

1 ENGROSSED HOUSE
2 BILL NO. 1603

By: Sullivan, McCullough, Derby
and Osborn of the House

3 and

4 Coffee of the Senate
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8 An Act relating to civil procedure; requiring
9 appointment of attorney for specified purpose;
10 providing for award of certain fees; requiring
11 plaintiff to attach certain affidavit in civil action
12 for negligence; defining term; providing statute of
13 repose for product liability actions; providing
14 exclusions; clarifying scope and application;
15 amending Section 2, Chapter 368, O.S.L. 2004 and 12
16 O.S. 2001, Sections 134 and 137 (12 O.S. Supp. 2008,
17 Section 130), which relate to venue; modifying venue
18 for certain actions; authorizing the court to decline
19 to exercise jurisdiction under the doctrine of forum
20 non conveniens; providing that bringing action in
21 county in which venue does not lie does not toll
22 statute of limitations; requiring each plaintiff to
23 establish venue in cases in which there are multiple
24 plaintiffs; providing for interlocutory appeals;
providing requirements for Oklahoma Uniform Jury
Instructions; amending 12 O.S. 2001, Section 588,
which relates to general and specific findings;
modifying procedure; amending 12 O.S. 2001, Sections
683 and 684, as amended by Sections 3 and 4, Chapter
368, O.S.L. 2004 (12 O.S. Supp. 2008, Sections 683
and 684), which relate to dismissal; modifying
procedure for 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

1 O.S. 2001, Sections 990.4, as last amended by Section
2 6, Chapter 1, O.S.L. 2005, 993, 2004, as amended by
3 Section 7, Chapter 402, O.S.L. 2002, 2008, 2009,
4 2011, as amended by Section 10, Chapter 368, O.S.L.
5 2004, Section 1, Chapter 370, O.S.L. 2004, as amended
6 by Section 10, Chapter 12, O.S.L. 2007, 2023 and 2702
7 (12 O.S. Supp. 2008, Sections 990.4, 2004, 2011 and
8 2011.1), which relate to stays of enforcement,
9 interlocutory appeals, the Oklahoma Pleading Code,
10 frivolous claims or defenses, class actions and
11 expert testimony; modifying certain appeal bond
12 procedures; modifying grounds and procedure for
13 interlocutory appeals; modifying time limit for
14 service of process; modifying monetary threshold for
15 which amount of damages is not specified; limiting
16 amount of damages that may be recovered under certain
17 circumstances; modifying procedure for petition for
18 special damages; modifying definitions; providing
19 procedure for pretrial conferences; requiring certain
20 standard of review upon appeal of order maintaining a
21 class action; requiring stay of discovery while
22 appeal is pending; requiring potential class members
23 to request inclusion in the class; providing for
24 determination of attorney fees in class actions;
requiring plaintiffs to sign representation
agreements; providing method of calculating attorney
fees for class action cases; providing for judicial
discretion to modify the fee award; requiring
attorney fees to include noncash benefits in certain
circumstances; defining term; providing class
membership limitations; providing procedure for
summary judgment; providing that certain evidence is
admissible in certain actions; providing requirements
for expert testimony; providing role of the court;
providing for interpretation; stating legislative
intent; amending 12 O.S. 2001, Section 3226, as last
amended by Section 3, Chapter 519, O.S.L. 2004 (12
O.S. Supp. 2008, Section 3226), which relates to
discovery; eliminating requirement that a party
produce certain agreement; requiring certain
disclosures prior to discovery request; amending 15
O.S. 2001, Sections 754 and 761.1, which relate to
the Oklahoma Consumer Protection Act; updating
statutory reference; excepting certain actions,
transactions, and claims from the Oklahoma Consumer
Protection Act; requiring certain losses to be
ascertainable; providing for private right of action

1 for actual damages; providing for determination of
2 actual damages; allowing court to order reimbursement
3 of certain costs and fees; providing for maximum
4 amount that court may order as reimbursement of
5 certain costs and fees; requiring certain proof in
6 order to recover damages; defining terms; amending 23
7 O.S. 2001, Section 9.1, as amended by Section 1,
8 Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2008, Section
9 9.1), which relates to punitive damages; modifying
10 factors to be considered in awarding punitive
11 damages; requiring presentation of prima facie
12 evidence for punitive damages claims prior to certain
13 discovery; prohibiting punitive damages in product
14 liability actions under certain conditions; providing
15 restrictions and procedures for punitive damages in
16 medical liability actions; providing for periodic
17 payment of certain damages; amending Section 18,
18 Chapter 368, O.S.L. 2004 and 23 O.S. 2001, Section 61
19 (23 O.S. Supp. 2008, Section 15), which relate to
20 joint and several liability and obligations not
21 arising from contract; modifying exceptions to
22 severability; providing limits of liability for
23 noneconomic damages for certain actions; requiring
24 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 Section
7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2008,
Section 1-1708.1G), which relates to prejudgment
interest for medical liability actions; providing
time that prejudgment interest accrues; amending 63
O.S. 2001, Section 1-1709.1, as last amended by
Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp.
2008, Section 1-1709.1), which relates to peer review
information; providing that certain information is
not subject to discovery or admissible at trial;

