to an emergency, including, but not limited to:

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

13 15. "Volunteer health practitioner" means a health practitioner who provides health or veterinary
14 services, whether or not the practitioner receives compensation for those services and does not include
15 a practitioner who receives compensation pursuant to a preexisting employment relationship with a
16 host entity or affiliate which requires the practitioner to provide health services in this state, unless the
17 practitioner is not a resident of this state and is employed by a disaster relief organization providing
18 services in this state while an emergency declaration is in effect.

19 SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
20 Section 684.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

21 This Uniform Emergency Volunteer Health Practitioners Act applies to volunteer health
22 practitioners registered with a registration system that complies with Section 46 of this act and who
23
24

1 provide health or veterinary services in this state for a host entity while an emergency declaration is in
2 effect.

3 SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
4 Section 684.17 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

- 7 1. The duration of practice by volunteer health practitioners;
- 8 2. The geographical areas in which volunteer health practitioners may practice;
- 9 3. The types of volunteer health practitioners who may practice; and
- 10 4. Any other matters necessary to coordinate effectively the provision of health or veterinary
11 services during the emergency.

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

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

- 16 1. Consult and coordinate its activities with the State Department of Health to the extent
17 practicable to provide for the efficient and effective use of volunteer health practitioners; and
- 18 2. Comply with any laws other than this act relating to the management of emergency health or
19 veterinary services, including the Oklahoma Emergency Management Act of 2003 and the
20 Catastrophic Health Emergency Powers Act.

21 SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
22 Section 684.18 of Title 63, unless there is created a duplication in numbering, reads as follows:

23 A. To qualify as a volunteer health practitioner registration system, a system must:
24

- 1 1. Accept applications for the registration of volunteer health practitioners before or during an
2 emergency;
- 3 2. Include information about the licensure and good standing of health practitioners which is
4 accessible by authorized persons;
- 5 3. Be capable of confirming the accuracy of information concerning whether a health
6 practitioner is licensed and in good standing before health services or veterinary services are provided
7 under the Uniform Emergency Volunteer Health Practitioners Act; and
- 8 4. Meet one of the following conditions:
 - 9 a. be an emergency system for advance registration of volunteer health practitioners
10 established by a state and funded through the Health Resources Services
11 Administration under Section 319I of the Public Health Services Act, 42 U.S.C.,
12 Section 247d-7b,
 - 13 b. be a local unit consisting of trained and equipped emergency response, public
14 health, and medical personnel formed pursuant to Section 2801 of the Public
15 Health Services Act, 42 U.S.C., Section 300hh,
 - 16 c. be operated by a:
 - 17 (1) disaster relief organization,
 - 18 (2) licensing board,
 - 19 (3) national or regional association of licensing boards or health practitioners,
 - 20 (4) health facility that provides comprehensive inpatient and outpatient health-
21 care services, including a tertiary care and teaching hospital, or
 - 22 (5) governmental entity, or
 - 23
 - 24

1 d. be designated by the State Department of Health as a registration system for
2 purposes of the Uniform Emergency Volunteer Health Practitioners Act.

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

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

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

15 SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
16 Section 684.19 of Title 63, unless there is created a duplication in numbering, reads as follows:

17 A. While an emergency declaration is in effect, a volunteer health practitioner, registered with a
18 registration system that complies with Section 46 of this act and licensed and in good standing in the
19 state upon which the registration of the practitioner is based, may practice in this state to the extent
20 authorized by the Uniform Emergency Volunteer Health Practitioners Act as if the practitioner were
21 licensed in this state.

22 B. A volunteer health practitioner qualified under subsection A of this section is not entitled to
23 the protections of the Uniform Emergency Volunteer Health Practitioners Act if the practitioner is
24

1 licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to
2 an agency order limiting or restricting practice privileges, or has been voluntarily terminated under
3 threat of sanction.

4 SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
5 Section 684.20 of Title 63, unless there is created a duplication in numbering, reads as follows:

6 A. For purposes of this section:

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

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

13 B. The Uniform Emergency Volunteer Health Practitioners Act does not affect credentialing or
14 privileging standards of a health facility and does not preclude a health facility from waiving or
15 modifying those standards while an emergency declaration is in effect.

16 SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
17 Section 684.21 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

21 B. Except as otherwise provided in subsection C of this section, the Uniform Emergency
22 Volunteer Health Practitioners Act does not authorize a volunteer health practitioner to provide
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1 services that are outside the scope of practice of the practitioner, even if a similarly licensed
2 practitioner in this state would be permitted to provide the services.

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

7 D. A host entity may restrict the health or veterinary services that a volunteer health practitioner
8 may provide pursuant to the Uniform Emergency Volunteer Health Practitioners Act.

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

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

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

19 F. In addition to the authority granted by law of this state other than the Uniform Emergency
20 Volunteer Health Practitioners Act to regulate the conduct of health practitioners, a licensing board or
21 other disciplinary authority in this state:

22 1. May impose administrative sanctions upon a health practitioner licensed in this state for
23 conduct outside of this state in response to an out-of-state emergency;
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1 2. May impose administrative sanctions upon a practitioner not licensed in this state for conduct
2 in this state in response to an in-state emergency; and

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

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

10 SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
11 Section 684.22 of Title 63, unless there is created a duplication in numbering, reads as follows:

12 A. The Uniform Emergency Volunteer Health Practitioners Act does not limit rights, privileges,
13 or immunities provided to volunteer health practitioners by laws other than the Uniform Emergency
14 Volunteer Health Practitioners Act. Except as otherwise provided in subsection B of this section, the
15 Uniform Emergency Volunteer Health Practitioners Act does not affect requirements for the use of
16 health practitioners pursuant to the Emergency Management Assistance Compact.

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

21 SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
22 Section 684.23 of Title 63, unless there is created a duplication in numbering, reads as follows:
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1 The State Board of Health may promulgate rules to implement the Uniform Emergency
2 Volunteer Health Practitioners Act. In doing so, the State Department of Health shall consult with and
3 consider the recommendations of the entity established to coordinate the implementation of the
4 Emergency Management Assistance Compact and shall also consult with and consider rules
5 promulgated by similarly empowered agencies in other states to promote uniformity of application of
6 the Uniform Emergency Volunteer Health Practitioners Act and make the emergency response systems
7 in the various states reasonably compatible.

8 SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
9 Section 684.24 of Title 63, unless there is created a duplication in numbering, reads as follows:

10 In applying and construing the Uniform Emergency Volunteer Health Practitioners Act,
11 consideration must be given to the need to promote uniformity of the law with respect to its subject
12 matter among states that enact it.

13 SECTION 53. AMENDATORY 63 O.S. 2001, Section 683.9, as amended by Section 9,
14 Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008, Section 683.9), is amended to read as follows:

15 Section 683.9 The provisions of this section shall be operative only during the existence of a
16 natural or man-made emergency. The existence of such emergency may be proclaimed by the
17 Governor or by concurrent resolution of the Legislature if the Governor in such proclamation, or the
18 Legislature in such resolution, finds that an emergency or disaster has occurred or is anticipated in the
19 immediate future. Any such emergency, whether proclaimed by the Governor or by the Legislature,
20 shall terminate upon the proclamation of the termination thereof by the Governor, or by passage by the
21 Legislature of a concurrent resolution terminating such emergency. During such period as such state
22 of emergency exists or continues, the Governor shall have and may exercise the following additional
23 emergency powers:
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1 1. To activate the Emergency Operations Plan, and to assume regulatory control over all
2 essential resources of this state, directly or through the boards, agencies, offices and officers
3 established by ~~said~~ the Emergency Operations Plan, to determine priorities of such resources and
4 allocate such resources as the Governor may deem necessary in cooperation with the political
5 subdivisions of this state, the federal government, or other states. "Resources" shall mean all economic
6 resources within this state including but not limited to food, manpower, health ~~and health manpower~~,
7 water, transportation, economic stabilization, electric power, petroleum, gas, and solid fuel, industrial
8 production, construction and housing;

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

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

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

21 and

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

4 SECTION 54. AMENDATORY 63 O.S. 2001, Section 683.13, as amended by Section 12,
5 Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008, Section 683.13), is amended to read as follows:

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

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

19 C. As used in this section, the term "emergency management worker" shall include any full or
20 part-time paid, volunteer, or auxiliary employee of this state, or other states, territories, possession or
21 the District of Columbia, of the federal government, or any neighboring country, or of any political
22 subdivision thereof, or of any agency or organization, performing emergency management services
23 under state supervision, and who has been properly trained in the performance of emergency
24

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

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

11 SECTION 55. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
12 Section 1-1924.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

13 The Legislature finds that:

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

20 2. The Centers for Medicare and Medicaid Services and the State Department of Health have
21 recognized the effectiveness of such quality assessment and assurance programs to measure, monitor
22 and improve the quality of care furnished by skilled nursing facilities and nursing facilities;
23
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1 3. The threat of liability for private money damages or civil money penalties under federal and
2 state law unreasonably discourages skilled nursing facilities, nursing facilities, health care
3 professionals and other health care providers from conducting or participating in effective quality
4 assessment and assurance activities and medical error review activities;

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

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

13 SECTION 56. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
14 Section 1-1924.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

15 For purposes of this section and Sections 57 through 59 of this act:

16 1. "Quality assessment and assurance activities" means activities performed by a health care
17 provider for the purpose of evaluating matters relating to patient safety and quality of care, or health
18 resources management review and identification and prevention of medical incidents and risks, and
19 shall include without limitation peer review activities, quality assessment and assurance committee
20 activities and patient care assessment;

21 2. "Quality assessment and assurance committee" means any committee of a skilled nursing
22 facility or a nursing facility which conducts quality assessment and assurance activities;
23
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1 3. "Quality assessment and assurance committee records" means documents and other
2 information in whatever form:

- 3 a. submitted to, reviewed or generated by, or produced at the request of a quality
4 assessment and assurance committee for purposes of quality assessment,
5 assurance or improvement, including without limitation proceedings, records,
6 reports, statements, notes, incident reports, memoranda, minutes, conclusions,
7 deliberations, findings, and internal working papers, or
- 8 b. submitted or reported by a skilled nursing facility or a nursing facility to an
9 accredited organization, trade association, or other entity for purposes of
10 improving quality of care in the skilled nursing facility or the nursing facility
11 industry;

12 4. "Statements of deficiencies" means information respecting surveys and certifications made
13 regarding a skilled nursing facility or a nursing facility including, but not limited to, federal and state
14 survey reports, citation reports, statements of deficiencies, plans of correction or similar findings of
15 noncompliance with statutory or regulatory requirements or standards; and

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

19 SECTION 57. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
20 Section 1-1924.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

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

8 C. Records created solely for the quality assessment and assurance committee, and related solely
9 to the purpose of the committee, shall be confidential and privileged and not disclosed, but other
10 records reviewed or consulted by the committee do not become confidential and privileged solely by
11 virtue of being turned over to, or reviewed by, the committee.

12 SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
13 Section 1-1924.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

18 B. Notwithstanding any other provision of law, no member of a quality assessment and
19 assurance committee or person providing information to a quality assessment and assurance body shall
20 be held, by reason of participation in quality assessment and assurance activities, liable in damages
21 under any law of the state or political subdivision thereof unless such individual provided false
22 information with the knowledge that such information was false.
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1 SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
2 Section 1-1924.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

6 1. The deficiency determination is final, adjudicated and has been appealed;
7 2. The deficiency determination or Minimum-Data-Set-related documentation is otherwise
8 admissible under the State Rules of Civil Procedure, as applicable; and

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

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

15 SECTION 60. AMENDATORY 76 O.S. 2001, Section 5.5, is amended to read as follows:

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

20 B. Regardless of when the cause of action shall have accrued, any action for damages based in
21 tort shall be brought within eight (8) years from the date of the act or omission that gives rise to the
22 claim. This subsection is intended as a statute of repose and any action which is not brought within
23 eight (8) years after the act or omission giving rise to the claim is time-barred.
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1 SECTION 61. AMENDATORY 76 O.S. 2001, Section 25, is amended to read as follows:

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

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

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

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

19 E. No person involved in a peer review process may testify regarding the peer review process in
20 any civil proceeding or disclose by responses to written discovery requests any peer review
21 information. However, a person's involvement in a peer review process does not prevent the person
22 from testifying about knowledge the person obtained or observations the person made prior to or
23 outside the peer review process.
24

1 SECTION 62. AMENDATORY 76 O.S. 2001, Section 31, is amended to read as follows:

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

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

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

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

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

16 D. Definitions.

17 1. For the purposes of this section, the term "volunteer" means a person who enters into a
18 service or undertaking of the person's free will without compensation or expectation of compensation
19 in money or other thing of value in order to provide a service, care, assistance, advice, or other benefit
20 ~~where the person does not offer that type of service, care, assistance, advice or other benefit for sale to~~
21 ~~the public;~~ provided, being legally entitled to receive compensation for the service or undertaking
22 performed shall not preclude a person from being considered a volunteer.
23
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1 2. For the purposes of this section, the term "charitable organization" means any benevolent,
2 philanthropic, patriotic, eleemosynary, educational, social, civic, recreational, religious group or
3 association or any other person performing or purporting to perform acts beneficial to the public.

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

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

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

15 G. This section shall apply to all civil actions filed after ~~the effective date of this act~~ August 25,
16 1995.

17 SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
18 Section 33 of Title 76, unless there is created a duplication in numbering, reads as follows:

19 Sections 63 through 66 of this act shall be known and may be cited as the "Common Sense
20 Consumption Act".

21 SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
22 Section 34 of Title 76, unless there is created a duplication in numbering, reads as follows:
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1 The intent of the Common Sense Consumption Act is to prevent frivolous lawsuits against
2 manufacturers, packers, distributors, carriers, holders, sellers, marketers or advertisers of food products
3 that comply with applicable statutory and regulatory requirements.

4 SECTION 65. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
5 Section 35 of Title 76, unless there is created a duplication in numbering, reads as follows:

6 As used in the Common Sense Consumption Act:

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

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

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

- 15 a. the conduct constituting the violation was committed with the intent to deceive or
16 injure consumers or with actual knowledge that such conduct was injurious to
17 consumers, and
18 b. the conduct constituting the violation was not required by regulations, orders,
19 rules or other pronouncement of, or any statute administered by, a federal, state,
20 or local government agency.

21 SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
22 Section 36 of Title 76, unless there is created a duplication in numbering, reads as follows:
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1 A. Except as provided in subsection B of this section, a manufacturer, packer, distributor,
2 carrier, holder, seller, marketer or advertiser of a food, as defined in Section 201(f) of the Federal
3 Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an association of one or more such
4 entities, shall not be subject to civil liability arising under any law of this state, including all statutes,
5 regulations, rules, common law, public policies, court or administrative decisions or decrees, or other
6 state action having the effect of law, for any claim arising out of weight gain, obesity, a health
7 condition associated with weight gain or obesity, or other generally known condition allegedly caused
8 by or allegedly likely to result from long-term consumption of food.

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

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

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

18 C. In any action exempted under paragraph 1 of subsection B of this section, the complaint
19 initiating such action shall state with particularity the following: the statute, regulation or other law of
20 this state or of the United States that was allegedly violated; the facts that are alleged to constitute a
21 material violation of such statute or regulation; and the facts alleged to demonstrate that such violation
22 proximately caused actual injury to the plaintiff. In any action exempted under paragraph 2 of
23 subsection B of this section, in addition to the foregoing pleading requirements, the complaint
24

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

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

16 E. The provisions of the Common Sense Consumption Act shall apply to all covered claims
17 pending on November 1, 2009, and all claims filed thereafter, regardless of when the claim arose.

18 SECTION 67. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
19 Section 51 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

22 SECTION 68. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
23 Section 52 of Title 76, unless there is created a duplication in numbering, reads as follows:
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1 No firearm manufacturer, distributor, or seller who lawfully manufactures, distributes, or sells a
2 firearm is liable to any person or entity, or to the estate, successors, or survivors of either, for any
3 injury suffered, including wrongful death and property damage, because of use of such firearm by
4 another.

5 SECTION 69. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
6 Section 53 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

12 SECTION 70. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
13 Section 54 of Title 76, unless there is created a duplication in numbering, reads as follows:

14 The provisions of Sections 67 through 69 of this act do not apply to actions for deceit, breach of
15 contract, or expressed or implied warranties, or for injuries resulting from failure of firearms to operate
16 in a normal or usual manner due to defects or negligence in design or manufacture. The provisions of
17 Sections 67 through 69 of this act do not apply to actions arising from the unlawful sale or transfer of
18 firearms, or to instances in which the transferor knew, or should have known, that the recipient would
19 engage in the unlawful sale or transfer of the firearm, or would use, or purposely allow the use of, the
20 firearm in an unlawful, negligent, or improper fashion. For purposes of this section, the potential of a
21 firearm to cause serious injury, damage, or death as a result of normal function does not constitute a
22 defective condition of the product. A firearm may not be deemed defective on the basis of its potential
23 to cause serious injury, damage, or death when discharged.
24

1 SECTION 71. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
2 Section 55 of Title 76, unless there is created a duplication in numbering, reads as follows:

3 Sections 71 through 79 of this act shall be known and may be cited as the “Product Liability
4 Act”.

5 SECTION 72. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
6 Section 56 of Title 76, unless there is created a duplication in numbering, reads as follows:

7 In the Product Liability Act:

8 1. “Claimant” means a party seeking relief, including a plaintiff, counterclaimant, or cross-
9 claimant;

10 2. “Product liability action” means any action against a manufacturer or seller for recovery of
11 damages arising out of personal injury, death, or property damage allegedly caused by a defective
12 product whether the action is based in strict tort liability, strict products liability, negligence,
13 misrepresentation, breach of express or implied warranty, or any other theory or combination of
14 theories;

15 3. “Seller” means a person who is engaged in the business of distributing or otherwise placing,
16 for any commercial purpose, in the stream of commerce for use or consumption a product or any
17 component part thereof; and

18 4. “Manufacturer” means a person who is a designer, formulator, constructor, rebuilder,
19 fabricator, producer, compounder, processor, or assembler of any product or any component part
20 thereof and who places the product or any component part thereof in the stream of commerce.