1 requiring certain findings for certain information to
2 be admissible; creating the Uniform Emergency
3 Volunteer Health Practitioners Act; providing short
4 title; defining terms; providing for application;
5 authorizing the State Department of Health to
6 regulate volunteer health practitioners in a declared
7 emergency; requiring certain consultation and
8 compliance of specified host entities; setting
9 requirements for a volunteer health practitioner
10 registration system; permitting certain confirmation;
11 requiring certain notification; authorizing host
12 entities to refuse the services of a volunteer health
13 practitioner; permitting certain volunteer health
14 practitioners to practice in this state during a
15 declared emergency; prohibiting certain volunteer
16 health practitioners from certain protections;
17 defining terms; clarifying credentialing or
18 privileging standards; requiring adherence to certain
19 scopes of practice; prohibiting the providing of
20 services outside a practitioner's scope of practice;
21 authorizing the Department or a host entity to
22 restrict certain services; providing certain
23 protection; permitting certain licensing boards to
24 impose administrative sanctions; requiring certain
reporting; requiring certain consideration; providing
for certain rights, privileges or immunities;
permitting the Department to incorporate certain
volunteer health practitioners; authorizing the State
Board of Health to promulgate rules; requiring
consideration for uniformity; amending 63 O.S. 2001,
Sections 683.9 and 683.13, as amended by Sections 9
and 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008,
Sections 683.9 and 683.13), which relate to the
Emergency Management Act of 2003; modifying
definition; providing certain exclusion; stating
legislative findings; defining terms; providing for
confidentiality of certain records; prohibiting
certain testimony; limiting liability of certain
persons; prohibiting submission of certain
information into evidence; amending 76 O.S. 2001,
Sections 5.5, 25 and 31, which relate to limitations
for certain actions, professional review bodies,
civil immunity for volunteers, charitable
organizations, and not-for-profit corporations;
establishing a statute of repose for certain actions;
providing that peer review information is private,
confidential and privileged; providing exception;

1 providing notice requirement; providing that certain
2 information is not subject to discovery or admissible
3 at trial; prohibiting testimony by certain persons;
4 modifying definition; creating the Common Sense
5 Consumption Act; providing short title; stating
6 legislative intent; defining terms; providing
7 immunity from civil liability for certain claims;
8 providing exception; providing pleading requirements;
9 providing for stay of discovery and other proceedings
10 in certain circumstances; providing scope of claims
11 covered; stating legislative findings; limiting
12 liability of certain manufacturers; limiting
13 liability of certain associations; clarifying
14 applicability of certain provisions; creating the
15 Product Liability Act; providing short title;
16 defining terms; providing that a manufacturer or
17 seller shall not be liable for inherently unsafe
18 products; providing procedures and requirements in
19 actions alleging design defect; limiting liability of
20 nonmanufacturing sellers; providing rebuttable
21 presumption in actions relating to pharmaceutical
22 products; providing rebuttable presumption concerning
23 compliance with government standards; defining term;
24 making evidence regarding measures taken after injury
inadmissible; requiring filing of certain affidavit
and procedures therefor; creating the Asbestos and
Silica Claims Priorities Act; providing legislative
findings; stating purposes; defining terms; providing
elements of proof and proceedings for asbestos or
silica claims; providing that certain evidence does
not create a presumption; providing that certain
evidence is inadmissible; providing for discovery;
providing for consolidation of claims; authorizing
the court to decline to exercise jurisdiction in
certain circumstances; providing for venue; providing
a statute of limitations; establishing two-disease
rule; providing scope of applicability of the
Asbestos and Silica Claims Priorities Act; creating
the Innocent Successor Asbestos-Related Liability
Fairness Act; defining terms; providing limitations
on successor asbestos-related liabilities; providing
method for establishing fair market value of gross
assets; providing for adjustment of fair market
value; providing scope of act; providing date of
application; repealing Section 1, Chapter 368, O.S.L.
2004 (5 O.S. Supp. 2008, Section 7.1), which relates
to the award of attorney fees in class actions;

1 repealing Section 4, Chapter 390, O.S.L. 2003,
2 Section 6, Chapter 390, O.S.L. 2003, as amended by
3 Section 21, Chapter 368, O.S.L. 2004 and Section 22,
4 Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2008,
5 Sections 1-1708.1D, 1-1708.1F and 1-1708.1F-1), which
6 relate to limits on noneconomic damages in medical
7 liability actions; repealing Section 19, Chapter 473,
8 O.S.L. 2003 (63 O.S. Supp. 2008, Section 6602), which
9 relates to emergency powers regarding licensing and
10 appointment of health personnel; providing for
11 codification; providing for noncodification;
12 providing for severability; and providing an
13 effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 H. This section shall not apply to any claim to which the
2 General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298,
3 108 Stat. 1552) (1994), 49 U.S.C., Section 40101 or its exceptions
4 are applicable.

5 SECTION 3. AMENDATORY Section 2, Chapter 368, O.S.L.
6 2004 (12 O.S. Supp. 2008, Section 130), is amended to read as
7 follows:

8 Section 130. The venue of civil actions for damages brought
9 pursuant to the Affordable Access to Health Care Act, Section 1-
10 1708.1A et seq. of Title 63 of the Oklahoma Statutes, shall be in a
11 county where the cause of action or any portion thereof arose, or in
12 any county in which any of the defendants reside, or in the case of
13 a corporation, in a county in which it is situated, or has its
14 principal office or place of business, ~~or in any county where a~~
15 ~~codefendant of such corporation may be sued.~~ Upon a finding of lack
16 of venue, the court shall transfer or dismiss the action; provided,
17 however, that if the court finds lack of venue and that a dismissal
18 would operate as a dismissal with prejudice, the court shall
19 transfer the action.

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

22 Section 134. An action, other than one of those mentioned in
23 ~~first three sections of this article~~ Section 131, 132 or 133 of this
24 title, against a corporation created by the laws of this state, may

1 be brought in the county in which it is situated, or has its
2 principal office or place of business, or in which any of the
3 principal officers thereof may reside, ~~or be summoned,~~ or in the
4 county where the cause of action or some part thereof arose, ~~or in~~
5 ~~any county where a codefendant of such corporation created by the~~
6 ~~laws of this state may properly be sued.~~

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

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

15 B. An action may be brought against a foreign corporation in
16 the county in which the corporation has its principal office or
17 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
20 action may be brought in any county where such cause of action, or
21 any part thereof, arose, or where the plaintiff resides or where
22 such company has ~~an~~ its principal office or place of business or in
23 which any of the principal officers thereof reside, or where such
24 company has a service agent.

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

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

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

- 13 1. Whether an alternate forum exists in which the claim or
14 action may be tried;
- 15 2. Whether the alternate forum provides an adequate remedy;
- 16 3. Whether maintenance of the claim in the court in which the
17 case is filed would work a substantial injustice to the moving
18 party;
- 19 4. Whether the alternate forum can exercise jurisdiction over
20 all the defendants properly joined in the claim of the plaintiff;
- 21 5. Whether the balance of the private interests of the parties
22 and the public interest of the state predominate in favor of the
23 claim or action being brought in an alternate forum; and

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1 6. Whether the stay or dismissal would prevent unreasonable
2 duplication or proliferation of litigation.

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

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

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

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

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

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

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

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

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

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

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

13 C. The court of appeals shall:

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

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

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

22 A. 1. In any action not arising out of contract, wherein the
23 party intends or is required by law to use a qualified expert to
24 prove liability, except as provided in subsection B of this section,

1 the party shall file within sixty (60) days of filing the petition
2 an affidavit attesting that:

3 a. the party has consulted and reviewed the facts of the
4 claim with a qualified expert,

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

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

15 2. If the civil action is filed:

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

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

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

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

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

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

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

17 a. a copy of the written opinion of a qualified expert
18 mentioned in an affidavit filed pursuant to subsection
19 A or B of this section, and

20 b. an authorization from the party in a form that
21 complies with applicable state and federal laws,
22 including the Health Insurance Portability and
23 Accountability Act of 1996, for the release of any and
24 all medical records and bills related to the party for

1 a period commencing ten (10) years prior to the
2 incident that is at issue.

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

6 SECTION 10. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 577.4 of Title 12, unless there
8 is created a duplication in numbering, reads as follows:

9 The Oklahoma Uniform Jury Instructions (OUJI) applicable in a
10 civil case shall include an instruction notifying the jury as to
11 that part of an award which is not subject to federal or state
12 income tax. Any amount that the jury determines to be proper
13 compensation for personal injury or wrongful death shall not be
14 increased or decreased by any consideration for income taxes.

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

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

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

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

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

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

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

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

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

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

19 SECTION 13. AMENDATORY 12 O.S. 2001, Section 684, as
20 amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008,
21 Section 684), is amended to read as follows:

22 Section 684. A. ~~Except as provided in Section 5 of this act,~~
23 An action may be dismissed ~~on the payment of costs and by the~~
24 plaintiff without an order of court by ~~the plaintiff~~ filing a notice

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

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

20 ~~C. When an action is dismissed after a jury in the action is~~
21 ~~empanelled and the case is subsequently refiled, the court, at the~~
22 ~~conclusion of the subsequent action, may assess costs and attorney~~
23 ~~fees incurred in the previous action by the defendants subsequent to~~
24 ~~the jury being empanelled service by the adverse party of an answer~~

1 or of a motion for summary judgment, whichever first occurs, or by
2 filing a stipulation for dismissal signed by all parties who have
3 appeared in the action; provided, if a plaintiff files a notice of
4 dismissal after discovery has commenced, any such action shall not
5 be dismissed without prejudice without the consent of the defendant.
6 Unless otherwise stated in the notice of dismissal or stipulation,
7 the dismissal is without prejudice, except that a notice of
8 dismissal operates as an adjudication upon the merits when filed by
9 a plaintiff who has once dismissed in any court of the United States
10 or of any state an action based on or including the same claim.

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

21 C. For failure of the plaintiff to prosecute or to comply with
22 the provisions of this section or any order of court, a defendant
23 may move for dismissal of an action or of any claim against the
24 defendant. Unless the court in its order for dismissal otherwise

1 specifies, a dismissal under this subsection and any dismissal not
2 provided for in this section, other than a dismissal for lack of
3 jurisdiction, for improper venue, or for failure to join a party,
4 operates as an adjudication upon the merits.

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

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

20 SECTION 14. AMENDATORY Section 7, Chapter 368, O.S.L.
21 2004 (12 O.S. Supp. 2008, Section 727.1), is amended to read as
22 follows:

23 Section 727.1

24 POSTJUDGMENT INTEREST

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

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

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

23 C. The postjudgment interest authorized by subsection A or
24 subsection B of this section shall accrue from the earlier of the

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

1 original amount of the judgment, including any prejudgment interest,
2 together with postjudgment interest previously accrued. Interest
3 shall accrue on a judgment in the manner prescribed by this
4 subsection until the judgment is satisfied or released.