21 SECTION 73. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
22 Section 57 of Title 76, unless there is created a duplication in numbering, reads as follows:

23 A. In a product liability action, a manufacturer or seller shall not be liable if:
24

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

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

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

6 SECTION 74. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
7 Section 58 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

10 1. There was a safer alternative design; and

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

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

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

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

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

23 D. This section does not apply to:
24

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

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

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

7 SECTION 75. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
8 Section 59 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

16 4. That:

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

19 b. the warning or instruction was inadequate, and

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

21 5. That:

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

23 b. the representation was incorrect,
24

- c. the claimant relied on the representation in obtaining or using the product, and
- d. if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm;

6. That:

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

7. That the manufacturer of the product is:

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

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

A. In a product liability action alleging that an injury was caused by a failure to provide adequate warnings or information with regard to a pharmaceutical product, there is a rebuttable presumption that the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, are not liable with respect to the allegations involving failure to provide adequate warnings or information if:

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

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

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

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

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

13 3. a. The defendant recommended, promoted, or advertised the pharmaceutical product
14 for an indication not approved by the United States Food and Drug
15 Administration,

16 b. The product was used as recommended, promoted, or advertised, and

17 c. The claimant's injury was causally related to the recommended, promoted, or
18 advertised use of the product;

19 4. a. The defendant prescribed the pharmaceutical product for an indication not
20 approved by the United States Food and Drug Administration, and

21 b. The product was used as prescribed, and

22 c. The claimant's injury was causally related to the prescribed use of the product; or
23
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1 5. The defendant, before or after premarket approval or licensing of the product, engaged in
2 conduct that would constitute a violation of 18 U.S.C., Section 201 and that conduct caused the
3 warnings or instructions approved for the product by the United States Food and Drug Administration
4 to be inadequate.

5 SECTION 77. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
6 Section 61 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

20 C. In a product liability action brought against a product manufacturer or seller, there is a
21 rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant
22 allegedly caused by some aspect of the formulation, labeling, or design of a product if the product
23 manufacturer or seller establishes that the product was subject to premarket licensing or approval by
24

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

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

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

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

14 E. This section does not extend to products covered by Section 76 of this act.

15 SECTION 78. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
16 Section 62 of Title 76, unless there is created a duplication in numbering, reads as follows:

17 In a product liability action, if measures are taken which, if taken previously, would have made
18 an event less likely to occur, evidence of the subsequent measures is not admissible to prove a defect in
19 a product, negligence, or culpable conduct in connection with the event. In a product liability action
20 brought under any theory or doctrine, if the feasibility of a design or change in warnings is not
21 controverted, then a subsequent design change or change in warnings shall not be admissible into
22 evidence. This section shall not require the exclusion of evidence of subsequent measures when
23 offered for another purpose such as proving ownership, control, or impeachment.
24

1 SECTION 79. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
2 Section 63 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

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

- 9 a. in any action based on strict tort liability, the product contained specific
10 identifiable defects having a potential for injury beyond that which would be
11 contemplated by the ordinary user of the product and was unreasonably dangerous
12 and in a defective condition when it left the control of the manufacturer, or
13 b. in any other action, those acts or omissions would give rise to fault, and
14 c. in any action based on any theory or doctrine, the defective condition of the
15 product or other fault was a proximate cause of the plaintiff's injury; or

16 2. That the plaintiff or attorney was unable to obtain a consultation required by paragraph 1 of
17 this subsection because a statute of limitations would impair the action and the consultation required
18 could not be obtained before the expiration of the statute of limitations. If an affidavit is executed
19 pursuant to this paragraph, the affidavit required by this subsection shall be filed within ninety (90)
20 days after the filing of the complaint. The defendant shall be excused from answering or otherwise
21 pleading until thirty (30) days after being served with an affidavit required by this subsection. No
22 plaintiff shall be afforded the ninety-day extension of time provided by this paragraph if the plaintiff
23 has voluntarily dismissed an action and has subsequently commenced a new action.
24

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

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

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

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

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

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

13 F. This section shall apply to any cause of action filed on or after November 1, 2009.

14 SECTION 80. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
15 Section 64 of Title 76, unless there is created a duplication in numbering, reads as follows:

16 Sections 80 through 86 of this act shall be known and may be cited as the “Asbestos and Silica
17 Claims Priorities Act”.

18 SECTION 81. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
19 Section 65 of Title 76, unless there is created a duplication in numbering, reads as follows:

20 A. FINDINGS. The Legislature finds that:

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

23 2. Many American workers were exposed to asbestos, especially during World War II;
24

1 3. Long-term exposure to some types of asbestos has been causally associated with
2 mesothelioma and lung cancer, as well as nonmalignant conditions, such as asbestosis, pleural plaques,
3 and diffuse bilateral pleural thickening;

4 4. The United States Supreme Court has described asbestos litigation in this country as a
5 “crisis”;

6 5. Reports indicate that up to ninety percent (90%) of recent asbestos claims were filed by
7 individuals with no demonstrable asbestos-related impairment. Lawyer-sponsored X-ray screenings of
8 workers at occupational locations have been used to amass large numbers of unimpaired claimants;

9 6. The costs of compensating unimpaired claimants and litigating their claims jeopardize the
10 ability of defendants to compensate people with cancer and other serious diseases; threatens the
11 savings, retirement benefits, and jobs of current and retired employees; and adversely impacts affected
12 communities;

13 7. Asbestos litigation has forced an estimated eighty-six employers into bankruptcy. The rate of
14 asbestos-driven bankruptcies has accelerated in recent years. Between 2000 and 2004, there were
15 more asbestos-related bankruptcy filings than in either of the prior two (2) decades;

16 8. Personal injury lawyers have responded to these bankruptcies by expanding their search for
17 solvent defendants. The number of asbestos defendants includes over eight thousand five hundred
18 companies, including many small- and medium-size companies, in industries that cover eighty-five
19 percent (85%) of the United States economy;

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

21 10. Silica is a naturally occurring mineral and is the second most common constituent of the
22 earth’s crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks;
23
24

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

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

6 13. Silica screening processes have been found subject to substantial abuse and potential fraud
7 (In re Silica Prods. Liab. Litig., 398 F. Supp. 2d 563 (S.D. Tex. 2005));

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

11 15. Sound public policy requires that the claims of persons with no present physical impairment
12 caused by asbestos or silica exposure be deferred to give priority to physically impaired claimants, and
13 to safeguard the jobs, benefits, and savings of workers in affected companies; and

14 16. Trial consolidations, joinders, and similar trial procedures used by some courts to handle
15 asbestos and silica cases can undermine the appropriate functioning of the court system, deny due
16 process to plaintiffs and defendants, and further encourage the filing of cases by persons who are not
17 sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

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

19 1. Give priority to current claimants who can demonstrate present physical impairment caused
20 by asbestos or silica exposure based on objective medical criteria;

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

23 3. Enhance the ability of the courts to supervise and manage asbestos and silica claims.
24

1 SECTION 82. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
2 Section 66 of Title 76, unless there is created a duplication in numbering, reads as follows:

3 DEFINITIONS. As used in the Asbestos and Silica Claims Priorities Act:

4 1. "AMA Guides to the Evaluation of Permanent Impairment" means the American Medical
5 Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the
6 performance of any examination or test on the exposed person required under the Asbestos and Silica
7 Claims Priorities Act;

8 2. "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos,
9 actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and
10 any of these minerals that have been chemically treated or altered, including all minerals defined as
11 asbestos in 29 C.F.R. 1910 at the time an asbestos claim is made;

12 3. "Asbestos claim" means any claim for damages, losses, indemnification, contribution, or
13 other relief of whatever nature arising out of, based on, or in any way related to the alleged health
14 effects associated with the inhalation or ingestion of asbestos, to the extent such claims are recognized,
15 including loss of consortium, personal injury or death, mental or emotional injury, risk or fear of
16 disease or other injury, the costs of medical monitoring or surveillance, and any claim made by or on
17 behalf of any person exposed to asbestos or a representative, spouse, parent, child, or other relative of
18 the exposed person. The term "asbestos claim" does not include a claim for compensatory benefits
19 pursuant to a workers' compensation law or a veterans' benefits program;

20 4. "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of
21 asbestos fibers;

22 5. "Board-certified in internal medicine" means a physician who is certified by the American
23 Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose
24

1 certification was current at the time of the performance of any examination and rendition of any report
2 required by the Asbestos and Silica Claims Priorities Act;

3 6. “Board-certified in occupational medicine” means a physician who is certified in the
4 subspecialty of occupational medicine by the American Board of Preventive Medicine or the American
5 Osteopathic Board of Preventive Medicine and whose certification was current at the time of the
6 performance of any examination and rendition of any report required by the Asbestos and Silica
7 Claims Priorities Act;

8 7. “Board-certified in oncology” means a physician who is certified in the subspecialty of
9 medical oncology by the American Board of Internal Medicine or the American Osteopathic Board of
10 Internal Medicine and whose certification was current at the time of the performance of any
11 examination and rendition of any report required by the Asbestos and Silica Claims Priorities Act;