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

11 PREJUDGMENT INTEREST

12 E. Except as provided by subsection F of this section ~~or~~
13 ~~Section 1-1708.1G of Title 63 of the Oklahoma Statutes, beginning~~
14 November 1, 2009, if a verdict for damages by reason of personal
15 injuries or injury to personal rights including, but not limited to,
16 injury resulting from bodily restraint, personal insult, defamation,
17 invasion of privacy, injury to personal relations, or detriment due
18 to an act or omission of another is accepted by the trial court, the
19 court in rendering judgment shall add interest on the verdict at a
20 rate prescribed pursuant to subsection I of this section from the
21 date which is thirty-six (36) months after the suit resulting in the
22 judgment was commenced to the earlier of the date the verdict is
23 accepted by the trial court as expressly stated in the judgment, or
24 the date the judgment is filed with the court clerk. No prejudgment

1 interest shall begin to accrue until thirty-six (36) months after
2 the suit resulting in the judgment was commenced. The interest rate
3 for computation of prejudgment interest shall begin with the rate
4 prescribed by subsection I of this section which is in effect for
5 the calendar year ~~in~~ which is thirty-six (36) months after the suit
6 resulting in the judgment ~~is~~ was commenced. This rate shall be in
7 effect until the end of the calendar year in which ~~the suit~~
8 ~~resulting in judgment was filed~~ interest begins to accrue or until
9 the date judgment is filed, whichever first occurs. Beginning on
10 January 1 of the next succeeding calendar year until the end of that
11 calendar year, or until the date the judgment is filed, whichever
12 first occurs, and for each succeeding calendar year thereafter, the
13 prejudgment interest rate shall be the rate in effect for judgments
14 rendered during each calendar year as certified by the
15 Administrative Director of the Courts pursuant to subsection I of
16 this section. After the computation of all prejudgment interest has
17 been completed, the total amount of prejudgment interest shall be
18 added to the amount of the judgment rendered pursuant to the trial
19 of the action, and the total amount of the resulting judgment shall
20 become the amount upon which postjudgment interest is computed
21 pursuant to subsection A of this section.

22 F. If a verdict of the type described by subsection E of this
23 section is rendered against this state or its political
24 subdivisions, including counties, municipalities, school districts,

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

1 section. No award of prejudgment interest against this state or its
2 political subdivisions, including counties, municipalities, school
3 districts, and public trusts of which this state or a political
4 subdivision of this state is a beneficiary, including the amount of
5 the judgment awarded pursuant to trial of the action, shall exceed
6 the total amount of liability of the governmental entity pursuant to
7 The Governmental Tort Claims Act.

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

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

21 I. For purposes of computing either postjudgment interest or
22 prejudgment interest as authorized by this section, interest shall
23 be ~~the prime rate, as listed in the first edition of the Wall Street~~
24 ~~Journal published for each calendar year and as certified to the~~

1 ~~Administrative Director of the Courts by the State Treasurer on the~~
2 ~~first regular business day following publication in January of each~~
3 ~~year, plus two percent (2%)~~ determined using a rate equal to the
4 average United States Treasury Bill rate of the preceding calendar
5 year as certified to the Administrative Director of the Courts by
6 the State Treasurer on the first regular business day in January of
7 each year.

8 J. For purposes of computing postjudgment interest, the
9 provisions of this section shall be applicable to all judgments of
10 the district courts rendered on or after January 1, ~~2005~~ 2010.
11 Effective January 1, ~~2005~~ 2010, the method for computing
12 postjudgment interest prescribed by this section shall be applicable
13 to all judgments remaining unpaid rendered prior to January 1, ~~2005~~
14 2010.

15 K. For purposes of computing prejudgment interest, the
16 provisions of this section shall be applicable to all actions which
17 are filed in the district courts on or after January 1, ~~2005~~ 2010,
18 for which an award of prejudgment interest is authorized by the
19 provisions of this section.

20 SECTION 15. AMENDATORY 12 O.S. 2001, Section 990.4, as
21 last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp.
22 2008, Section 990.4), is amended to read as follows:
23
24

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

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

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

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

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

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

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

1 3. If an appeal is no longer pending.

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

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

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

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

1 the full amount of security required pursuant to this
2 section, and

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

13 2. When the judgment, decree or final order directs execution
14 of a conveyance or other instrument, the amount of the bond shall be
15 determined by the court. Instead of posting a supersedeas bond or
16 other security, the appellant may execute the conveyance or other
17 instrument and deliver it to the clerk of the court for deposit with
18 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
21 delivery of possession of real or personal property, the bond shall
22 be in an amount, to be determined by the court, that will protect
23 the interests of the parties. The court may consider the value of
24 the use of the property, any waste that may be committed on or to

1 the property during the pendency of the stay, the value of the
2 property, and all costs. When the judgment, decree or final order
3 is for the sale of mortgaged premises and the payment of a
4 deficiency arising from the sale, the bond must also provide for the
5 payment of the deficiency;

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

12 5. In order to protect any monies payable to the Tobacco
13 Settlement Fund as set forth in Section 50 of Title 62 of the
14 Oklahoma Statutes, the bond in any action or litigation brought
15 under any legal theory involving a signatory, successor of a
16 signatory or an affiliate of a signatory to the Master Settlement
17 Agreement dated November 23, 1998, or a signatory, successor of a
18 signatory or an affiliate of a signatory to the Smokeless Tobacco
19 Master Settlement Agreement, also dated November 23, 1998, shall be
20 in an amount not to exceed one hundred percent (100%) of the
21 judgment, exclusive of interest and costs, ten percent (10%) of the
22 net worth of the judgment debtor, or Twenty-five Million Dollars
23 (\$25,000,000.00), whichever is less. However, if it is proved by a
24 preponderance of the evidence that the appellant for whom the bond

1 has been limited pursuant to this paragraph is intentionally
2 dissipating or diverting assets outside of the ordinary course of
3 its business for the purpose of avoiding payment of the judgment,
4 the court shall enter such orders as are necessary to prevent
5 dissipation or diversion, including, but not limited to, requiring
6 that a bond be posted equal to the full amount of security required
7 pursuant to this section. For purposes of this paragraph, "Master
8 Settlement Agreement" shall have the same meaning as that term is
9 defined in paragraph 5 of Section 600.22 of Title 37 of the Oklahoma
10 Statutes, and "Smokeless Tobacco Master Settlement Agreement" means
11 the settlement agreement and related documents entered into on
12 November 23, 1998, by this state and leading United States smokeless
13 tobacco product manufacturers.

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

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

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

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

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

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

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

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

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

14 Section 993. A. When an order:

15 1. Discharges, vacates, or modifies or refuses to discharge,
16 vacate, or modify an attachment;

17 2. Denies a temporary or permanent injunction, grants a
18 temporary or permanent injunction except where granted at an ex
19 parte hearing, or discharges, vacates, or modifies or refuses to
20 discharge, vacate, or modify a temporary or permanent injunction;

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

24

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

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

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

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

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

17 9. Grants a new trial or opens or vacates a judgment or order,
18 the party aggrieved thereby may appeal the order to the Supreme
19 Court without awaiting the final determination in said cause, by
20 filing the petition in error and the record on appeal with the
21 Supreme Court within thirty (30) days after the order prepared in
22 conformance with Section 696.3 of this title, is filed with the
23 court clerk. If the appellant did not prepare the order, and
24 Section 696.2 of this title required a copy of the order to be

1 mailed to the appellant, and the court records do not reflect the
2 mailing of a copy of the order to the appellant within three (3)
3 days, exclusive of weekends and holidays, after the filing of the
4 order, the petition in error may be filed within thirty (30) days
5 after the earliest date on which the court records show that a copy
6 of the order was mailed to the appellant. The Supreme Court may
7 extend the time for filing the record upon good cause shown.

8 B. If the order discharges or modifies an attachment or
9 temporary injunction and it becomes operative, the undertaking given
10 upon the allowance of an attachment or temporary injunction shall
11 stay the enforcement of said order and remain in full force until
12 final order of discharge shall take effect.

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

23 D. If the order determines whether or not a plaintiff has
24 established proper venue pursuant to Section 8 of this act, the

1 Supreme Court shall determine whether the order of the trial court
2 is proper based on an independent determination of the record and
3 not under either an abuse of discretion or substantial evidence
4 standard and shall render judgment within one hundred twenty (120)
5 days after the date the appeal is perfected.

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

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

12 Section 2004.

13 PROCESS

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

17 B. SUMMONS: FORM.

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

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

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

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

12 1. SERVICE BY PERSONAL DELIVERY.

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

20 b. A summons to be served by the sheriff or deputy
21 sheriff shall be delivered to the sheriff by the court
22 clerk or an attorney of record for the plaintiff.
23 When a summons, subpoena, or other process is to be
24 served by the sheriff or deputy sheriff of another

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

15 c. Service shall be made as follows:

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

1 authorized by appointment or by law to receive
2 service of process;

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

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

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

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

14 (6) Upon an inmate incarcerated in an institution
15 under the jurisdiction and control of the
16 Department of Corrections, by delivering a copy
17 of the summons and of the petition to the warden
18 or superintendent or the designee of the warden
19 or superintendent of the institution where the
20 inmate is housed. It shall be the duty of the
21 receiving warden or superintendent or a designee
22 to promptly deliver the summons and petition to
23 the inmate named therein. The warden or
24 superintendent or his or her designee shall

1 reject service of process for any inmate who is
2 not actually present in said institution.

3 2. SERVICE BY MAIL.

4 a. At the election of the plaintiff, a summons and
5 petition may be served by mail by the plaintiff's
6 attorney, any person authorized to serve process
7 pursuant to subparagraph a of paragraph 1 of this
8 subsection, or by the court clerk upon a defendant of
9 any class referred to in division (1), (3), or (5) of
10 subparagraph c of paragraph 1 of this subsection.

11 Service by mail shall be effective on the date of
12 receipt or if refused, on the date of refusal of the
13 summons and petition by the defendant.

14 b. Service by mail shall be accomplished by mailing a
15 copy of the summons and petition by certified mail,
16 return receipt requested and delivery restricted to
17 the addressee. When there is more than one defendant,
18 the summons and a copy of the petition or order shall
19 be mailed in a separate envelope to each defendant.
20 If the summons is to be served by mail by the court
21 clerk, the court clerk shall enclose the summons and a
22 copy of the petition or order of the court to be
23 served in an envelope, prepared by the plaintiff,
24 addressed to the defendant, or to the resident service

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

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

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

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

10 3. SERVICE BY PUBLICATION.