12 8. “Board-certified in pathology” means a physician who holds primary certification in anatomic
13 pathology or clinical pathology from the American Board of Pathology or the American Osteopathic
14 Board of Internal Medicine, whose certification was current at the time of the performance of any
15 examination and rendition of any report required by the Asbestos and Silica Claims Priorities Act, and
16 whose professional practice is principally in the field of pathology and involves regular evaluation of
17 pathology materials obtained from surgical or postmortem specimens;

18 9. “Board-certified in pulmonary medicine” means a physician who is certified in the
19 subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American
20 Osteopathic Board of Internal Medicine and whose certification was current at the time of the
21 performance of any examination and rendition of any report required by the Asbestos and Silica
22 Claims Priorities Act;

1 10. "Certified B-reader" means an individual qualified as a "final" or "B-reader" in accordance
2 with 42 C.F.R. 37.51(b) and whose certification was current at the time of any readings required under
3 the Asbestos and Silica Claims Priorities Act;

4 11. "Certified industrial hygienist" means an industrial hygienist having attained the status of
5 diplomate of the American Academy of Industrial Hygiene subject to compliance with requirements
6 established by the American Board of Industrial Hygiene;

7 12. "Certified safety professional (CSP)" means a person who meets all requirements
8 established by the Board of Certified Safety Professionals and is authorized to use the Certified Safety
9 Professional title or the CSP designation;

10 13. "Chest X-rays" means chest films taken in accordance with all applicable state and federal
11 regulatory standards and taken in the posterior-anterior and lateral views;

12 14. "Claimant" means any plaintiff asserting an asbestos or silica claim; if a claim is brought
13 through or on behalf of an estate, the term includes the claimant's decedent; if a claim is brought
14 through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

15 15. "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the
16 measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood;

17 16. "Exposed person" means any person claiming exposure to asbestos or silica or to asbestos-
18 containing or silica-containing products;

19 17. "FEV-1" means forced expiratory volume in the first second, which is the maximal volume
20 of air expelled in one (1) second during performance of simple spirometric tests;

21 18. "FVC" means forced vital capacity, which is the maximal volume of air expired with
22 maximum effort from a position of full inspiration;
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1 19. "ILO system and ILO scale" means the radiological ratings and system for the classification
2 of chest X-rays of the International Labor Office provided in Guidelines for the Use of ILO
3 International Classification of Radiographs of Pneumoconioses in effect on the day any X-rays of the
4 exposed person were reviewed by a certified B-reader;

5 20. "Lung cancer" means a malignant tumor, diagnosed by a board-certified pathologist or
6 oncologist, in which the primary site of origin is located inside the lungs;

7 21. "Mesothelioma" means a malignant tumor with a primary site of origin in the pleura,
8 peritoneum, or pericardium, diagnosed by a board-certified pathologist or oncologist, using
9 standardized and accepted criteria of microscopic morphology and appropriate immunohistochemical
10 staining techniques;

11 22. "Nonsmoker" means a person who has not smoked cigarettes or used any tobacco products
12 on a consistent and frequent basis during the fifteen (15) years preceding the day of diagnosis of an
13 asbestos-related or silica-related disease through the present date;

14 23. "Official Statements of the American Thoracic Society" means lung function testing
15 standards set forth in statements from the American Thoracic Society (and, if applicable, the European
16 Respiratory Society), including standardizations of spirometry, standardizations of lung volume
17 testing, standardizations of diffusion capacity testing or single-breath determination of carbon
18 monoxide uptake in the lung, and interpretive strategies for lung function tests, which are in effect on
19 the day of the pulmonary function testing of the exposed person;

20 24. "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that
21 more than one representative section of lung tissue, uninvolved with any other disease process,
22 demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic
23 asbestos bodies graded 1(B) or higher under the criteria published in Asbestos-Associated Diseases,
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1 106 Archive of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982), or as amended
2 at the time of the exam, and that no other more likely explanation for the presence of the fibrosis
3 exists;

4 25. "Pathological evidence of silicosis" means a statement by a board-certified pathologist that
5 more than one representative section of lung tissue uninvolved with any other disease process
6 demonstrates complicated silicosis with characteristic confluent silicotic nodules or lesions equal to or
7 greater than one (1) centimeter and birefringent crystals or other demonstration of crystal structures
8 consistent with silica (well-organized concentric whorls of collagen surrounded by inflammatory cells)
9 in the lung parenchyma and no other more likely explanation for the presence of the fibrosis exists, or
10 acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation
11 within the alveoli of proteinaceous fluid rich in surfactant;

12 26. "Plethysmography or body plethysmography" means the test for determining lung volume in
13 which the exposed person is enclosed in a chamber equipped to measure pressure, flow, or volume
14 change;

15 27. "Premises owner" means a person who owns, in whole or in part, leases, rents, maintains, or
16 controls privately owned lands, ways or waters, or any buildings and structures on those lands, ways or
17 waters, and all privately owned and state-owned lands, ways, or waters leased to a private person, firm,
18 or organization, including any buildings and structures on those lands, ways or waters;

19 28. "Predicted lower limit of normal" for any test value means the calculated standard
20 convention lying at the fifth percentile, below the upper ninety-five percent (95%) of the reference
21 population, based on age, height, and gender, according to the recommendations by the American
22 Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation of Permanent
23 Impairment;

1 29. “Pulmonary function test” means spirometry, lung volume testing, diffusion capacity testing,
2 and exercise testing, including appropriate measurements and graphs, performed in accordance with
3 the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of
4 Permanent Impairment and all standards provided in the Official Statements of the American Thoracic
5 Society in effect on the day pulmonary function testing of the exposed person was conducted;

6 30. “Qualified physician” means a board-certified internist, oncologist, pathologist, pulmonary
7 specialist, radiologist, or specialist in occupational and environmental medicine, as may be appropriate
8 to the actual diagnostic specialty in question, that meets all of the following requirements:

- 9 a. the physician personally conducted a physical examination of the exposed person
10 and has taken or has directed to be taken at his supervision, direction and control,
11 a detailed occupational, exposure, medical, smoking and social history from the
12 exposed person, or if the exposed person is deceased, from the person most
13 knowledgeable about the information forming the basis of the asbestos or silica
14 claim,
- 15 b. the physician treated or is treating the exposed person, and has or had a doctor-
16 patient relationship with the exposed person at the time of the physical
17 examination, or in the case of a board-certified pathologist, examined tissue
18 samples or pathological slides of the exposed person at the request of the treating
19 physician,
- 20 c. the physician spends no more than ten percent (10%) of the physician’s
21 professional practice time providing consulting or expert services in actual or
22 potential civil actions, and whose medical group, professional corporation, clinic,
23
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1 or other affiliated group earns not more than twenty percent (20%) of its revenue
2 providing such services,

- 3 d. the physician is currently licensed to practice, or was licensed to practice on the
4 day any examination or pulmonary function testing was conducted, and actively
5 practices or practiced in the state where the claimant resides, the claimant's civil
6 action was filed, or the claimant resided at the time of the examination,
- 7 e. the physician received or is receiving payment for the treatment of the exposed
8 person from the exposed person, a member of the exposed person's family, or the
9 exposed person's health care plan,
- 10 f. the physician prepared the report, or directly supervised the preparation and final
11 review of the report, and
- 12 g. the physician may not, as the basis for a diagnosis, rely, in whole or in part, on
13 any of the reports or opinions of any doctor, clinic, laboratory, or testing company
14 that performed an examination, test, or screening of the exposed person in
15 violation of any law, regulation, licensing requirement, or medical code of
16 practice of the state in which the examination, test, or screening was conducted, or
17 that was conducted without clearly establishing a doctor-patient relationship with
18 the exposed person or medical personnel involved in the examination, test, or
19 screening process, or that required the exposed person to agree to retain the legal
20 service of a law firm;

21 31. "Radiological evidence of asbestosis" means a quality 1 chest X-ray under the ILO system,
22 or a quality 2 chest X-ray in a death case when no pathology or quality 1 chest X-ray is available,
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1 showing bilateral small, irregular opacities (s, t, or u) graded by a certified B-reader as at least 1/1 on
2 the ILO scale;

3 32. “Radiological evidence of diffuse bilateral pleural thickening” means a quality 1 chest X-ray
4 under the ILO system, or a quality 2 chest X-ray in a death case when no pathology or quality 1 chest
5 X-ray is available, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and
6 blunting of at least one costophrenic angle as classified by a certified B-reader;

7 33. “Radiological evidence of silicosis” means a quality 1 chest X-ray under the ILO system, or
8 a quality 2 chest X-ray in a death case when no pathology or quality 1 chest X-ray is available,
9 showing bilateral predominantly nodular or rounded opacities (p, q, or r) occurring primarily in the
10 upper lung fields by a certified B-reader as at least 1/1 on the ILO scale or A-, B-, or C-sized opacities
11 representing complicated silicosis or acute silicosis with characteristic pulmonary edema, interstitial
12 inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant;

13 34. “Silica” means a respirable crystalline form of silicon dioxide, including quartz, cristobalite,
14 and tridymite;

15 35. “Silica claim” means any claim for damages, losses, indemnification, contribution, or other
16 relief of whatever nature arising out of, based on, or in any way related to the alleged health effects
17 associated with the inhalation of silica, to the extent such claims are recognized, including loss of
18 consortium, personal injury or death, mental or emotional injury, risk or fear of disease or other injury,
19 the costs of medical monitoring or surveillance, and any claim made by or on behalf of any person
20 exposed to silica, or a representative, spouse, parent, child, or other relative of the exposed person.
21 The term “silica claim” does not include a claim for compensatory benefits pursuant to a workers’
22 compensation law or a veterans’ benefits program;

1 36. "Silicosis" means simple silicosis, acute silicosis, accelerated silicosis, or chronic silicosis
2 caused by the inhalation of respirable silica;

3 37. "Smoker" means a person who has smoked cigarettes or used any tobacco products on a
4 consistent and frequent basis during the fifteen (15) years preceding the day of diagnosis through the
5 present date;

6 38. "Spirometry" means a test of air capacity of the lung through a spirometer to measure the
7 volume of air inspired and expired;

8 39. "Substantial contributing factor" means all of the following:

- 9 a. the predominate cause of the physical impairment alleged in the asbestos or silica
10 claim was exposure to asbestos or silica from the defendant, from the premises of
11 the defendant, or as a result of a product from the defendant,
- 12 b. there is credible evidence that the claimant identified the specific product,
13 operation or specific premises at issue and the location, duration, and specific
14 circumstances of exposure,
- 15 c. the exposure to asbestos or asbestos-containing product or silica or silica-
16 containing product happened on a frequent or recurring basis over an extended
17 period of time and in close proximity to the exposed person and constituted more
18 than incidental contact with the product, operation, or location,
- 19 d. the exposed person inhaled asbestos fibers or silica from the defendant, from the
20 premises of the defendant, or as a result of a product from the defendant in
21 sufficient quantities capable of causing his harm, and
- 22 e. a qualified physician determined with a reasonable degree of medical certainty
23 that the physical impairment of the exposed person would not have occurred but
24

1 for the exposure to asbestos or silica from the defendant, from the premises of the
2 defendant, or as a result of a product from the defendant;

3 40. "Substantial occupational exposure to asbestos" means employment of a cumulative period
4 of at least ten (10) years in an industry and occupation in which, for a substantial portion of a normal
5 work year for that occupation, the exposed person handled raw asbestos fibers; fabricated asbestos-
6 containing products; altered, repaired, or otherwise worked with an asbestos-containing product; or
7 worked in close proximity to other workers engaged in any of these activities;

8 41. "Substantial occupational exposure to silica" means employment of a cumulative period of
9 at least five (5) years in an industry and occupation in which, for a substantial portion of a normal work
10 year for that occupation, the exposed person handled silica; fabricated silica-containing products;
11 altered, repaired, or otherwise worked with a silica-containing product; or worked in close proximity to
12 other workers engaged in any of these activities;

13 42. "Supporting test results" means copies of the B-reading, pulmonary function tests (including
14 printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials and all
15 other elements required to demonstrate compliance with the equipment, quality, interpretation and
16 reporting standards set forth herein), lung volume tests, reports of X-ray examinations, diagnostic
17 imaging of the chest, pathology reports, and all other tests reviewed by the diagnosing, qualified
18 physician in reaching the physician's conclusion;

19 43. "Timed gas dilution" means a method for measuring total lung capacity in which the subject
20 breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific
21 time, and the concentration of that inert and insoluble gas in the lung is compared to the concentration
22 of that type of gas in the spirometer;
23
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1 44. "Total lung capacity" means the volume of gas contained in the lungs at the end of a
2 maximal inspiration;

3 45. "Veterans' benefits program" means a program for benefits in connection with military
4 service administered by the Veterans' Administration under Title 38, United States Code; and

5 46. "Workers' compensation law" means a law respecting a program administered by a state or
6 the United States to provide compensatory benefits, funded by a responsible employer or its insurance
7 carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases
8 or injuries. The term includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C.,
9 Section 901 et seq.) and the Federal Employees' Compensation Act (Chap. 81 of Title 5, United States
10 Code). The term does not include the Act of April 22, 1908, commonly known as the Federal
11 Employers' Liability Act (45 U.S.C., Section 51 et seq.), or any claim for exemplary or punitive
12 damages by an employee, estate, heir, representative or any other person or entity against the employer
13 of an exposed person arising out of or related to asbestos-related injury or silica-related injury.

14 SECTION 83. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
15 Section 67 of Title 76, unless there is created a duplication in numbering, reads as follows:

16 A. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS. Preliminary
17 Proceedings.

18 1. QUALIFIED PHYSICIAN'S REPORT. The claimant in any civil action alleging an asbestos
19 or silica claim shall file together with the complaint or other initial pleading a detailed narrative
20 medical report and diagnosis, signed under oath by a qualified physician and accompanied by
21 supporting test results, constituting prima facie evidence that the claimant meets the requirements of
22 this section. The written report shall be prepared by the diagnosing, qualified physician and shall not
23 be prepared by a lawyer or person working for or on behalf of any lawyer or law firm.
24

1 2. TIMING. The claimant in any civil action alleging an asbestos or silica claim pending on
2 November 1, 2009, shall file the written report and supporting test results described in paragraph 1 of
3 this subsection not later than one hundred eighty (180) days after November 1, 2009, or not later than
4 sixty (60) days prior to the commencement of trial, whichever occurs first.

5 3. DEFENDANT’S RIGHT TO CHALLENGE. The defendant shall be afforded a reasonable
6 opportunity to challenge the adequacy of the proffered prima facie evidence.

7 4. DISMISSAL. The claim shall be dismissed without prejudice upon a finding that the
8 claimant has failed to make the required prima facie showing.

9 B. NEW CLAIM REQUIRED INFORMATION.

10 1. IN GENERAL. The claimant in any civil action alleging an asbestos or silica claim filed in
11 this state on or after the effective date of the Asbestos and Silica Claims Priorities Act shall include a
12 sworn information form containing all of the following:

- 13 a. the name, address, date of birth, social security number, marital status,
14 occupation, and employer of the claimant, the exposed person, and any person
15 through which the claimant alleges exposure,
- 16 b. the claimant’s relationship to the exposed person or person through which the
17 claimant alleges exposure,
- 18 c. the specific location and manner of each alleged exposure, including for persons
19 alleging exposure through another person, the specific premises at which such
20 other person was exposed, the beginning and ending dates of each alleged
21 exposure, and the identity of the manufacturer of the specific asbestos or silica
22 product at issue,

- 1 d. the identity of the defendant or defendants against whom the claimant asserts a
2 claim,
3 e. the specific asbestos-related or silica-related disease claimed to exist,
4 f. information as to any lawsuits filed or claims made by or on behalf of the
5 claimant and exposed person, including any claims made against bankruptcy
6 trusts, and information as to the case caption, docket number, identification of the
7 court or bankruptcy trust in which the claim is or was pending, and a description
8 of the status of the case or claim, and
9 g. any supporting documentation relating to subparagraphs c through f of this
10 paragraph.

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

14 C. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT
15 ASBESTOS CLAIMS. No person shall bring or maintain an asbestos claim related to an alleged
16 nonmalignant asbestos-related condition in the absence of prima facie evidence that the exposed
17 person has a physical impairment for which asbestos exposure was a substantial contributing factor.
18 The prima facie showing shall be made as to each defendant and include a detailed narrative medical
19 report and diagnosis signed under oath by a qualified physician that includes all of the following:

20 1. Radiological or pathological evidence of asbestosis or radiological evidence of diffuse
21 bilateral pleural thickening or a computed tomography or high-resolution computed tomography scan
22 showing evidence of asbestosis or diffuse pleural thickening;
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1 2. Evidence verifying that a qualified physician has taken a detailed occupational and exposure
2 history from the exposed person or, if he is deceased, from the person most knowledgeable about the
3 exposures that form the basis of the claim, including identification of all of the exposed person's
4 principal places of employment and exposures to airborne contaminants and whether each place of
5 employment involved exposures to airborne contaminants, including asbestos fibers or other disease-
6 causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of
7 any exposure;

8 3. Evidence verifying that a qualified physician has taken a detailed medical, social, and
9 smoking history from the exposed person or, if he is deceased, from the person most knowledgeable,
10 including a thorough review of the past and present medical problems of the exposed person and their
11 most probable cause;

12 4. Evidence demonstrating that at least fifteen (15) years elapsed between the date of first
13 exposure to asbestos and the date of diagnosis;

14 5. Evidence verifying that a qualified physician, on the basis of a personal medical examination
15 and pulmonary function testing of the exposed person, or if the exposed person is deceased, based
16 upon the person's medical records, that the claimant has, or deceased person had, a permanent
17 respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's
18 Guides to the Evaluation of Permanent Impairment;

19 6. Evidence verifying that a qualified physician has determined that asbestosis or diffuse
20 bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial
21 contributing factor to the physical impairment, based on a determination that the exposed person has:

- 22 a. forced vital capacity below the predicted lower limit of normal and FEV1/FVC
23 ratio, using actual values, at or above the predicted lower limit of normal,
24

- 1 b. total lung capacity, by plethysmography or timed gas dilution, below the
2 predicted lower limit of normal, or
3 c. a chest X-ray showing bilateral small, irregular opacities (s, t, or u) graded by a
4 certified B-reader at least 2/1 on the ILO scale; and

5 7. Evidence verifying that the qualified physician signing the detailed narrative medical report
6 and diagnosis has concluded that exposure to asbestos was a substantial contributing factor to the
7 physical impairment and not more probably the result of other causes. An opinion that the medical
8 findings and impairment are “consistent with” or “compatible with” exposure to asbestos, or words to
9 that effect, do not satisfy the requirements of this subsection.