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

18 b. Service of summons upon the unknown successors of a
19 named defendant, a named decedent, or a dissolved
20 partnership, corporation, or other association may be
21 made by publication when it is stated in a petition,
22 verified by the plaintiff or the plaintiff's attorney,
23 or in a separate affidavit by the plaintiff or the
24 plaintiff's attorney filed with the court, that the

1 person who verified the petition or the affidavit does
2 not know and with due diligence cannot ascertain the
3 following:

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

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

9 (3) whether a partnership, corporation, or other
10 association named as a defendant continues to
11 have legal existence or not; or the names or
12 whereabouts of its officers or successors,

13 (4) whether any person designated in a record as a
14 trustee continues to be the trustee; or the names
15 or whereabouts of the successors of the trustee,
16 or

17 (5) the names or whereabouts of the owners or holders
18 of special assessment or improvement bonds, or
19 any other bonds, sewer warrants or tax bills.

20 c. Service pursuant to this paragraph shall be made by
21 publication of a notice, signed by the court clerk,
22 one (1) day a week for three (3) consecutive weeks in
23 a newspaper authorized by law to publish legal notices
24 which is published in the county where the petition is

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

22 (1) When the recovery of money is sought, it is not
23 necessary for the publication notice to state the
24 separate items involved, but the total amount

1 that is claimed must be stated. When interest is
2 claimed, it is not necessary to state the rate of
3 interest, the date from which interest is
4 claimed, or that interest is claimed until the
5 obligation is paid.

6 (2) It is not necessary for the publication notice to
7 state that the judgment will include recovery of
8 costs in order for a judgment following the
9 publication notice to include costs of suit.

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

22 (4) In an action to foreclose a mortgage, it is
23 sufficient that the publication notice state that
24 if the defendant does not answer, the defendant's

1 interest in the property will be foreclosed. It
2 is not necessary to state that a judgment forever
3 barring the defendant from all right, title,
4 interest, estate, property and equity of
5 redemption in or to said property or any part
6 thereof is requested or will be entered if the
7 defendant does not answer.

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

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

1 defendant, a named decedent, or a dissolved
2 partnership, corporation or association, the court
3 shall conduct an inquiry to ascertain whether the
4 requirements described in subparagraph b of this
5 paragraph have been satisfied.

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

1 subparagraph affect the title of any property sold
2 before judgment under an attachment. The adverse
3 party, on the hearing of an application to open a
4 judgment or order as provided by this subparagraph,
5 shall be allowed to present evidence to show that
6 during the pendency of the action the applicant had
7 notice thereof in time to appear in court and make a
8 defense.

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

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

19 4. SERVICE ON THE SECRETARY OF STATE.

20 a. Service of process on a domestic or foreign
21 corporation may be made by serving the Secretary of
22 State as the corporation's agent, if:
23
24

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

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

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

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

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

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

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

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

18 d. Within three (3) working days after receiving the
19 summons and petition, the Secretary of State shall
20 send notice by letter, certified mail, return receipt
21 requested, directed to the corporation at its
22 registered office or the last-known address found in
23 the office of the Secretary of State, or if no address
24 is found there, to the corporation's last-known

1 address provided by the plaintiff. The notice shall
2 enclose a copy of the summons and petition and any
3 other papers served upon the Secretary of State. The
4 corporation shall not be required to serve its answer
5 until forty (40) days after service of the summons and
6 petition on the Secretary of State.

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

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

12 g. The provisions of this paragraph shall not apply to a
13 foreign insurance company doing business in this
14 state.

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

18 6. SERVICE BY OTHER METHODS. If service cannot be made by
19 personal delivery or by mail, a defendant of any class referred to
20 in division (1) or (3) of subparagraph c of paragraph 1 of this
21 subsection may be served as provided by court order in any manner
22 which is reasonably calculated to give the defendant actual notice
23 of the proceedings and an opportunity to be heard.
24

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

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

18 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

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

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

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

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

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

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

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

16 c. Service under this paragraph does not, of itself,
17 require the recognition or enforcement of an order,
18 judgment, or decree rendered outside this state.

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

22 G. RETURN.

23 1. The person serving the process shall make proof of service
24 thereof to the court promptly and in any event within the time

1 during which the person served must respond to the process, but the
2 failure to make proof of service does not affect the validity of the
3 service.

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

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

24

1 returned card or envelope showing that the card or envelope has been
2 received.

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

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

24

1 for ~~one hundred eighty (180)~~ one hundred twenty (120) days following
2 the filing of the petition.

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

5 Section 2008.

6 GENERAL RULES OF PLEADING

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

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

12 2. A demand for judgment for the relief to which he deems
13 himself entitled. Every pleading demanding relief for damages in
14 money in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ the amount
15 required for diversity jurisdiction pursuant to Section 1332 of
16 Title 28 of the United States Code shall, without demanding any
17 specific amount of money, set forth only that the amount sought as
18 damages is in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ the amount
19 required for diversity jurisdiction pursuant to Section 1332 of
20 Title 28 of the United States Code, except in actions sounding in
21 contract. Every pleading demanding relief for damages in money in
22 an amount ~~of Ten Thousand Dollars (\$10,000.00)~~ that is required for
23 diversity jurisdiction pursuant to Section 1332 of Title 28 of the
24 United States Code or less shall specify the amount of such damages

1 sought to be recovered. If the amount of damages sought to be
2 recovered is the same as the amount required for diversity
3 jurisdiction pursuant to Section 1332 of Title 28 of the United
4 States Code or less, the amount of damages that may be recovered
5 shall not exceed the amount set forth in the pleadings.