10 D. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED LUNG CANCER. No person
11 shall bring or maintain an asbestos claim related to alleged asbestos-related lung cancer in the absence
12 of a prima facie showing of a primary lung cancer for which exposure to asbestos was a substantial
13 contributing factor. The prima facie showing shall be made as to each defendant and include a detailed
14 narrative medical report and diagnosis signed under oath by a qualified physician that includes all of
15 the following:

16 1. Evidence verifying that a qualified physician has taken a detailed occupational and exposure
17 history from the exposed person or, if he is deceased, from the person most knowledgeable about the
18 exposures that form the basis of the claim, including identification of all of the principal places of
19 employment of the exposed person and exposures to airborne contaminants and whether each place of
20 employment involved exposures to airborne contaminants, including asbestos fibers or other disease-
21 causing dusts or fumes, that may cause cancer and the nature, duration, and level of any exposure;
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1 2. Evidence verifying that a qualified physician has taken a detailed medical, social, and
2 smoking history from the exposed person or, if he is deceased, from the person most knowledgeable,
3 including a thorough review of the past and present medical problems and their most probable cause;

4 3. A diagnostic report signed by a qualified physician who is board-certified in pathology,
5 pulmonary medicine or oncology verifying that the exposed person has primary lung cancer and that
6 exposure to asbestos was a substantial contributing factor, including pathological evidence of the
7 presence of a primary lung cancer if the diagnosis is made by a qualified physician who is board-
8 certified in pulmonary medicine;

9 4. Evidence demonstrating that at least fifteen (15) years elapsed between the date of first
10 exposure to asbestos and the date of diagnosis;

11 5. Evidence demonstrating:

- 12 a. if the exposed person is a nonsmoker, radiological or pathological evidence of
13 asbestosis or radiological evidence of diffuse bilateral pleural thickening or a
14 computed tomography or high-resolution computed tomography scan showing
15 evidence of asbestosis or diffuse bilateral pleural thickening or evidence verifying
16 substantial occupational exposure to asbestos or evidence verifying exposure to
17 asbestos at least equal to twenty-five fiber per cc years as determined to a
18 reasonable degree of scientific probability by a scientifically valid retrospective
19 exposure reconstruction conducted by a certified industrial hygienist or certified
20 safety professional based upon all reasonably available quantitative air monitoring
21 data and all other reasonably available information concerning occupational and
22 exposure history,

- 1 b. if the exposed person is a smoker, radiological or pathological evidence of
2 asbestosis or radiological evidence of diffuse bilateral pleural thickening or a
3 computed tomography or high-resolution computed tomography scan showing
4 evidence of asbestosis or diffuse bilateral pleural thickening and evidence
5 verifying substantial occupational exposure to asbestos or exposure to asbestos at
6 least equal to twenty-five fiber per cc years as determined to a reasonable degree
7 of scientific probability by a scientifically valid retrospective exposure
8 reconstruction conducted by certified industrial hygienist or certified safety
9 professional based upon all reasonably available quantitative air monitoring data
10 and all other reasonably available information concerning occupational and
11 exposure history, or
- 12 c. if a claimant alleges an asbestos claim based upon lung cancer and alleges that the
13 exposure of the claimant to asbestos was the result of living with an exposed
14 person, the claimant shall demonstrate radiological or pathological evidence of
15 asbestosis or radiological evidence of diffuse bilateral pleural thickening or a
16 computed tomography or high-resolution computed tomography scan showing
17 evidence of asbestosis or diffuse bilateral pleural thickening and verify that the
18 exposed person had substantial occupational exposure to asbestos or exposure to
19 asbestos at least equal to twenty-five fiber per cc years as determined to a
20 reasonable degree of scientific probability by a scientifically valid retrospective
21 exposure reconstruction conducted by a certified industrial hygienist or certified
22 safety professional based upon all reasonably available quantitative air monitoring
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1 data and all other reasonably available information concerning occupational and
2 exposure history; and

3 6. Evidence verifying that the qualified physician signing the detailed narrative medical report
4 and diagnosis has concluded that exposure to asbestos was a substantial contributing factor to the lung
5 cancer of the exposed person and not more probably the result of other causes. An opinion stating that
6 the medical findings and lung cancer are “consistent with” or “compatible with” exposure to asbestos,
7 or words to that effect, do not satisfy the requirements of this subsection.

8 E. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED CANCER OF THE COLON,
9 RECTUM, LARYNX, PHARYNX, OR ESOPHAGUS (OTHER CANCER). No person shall bring or
10 maintain an asbestos claim related to an alleged asbestos-related cancer of the colon, rectum, larynx,
11 pharynx, or esophagus (other cancer) in the absence of a prima facie showing of a primary cancer of
12 the colon, rectum, larynx, pharynx, or esophagus for which exposure to asbestos was a substantial
13 contributing factor. The prima facie showing shall be made as to each defendant and include a detailed
14 narrative medical report and diagnosis signed under oath by a qualified physician that includes all of
15 the following:

16 1. Evidence verifying that a qualified physician has taken a detailed occupational and exposure
17 history from the exposed person or, if the person is deceased, from the person most knowledgeable
18 about the exposures that form the basis of the claim, including identification of all of the principal
19 places of employment and exposure to airborne contaminants and whether each place of employment
20 involved exposures to airborne contaminants, including asbestos fibers or other disease-causing dusts
21 or fumes, that may cause cancer and the nature, duration, and level of any exposure;

22 2. Evidence verifying that a qualified physician has taken a detailed medical, social, and
23 smoking history from the exposed person or, if he is deceased, from the person most knowledgeable,
24

1 including a thorough review of the past and present medical problems of the exposed person and their
2 most probable cause;

3 3. A diagnosis by a qualified physician who is board-certified in pathology or oncology,
4 gastroenterology or otolaryngology, as appropriate for the type of cancer claimed, or primary cancer of
5 the colon, rectum, larynx, pharynx, or esophagus and that exposure to asbestos was a substantial
6 contributing factor;

7 4. Evidence demonstrating that at least fifteen (15) years elapsed between the date of first
8 exposure to asbestos and the date of diagnosis;

9 5. Radiological or pathological evidence of asbestosis or radiological evidence of diffuse
10 bilateral pleural thickening or a computed tomography or high-resolution computed tomography scan
11 showing evidence of asbestosis or diffuse bilateral pleural thickening and evidence verifying
12 substantial occupational exposure or exposure to asbestos at least equal to twenty-five fiber per cc
13 years as determined to a reasonable degree of scientific probability by a scientifically valid
14 retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety
15 professional based upon all reasonably available quantitative air monitoring data and all other
16 reasonably available information concerning the occupational and exposure history of the exposed
17 person;

18 6. If a claimant alleges an asbestos claim based upon cancer of the colon, rectum, larynx,
19 pharynx, or esophagus and alleges that the exposure of the claimant to asbestos was the result of living
20 with an exposed person, the claimant shall have evidence verifying that the exposed person had
21 substantial occupational exposure to asbestos or exposure to asbestos at least equal to twenty-five fiber
22 per cc years as determined to a reasonable degree of scientific probability by a scientifically valid
23 retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety
24

1 professional based upon all reasonably available quantitative air monitoring data and all other
2 reasonably available information concerning occupational and exposure history; and

3 7. Evidence verifying that the qualified physician signing the detailed narrative medical report
4 and diagnosis has concluded that exposure to asbestos was a substantial contributing factor to the
5 cancer and not more probably the result of other causes. An opinion stating that the medical findings
6 and cancer are “consistent with” or “compatible with” exposure to asbestos, or words to that effect do
7 not satisfy the requirements of this subsection.

8 F. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED MESOTHELIOMA. No person
9 shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima
10 facie showing of an asbestos-related mesothelioma. The prima facie showing shall be made as to each
11 defendant and include all of the following:

12 1. A report by a qualified physician who is board-certified in pathology, pulmonary medicine or
13 oncology verifying a diagnosis of mesothelioma and that exposure to asbestos was a substantial
14 contributing factor, including pathological evidence of the presence of a mesothelioma if the diagnosis
15 is made by a qualified physician who is board-certified in pulmonary medicine; and

16 2. Evidence of identifiable exposure to asbestos resulting from substantial occupational
17 exposure or exposure to asbestos fibers brought into the home of the claimant by a person with
18 substantial occupational exposure to asbestos.