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

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

24

1 C. AFFIRMATIVE DEFENSES. In pleading to a preceding pleading,
2 a party shall set forth affirmatively:
3 1. Accord and satisfaction;
4 2. Arbitration and award;
5 3. Assumption of risk;
6 4. Contributory negligence;
7 5. Discharge in bankruptcy;
8 6. Duress;
9 7. Estoppel;
10 8. Failure of consideration;
11 9. Fraud;
12 10. Illegality;
13 11. Injury by fellow servant;
14 12. Laches;
15 13. License;
16 14. Payment;
17 15. Release;
18 16. Res judicata;
19 17. Statute of frauds;
20 18. Statute of limitations;
21 19. Waiver; and
22 20. Any other matter constituting an avoidance or affirmative
23 defense.
24

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

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

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

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

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

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

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

3 Section 2009.

4 PLEADING SPECIAL MATTERS

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

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

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

24

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

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

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

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

1 amount sought exceeds the amount required to satisfy diversity
2 jurisdiction pursuant to Section 1332 of Title 28 of the United
3 States Code, the specific amount must be included in the petition.

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

7 Section 2011.

8 SIGNING OF PLEADINGS

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

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

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

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

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

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

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

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

23 1. HOW INITIATED.
24

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

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

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

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

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

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

1 impose any other sanctions authorized by this
2 paragraph.

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

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

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

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

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

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

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

16 PRETRIAL CONFERENCE

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

22 B. COMPULSORY REQUIREMENTS. The pretrial order shall include,
23 among other things, a specific itemization of damages for each party
24 claiming monetary damages. The amount of damages that may be

1 recovered shall not exceed the amount set forth in the order. The
2 trial court shall, by written order, remit any amounts that exceed
3 the itemized amounts contained in the pretrial order.

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

6 Section 2023.

7 CLASS ACTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE
7 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS
8 ACTIONS.

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

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

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

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

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

1 issue of liability is determined, ~~and~~; provided, commencing an
2 individual action before the issue of liability is determined in the
3 class action shall ~~be the equivalent of requesting~~ result in
4 exclusion from the class.

5 ~~3.~~ 4. The judgment in an action maintained as a class action
6 under ~~paragraphs~~ paragraph 1 or 2 of subsection B of this section,
7 whether or not favorable to the class, shall include and describe
8 those whom the court finds to be members of the class. The judgment
9 in an action maintained as a class action under paragraph 3 of
10 subsection B of this section, whether or not favorable to the class,
11 shall include and specify or describe those to whom the notice
12 provided in paragraph ~~2~~ 3 of this subsection ~~C of this section~~ was
13 directed, and who have not requested ~~exclusion~~ inclusion, and whom
14 the court finds to be members of the class.

15 ~~4.~~ 5. When appropriate:

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

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

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

24

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

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

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

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

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

19 ~~5.~~ 6. Dealing with similar procedural matters.

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

23 E. DISMISSAL OR COMPROMISE. A class action shall not be
24 dismissed or compromised without the approval of the court, and

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

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

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

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

- 19 a. time and labor required,
- 20 b. the novelty and difficulty of the case,
- 21 c. the skill required to perform the legal service
22 properly,
- 23 d. the preclusion of other employment by the attorney due
24 to acceptance of the case,

- e. the customary fee,
- f. whether the fee is fixed or contingent,
- g. time limitations imposed by the client or the
circumstances,
- h. the amount in controversy and the results obtained,
- 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

1 judgment by the adverse party, with or without supporting affidavits
2 for a summary judgment in the party's favor upon all or any part
3 thereof.

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

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

20 D. NOT FULLY ADJUDICATED ON MOTION. If, on motion under this
21 section, judgment is not rendered upon the whole case or for all the
22 relief asked and a trial is necessary, the court at the hearing of
23 the motion, by examining the pleadings and the evidence before it
24 and by interrogating counsel, shall ascertain, if practicable, what

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

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

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

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

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

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

22 H. STANDARD OF PROOF. Summary judgment shall be granted in
23 favor of a party only if there is no genuine issue as to any
24 material fact and upon a finding that the moving party is entitled

1 to a judgment as a matter of law. If a standard of proof beyond a
2 preponderance of the evidence applies at trial, the heightened
3 standard shall be taken into account by the court in ruling on a
4 motion for summary judgment.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 C. BASES OF EXPERT OPINION TESTIMONY. The facts or data in the
16 particular case upon which an expert bases an opinion or inference
17 may be those perceived by or made known to the expert at or before
18 the hearing. If of a type reasonably relied upon by experts in the
19 particular field in forming opinions or inferences upon the subject,
20 the facts or data need not be admissible in evidence in order for
21 the opinion or inference to be admitted. Facts or data that are
22 otherwise inadmissible shall not be disclosed to the jury by the
23 proponent of the opinion or inference unless the court determines

24

1 that their probative value in assisting the jury to evaluate the
2 expert's opinion substantially outweighs their prejudicial effect.

3 D. BARS TO EXPERT TESTIMONY.

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

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

13 E. MANDATORY PRETRIAL HEARING. If the witness is testifying as
14 an expert, then upon motion of a party, the court shall hold a
15 pretrial hearing to determine whether the witness qualifies as an
16 expert and whether the expert's testimony satisfies the requirements
17 of subsections B through D of this section. The court shall allow
18 sufficient time for a hearing and shall rule on the qualifications
19 of the witness to testify as an expert and whether or not the
20 testimony satisfies the requirements of subsections B through D of
21 this section. Such hearing and ruling shall be completed no later
22 than the final pretrial hearing. Upon request, the trial court's
23 ruling shall set forth the findings of fact and conclusions of law
24 upon which the order to admit or exclude expert evidence is based.