19 G. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED CLAIMS OTHER THAN
20 NONMALIGNANT CONDITIONS, LUNG CANCER, CANCER OF THE COLON, RECTUM,
21 LARYNX, PHARYNX, OR ESOPHAGUS, OR MESOTHELIOMA. No person shall bring or
22 maintain an asbestos claim other than an asbestos-related nonmalignant condition, asbestos-related
23 lung cancer, asbestos-related cancer of the colon, rectum, larynx, pharynx, or esophagus, or asbestos-
24

1 related mesothelioma, in the absence of a prima facie showing of a primary cancer for which exposure
2 to asbestos was a substantial contributing factor. The prima facie showing shall be made as to each
3 defendant and include a detailed narrative medical report and diagnosis signed under oath by a
4 qualified physician that includes all of the following:

5 1. A diagnosis of an asbestos-related disease based on findings by a qualified physician and
6 credible evidence of identifiable exposure to asbestos resulting from substantial occupational exposure
7 or exposure to asbestos fibers brought into the home of the claimant by a person with substantial
8 occupational exposure to asbestos;

9 2. Evidence verifying that the qualified physician signing the detailed narrative medical report
10 and diagnosis has concluded that exposure to asbestos was a substantial contributing factor to the
11 medical findings and impairment and not more probably the result of other causes. An opinion stating
12 that the medical findings and impairment are “consistent with” or “compatible with” exposure to
13 asbestos, or words to that effect, do not satisfy the requirements of this subsection; and

14 3. The court holds an evidentiary hearing and finds that the claimant has established a prima
15 facie showing of physical impairment to which exposure to asbestos was a substantial contributing
16 factor.

17 **H. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICOSIS CLAIMS.**

18 No person shall bring or maintain a silica claim related to alleged silicosis in the absence of a prima
19 facie showing of physical impairment as a result of silicosis. The prima facie showing shall be made
20 as to each defendant and include a detailed narrative medical report and diagnosis signed under oath by
21 a qualified physician that includes all of the following:

22 1. Radiological or pathological evidence of silicosis or a computed tomography or high-
23 resolution computed tomography scan showing evidence of silicosis;
24

1 2. Evidence verifying that a qualified physician has taken a detailed occupational and exposure
2 history from the exposed person or, if the person is deceased, from the person most knowledgeable
3 about the exposures that form the basis of the claim, including identification of all principal places of
4 employment and exposures to airborne contaminants and whether each place of employment involved
5 exposures to airborne contaminants, including silica or other disease-causing dusts or fumes, that may
6 cause pulmonary impairment and the nature, duration, and level of any exposure;

7 3. Evidence verifying that a qualified physician has taken a detailed medical, social, and
8 smoking history from the exposed person or, if the person is deceased, from the person most
9 knowledgeable, including a thorough review of the past and present medical problems and their most
10 probable cause;

11 4. Evidence demonstrating that a sufficient latency period elapsed between the date of first
12 exposure to silica and the day of diagnosis;

13 5. Evidence verifying that the qualified physician, on the basis of a personal medical
14 examination and pulmonary function testing of the exposed person (or, if the exposed person is
15 deceased, based upon the person's medical records) that the claimant has (or deceased person had) a
16 permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the
17 AMA's Guides to the Evaluation of Permanent Impairment; and

18 6. Evidence verifying that the qualified physician signing the detailed narrative medical report
19 and diagnosis has concluded that exposure to silica was a substantial contributing factor to the physical
20 impairment and not more probably the result of other causes. An opinion stating that the medical
21 findings and impairment are "consistent with" or "compatible with" exposure to silica, or words to that
22 effect, do not satisfy the requirements of this subsection.
23
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1 I. PRIMA FACIE EVIDENCE OF SILICA-RELATED LUNG CANCER. No person shall
2 bring or maintain a silica claim related to an alleged silica-related lung cancer in the absence of a prima
3 facie showing of a primary lung cancer for which exposure to silica was a substantial contributing
4 factor. The prima facie showing shall be made as to each defendant and include a detailed narrative
5 medical report and diagnosis signed under oath by a qualified physician that includes all of the
6 following:

7 1. Evidence verifying that a qualified physician has taken a detailed occupational and exposure
8 history from the exposed person or, if the exposed person is deceased, from the person most
9 knowledgeable about the exposures that form the basis of the claim, including identification of all
10 principal places of employment and exposures to airborne contaminants and whether each place of
11 employment involved exposures to airborne contaminants, including disease-causing dusts or fumes,
12 that may cause cancer and the nature, duration, and level of any exposure;

13 2. Evidence verifying that a qualified physician has taken a detailed medical, social, and
14 smoking history from the exposed person or, if the person is deceased, from the person most
15 knowledgeable, including a thorough review of the past and present medical problems and their most
16 probable cause;

17 3. A diagnostic report signed by a qualified physician who is board-certified in pathology,
18 pulmonary medicine or oncology verifying that the exposed person has primary lung cancer and that
19 exposure to silica was a substantial contributing factor, including pathological evidence of the presence
20 of a primary lung cancer if the diagnosis is made by a qualified physician who is board-certified in
21 pulmonary medicine;

22 4. Evidence demonstrating that at least fifteen (15) years elapsed between the date of first
23 exposure to silica and the date of diagnosis;
24

1 5. Evidence demonstrating:

- 2 a. if the exposed person is a nonsmoker, radiological or pathological evidence of
3 silicosis or a computed tomography or high-resolution computed tomography
4 scan showing evidence of silicosis or evidence verifying substantial occupational
5 exposure to silica, and
6 b. if the exposed person is a smoker, radiological or pathological evidence of
7 silicosis or a computed tomography or high-resolution computed tomography
8 scan showing evidence of silicosis and evidence verifying substantial
9 occupational exposure to silica; and

10 6. Evidence verifying that the qualified physician signing the detailed narrative medical report
11 and diagnosis has concluded that exposure to silica was a substantial contributing factor to the lung
12 cancer of the exposed person and not more probably the result of other causes. An opinion stating that
13 the medical findings and lung cancer are “consistent with” or “compatible with” exposure to silica, or
14 words to that effect, do not satisfy the requirements of this subsection.

15 J. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR OTHER SILICA-
16 RELATED CLAIMS. No person shall bring or maintain a silica claim related to an alleged silica-
17 related condition, other than silicosis or silica-related lung cancer, in the absence of a prima facie
18 showing of physical impairment as a result of a medical condition for which exposure to silica was a
19 substantial contributing factor. The prima facie showing shall be made as to each defendant and
20 include a detailed narrative medical report and diagnosis signed under oath by a qualified physician
21 that includes all of the following:
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1 1. A diagnosis of a silica-related disease based on findings by a qualified physician and credible
2 evidence of identifiable exposure, to silica resulting from substantial occupational exposure, or
3 exposure brought into the home of the claimant by a person with substantial occupational exposure;

4 2. Evidence verifying that the qualified physician signing the detailed narrative medical report
5 and diagnosis has concluded that exposure was a substantial contributing factor to the medical findings
6 and impairment and not more probably the result of other causes. An opinion stating that the medical
7 findings and impairment are “consistent with” or “compatible with” exposure to silica, or words to that
8 effect, do not satisfy the requirements of this subsection; and

9 3. The court holds an evidentiary hearing and finds that the claimant has established a prima
10 facie showing of physical impairment to which exposure was a substantial contributing factor.

11 **K. COMPLIANCE WITH TECHNICAL STANDARDS.** Evidence relating to physical
12 impairment under the Asbestos and Silica Claims Priorities Act, including pulmonary function testing
13 and diffusing studies, shall:

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

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

22 3. Not be obtained under the condition that the claimant retains the legal services of the attorney
23 or law firm sponsoring the examination, test, or screening.
24

1 L. PREMISES OWNERS. In any asbestos or silica claim, a premises owner, or any entity
2 performing any operations on a premises, is not liable to a plaintiff for asbestos or silica claims unless
3 that plaintiff's alleged exposure occurred while the exposed person was at the premises.

4 SECTION 84. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
5 Section 68 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

20 D. CONSOLIDATION. 1. A court may consolidate for trial any number and type of asbestos
21 or silica claims with the consent of all the parties. In the absence of such consent, the court may
22 consolidate for trial only asbestos claims or silica claims relating to the exposed person and members
23 of his or her household.
24

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

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

6 SECTION 85. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
7 Section 68 of Title 76, unless there is created a duplication in numbering, reads as follows:

8 STATUTE OF LIMITATIONS; TWO-DISEASE RULE. A. STATUTE OF LIMITATIONS. 1.
9 With respect to an asbestos or silica claim not barred by limitations in this state as of the effective date
10 of the Asbestos and Silica Claims Priorities Act, a claimant's cause of action shall not accrue, nor shall
11 the running of limitations commence, prior to the earlier of the date:

- 12 a. the exposed person received a medical diagnosis of an asbestos-related
13 impairment or silica-related impairment,
- 14 b. the exposed person discovered facts that would have led a reasonable person to
15 obtain a medical diagnosis with respect to the existence of an asbestos-related
16 impairment or silica-related impairment, or
- 17 c. the date of death of the exposed person having an asbestos-related or silica-related
18 impairment.

19 2. Nothing in the section shall be construed to revive or extend limitations with respect to any
20 claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as a
21 matter of applicable state law as of November 1, 2009.

1 3. Nothing in this section shall be construed so as to adversely affect, impair, limit, modify or
2 nullify any settlement or other agreements with respect to an asbestos or silica claim entered into prior
3 to November 1, 2009.

4 B. TWO-DISEASE RULE. An asbestos or silica claim arising out of a nonmalignant condition
5 shall be a distinct cause of action from a claim for an asbestos-related or silica-related cancer. Where
6 otherwise permitted under state law, no damages shall be awarded for fear or increased risk of future
7 disease in any civil action asserting an asbestos or silica claim.

8 SECTION 86. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
9 Section 69 of Title 76, unless there is created a duplication in numbering, reads as follows:

10 EFFECTIVE DATE. The Asbestos and Silica Claims Priorities Act shall apply to all asbestos or
11 silica claims filed on or after November 1, 2009. The Asbestos and Silica Claims Priorities Act shall
12 also apply to any pending asbestos or silica claims in which trial has not commenced by November 1,
13 2009, except that any provisions of these sections which would be unconstitutional if applied
14 retroactively shall be applied prospectively.

15 SECTION 87. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
16 Section 70 of Title 76, unless there is created a duplication in numbering, reads as follows:

17 SHORT TITLE. Sections 87 through 94 of this act shall be known and may be cited as the
18 “Innocent Successor Asbestos-Related Liability Fairness Act”.

19 SECTION 88. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
20 Section 71 of Title 76, unless there is created a duplication in numbering, reads as follows:

21 DEFINITIONS. As used in the Innocent Successor Asbestos-Related Liability Fairness Act:
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1 1. "Asbestos claim" means any claim, wherever or whenever made, for damages, losses,
2 indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos,
3 including:

4 a. the health effects of exposure to asbestos, including any claim for:

5 (1) personal injury or death,

6 (2) mental or emotional injury,

7 (3) risk of disease or other injury, or

8 (4) the costs of medical monitoring or surveillance,

9 b. any claim made by or on behalf of any person exposed to asbestos, or a
10 representative, spouse, parent, child, or other relative of the person, and

11 c. any claim for damage or loss caused by the installation, presence, or removal of
12 asbestos;

13 2. "Corporation" means a corporation for profit, including a domestic corporation organized
14 under the laws of this state, or a foreign corporation organized under laws other than the laws of this
15 state;

16 3. "Innocent successor" means a corporation that assumes or incurs or has assumed or incurred
17 successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972,
18 or is any of that successor corporation's successors, and that after a merger or consolidation did not
19 continue in the business of mining asbestos, in the business of selling or distributing asbestos fibers, or
20 in the business of manufacturing, distributing, removing, or installing asbestos-containing products that
21 were the same or substantially the same as those products previously manufactured, distributed,
22 removed, or installed by the transferor;

1 4. "Successor asbestos-related liabilities" means any liabilities, whether known or unknown,
2 asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due
3 or to become due, which are related to asbestos claims and were assumed or incurred by a corporation
4 as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation
5 related to the merger or consolidation with or into another corporation, or that are related in any way to
6 asbestos claims based on the exercise of control or the ownership of stock of the corporation before the
7 merger or consolidation. The term includes liabilities that, after the time of the merger or
8 consolidation for which the fair market value of total gross assets is determined pursuant to Section 91
9 of this act, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged,
10 by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a
11 transferor, in connection with settlements, judgments, or other discharges in this state or another
12 jurisdiction; and

13 5. "Transferor" means a corporation from which successor asbestos-related liabilities are or
14 were assumed or incurred.

15 SECTION 89. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
16 Section 72 of Title 76, unless there is created a duplication in numbering, reads as follows:

17 APPLICABILITY. A. The limitations in Section 90 of this act shall apply to any innocent
18 successor corporation.

19 B. The limitations in Section 90 of this act shall not apply to:

20 1. Workers' compensation benefits paid by or on behalf of an employer to an employee under
21 this state's Workers' Compensation Act or a comparable workers' compensation law of another
22 jurisdiction;

- 1 2. Any claim against a corporation that does not constitute a successor asbestos-related liability;
2 or
3 3. Any obligations under the National Labor Relations Act, 29 U.S.C., Section 151 et seq., as
4 amended, or under any collective bargaining agreement.

5 SECTION 90. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
6 Section 73 of Title 76, unless there is created a duplication in numbering, reads as follows:

7 LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. A. Except as
8 further limited in subsection B of this section, the cumulative successor asbestos-related liabilities of
9 an innocent successor corporation are limited to the fair market value of the total gross assets of the
10 transferor determined as of the time of the merger or consolidation. The innocent successor
11 corporation does not have any responsibility for successor asbestos-related liabilities in excess of this
12 limitation.

13 B. If the transferor had assumed or incurred successor asbestos-related liabilities in connection
14 with a prior merger or consolidation with a prior transferor, then the fair market value of the total
15 assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be
16 substituted for the limitation set forth in subsection A of this section for purposes of determining the
17 limitation of liability of an innocent successor corporation.

18 SECTION 91. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
19 Section 74 of Title 76, unless there is created a duplication in numbering, reads as follows:

20 ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. A. An innocent
21 successor corporation may establish the fair market value of total gross assets for the purpose of the
22 limitations under Section 90 of this act through any method reasonable under the circumstances,
23 including:
24

1 1. By reference to the going concern value of the assets or to the purchase price attributable to or
2 paid for the assets in an arm's-length transaction; or

3 2. In the absence of other readily available information from which fair market value can be
4 determined, by reference to the value of the assets recorded on a balance sheet.

5 B. Total gross assets include intangible assets.

6 C. To the extent total gross assets include any liability insurance issued to the transferor whose
7 assets are being valued for the purposes of this section, the applicability, terms, conditions, and limits
8 of such insurance shall not be affected by this act, nor shall the Innocent Successor Asbestos-Related
9 Liability Fairness Act otherwise affect the rights and obligations of a transferor, successor, or insurer
10 under any insurance contract and/or any related agreements, including, without limitation, rights and
11 obligations under preenactment settlements between a transferor or successor and its insurers resolving
12 liability insurance coverage, and the rights of an insurer to seek payment for applicable deductibles,
13 retrospective premiums or self-insured retentions or to seek contribution from a successor for
14 uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable.
15 Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a
16 settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or
17 successor with the insurers of the transferor before the effective date of the Innocent Successor
18 Asbestos-Related Liability Fairness Act shall be determinative of the total coverage of such liability
19 insurance to be included in the calculation of the transferor's total gross assets.

20 SECTION 92. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
21 Section 75 of Title 76, unless there is created a duplication in numbering, reads as follows:
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1 ADJUSTMENT. A. Except as provided in subsections B, C, and D of this section, the fair
2 market value of total gross assets at the time of a merger or consolidation increases annually at a rate
3 equal to the sum of:

4 1. The prime rate as listed in the first edition of “The Wall Street Journal” published for each
5 calendar year since the merger or consolidation, unless the prime rate is not published in that edition of
6 “The Wall Street Journal”, in which case any reasonable determination of the prime rate on the first
7 day of the year may be used; and

8 2. One percent (1%).

9 B. The rate provided for in subsection A of this section shall not be compounded.

10 C. The adjustment of fair market value of total gross assets continues as provided under
11 subsection A of this section until the date the adjusted value is first exceeded by the cumulative
12 amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the
13 innocent successor corporation or a predecessor, or by or on behalf of a transferor, after the time of the
14 merger or consolidation for which the fair market value of total gross assets is determined.

15 D. No adjustment of the fair market value of total gross assets shall be applied to any liability
16 insurance that may be included in the definition of total gross assets by subsection C of Section 91 of
17 this act.

18 SECTION 93. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
19 Section 76 of Title 76, unless there is created a duplication in numbering, reads as follows:

20 SCOPE OF ACT. The courts of this state shall construe the provisions of the Innocent Successor
21 Asbestos-Related Liability Fairness Act liberally with regard to innocent successors.

22 SECTION 94. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
23 Section 77 of Title 76, unless there is created a duplication in numbering, reads as follows:
24

1 EFFECTIVE DATE. The Innocent Successor Asbestos-Related Liability Fairness Act shall
2 apply to all asbestos claims filed against an innocent successor on or after the effective date of the
3 Innocent Successor Asbestos-Related Liability Fairness Act. The Innocent Successor Asbestos-
4 Related Liability Fairness Act shall also apply to any pending asbestos claims against an innocent
5 successor in which trial has not commenced as of the effective date of the Innocent Successor
6 Asbestos-Related Liability Fairness Act, except that any provisions of these sections which would be
7 unconstitutional if applied retroactively shall be applied prospectively.

8 SECTION 95. REPEALER Section 1, Chapter 368, O.S.L. 2004 (5 O.S. Supp. 2008,
9 Section 7.1), is hereby repealed.

10 SECTION 96. REPEALER Section 4, Chapter 390, O.S.L. 2003, Section 6, Chapter 390,
11 O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L.
12 2004 (63 O.S. Supp. 2008, Sections 1-1708.1D, 1-1708.1F and 1-1708.1F-1), are hereby repealed.

13 SECTION 97. REPEALER Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp. 2008,
14 Section 6602), is hereby repealed.

15 SECTION 98. The provisions of this act are severable and if any part or provision shall be held
16 void the decision of the court so holding shall not affect or impair any of the remaining parts or
17 provisions of this act.

18 SECTION 99. This act shall become effective November 1, 2009.

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