1 F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

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

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

21 3. These disclosures shall be made at the times and in the
22 sequence directed by the court. In the absence of other directions
23 from the court or stipulation by the parties, the disclosures shall
24 be made at least ninety (90) days before the trial date or the date

1 the case is to be ready for trial or, if the evidence is intended
2 solely to contradict or rebut evidence on the same subject matter
3 identified by another party under paragraph 2 of this subsection,
4 within thirty (30) days after the disclosure made by the other
5 party.

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

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

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

24

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

13 I. STANDARD OF REVIEW.

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

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

24

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

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

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

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

23
24

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

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

23 2. INITIAL DISCLOSURES.
24

1 a. Except in categories of proceedings specified in
2 subparagraph b of this paragraph, or to the extent
3 otherwise stipulated or directed by order, a party,
4 without awaiting a discovery request, must provide to
5 other parties a computation of any category of damages
6 claimed by the disclosing party, making available for
7 inspection and copying the documents or other
8 evidentiary material, not privileged or protected from
9 disclosure, on which such computation is based,
10 including materials bearing on the nature and extent
11 of injuries suffered.

12 b. The following categories of proceedings are exempt
13 from initial disclosure under subparagraph a of this
14 paragraph:

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

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

18 (3) an action brought without counsel by a person in
19 custody of the United States, a state, or a state
20 subdivision,

21 (4) an action to enforce or quash an administrative
22 summons or subpoena,

23 (5) an action by the United States to recover benefit
24 payments,

- 1 (6) an action by the United States to collect on a
- 2 student loan guaranteed by the United States,
- 3 (7) a proceeding ancillary to proceedings in other
- 4 courts, and
- 5 (8) an action to enforce an arbitration award.

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

23 4. TRIAL PREPARATION: MATERIALS. Subject to the provisions of
24 paragraph 3 5 of this subsection, discovery may be obtained of

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

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

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

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

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

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

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

16 (2) After disclosure of the names and addresses of
17 the expert witnesses, the other party expects to
18 call as witnesses, the party, who has requested
19 disclosure, may depose any such expert witnesses
20 subject to scope of this section. Prior to
21 taking the deposition the party must give notice
22 as required in subsections A and C of Section
23 3230 of this title. If any documents are
24 provided to such disclosed expert witnesses, the

1 documents shall not be protected from disclosure
2 by privilege or work product protection and they
3 may be obtained through discovery.

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

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

11 c. Unless manifest injustice would result:

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

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

23 ~~4.~~ 6. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION

24 MATERIALS. When a party withholds information otherwise

1 discoverable under the Oklahoma Discovery Code by claiming that it
2 is privileged or subject to protection as trial preparation
3 material, the party shall make the claim expressly and shall
4 describe the nature of the documents, communications, or things not
5 produced or disclosed in a manner that, without revealing
6 information itself privileged or protected, will enable other
7 parties to assess the applicability of the privilege or protection.

8 C. PROTECTIVE ORDERS.

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

- 20 a. that the discovery not be had,
- 21 b. that the discovery may be had only on specified terms
22 and conditions, including a designation of the time or
23 place,

24

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

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

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

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

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

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

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

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

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

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

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

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

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

- 3 a. the identity and location of persons having knowledge
4 of discoverable matters, and
- 5 b. the identity of each person expected to be called as
6 an expert witness at trial, the subject matter on
7 which the person is expected to testify, and the
8 substance of the testimony of the person.

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

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

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

23 F. DISCOVERY CONFERENCE. At any time after commencement of an
24 action, the court may direct the attorneys for the parties to appear

1 for a conference on the subject of discovery. The court shall do so
2 upon motion by the attorney for any party if the motion includes:

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

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

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

1 Subject to the right of a party who properly moves for a
2 discovery conference to prompt convening of the conference, the
3 court may combine the discovery conference with a pretrial
4 conference.

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

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

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

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

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

24

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

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

11 It is the intent of the Legislature that in construing the
12 Oklahoma Consumer Protection Act, courts shall be guided by the
13 policies of the Federal Trade Commission and interpretations given
14 by the Federal Trade Commission and the federal courts to Section
15 5(a)(1) of the Federal Trade Commission Act (15 U.S.C., Section
16 45(a)(1)), as from time to time amended.

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

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

21 1. Publishers, broadcasters, printers, or other persons insofar
22 as an unlawful practice as defined in Section ~~3~~ 753 of this ~~act~~
23 title involves information that has been disseminated or reproduced
24

1 on behalf of others without knowledge that it is an unlawful
2 practice-;

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

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

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

17 Section 761.1 A. The commission of any act or practice
18 declared to be a violation of the Oklahoma Consumer Protection Act
19 shall render the violator liable to the aggrieved consumer who
20 suffers an ascertainable loss of money or property, real or
21 personal, as a result of the violation for the payment of actual
22 damages sustained by the ~~customer~~ consumer and costs of litigation
23 including reasonable ~~attorney's~~ attorney fees, and the aggrieved
24 consumer shall have a private right of action for actual damages,

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

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

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

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

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

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

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

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

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

23 ~~E.~~ F. In addition to other penalties imposed by the Oklahoma
24 Consumer Protection Act, any person convicted in a criminal

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

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

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

24

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

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

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

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

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

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

14 7. The financial condition of the defendant.

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

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

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

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

1 b. the amount of the actual damages awarded.

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

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

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

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

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

15 b. twice the amount of actual damages awarded, or

16 c. the increased financial benefit derived by the
17 defendant or insurer as a direct result of the conduct
18 causing the injury to the plaintiff and other persons
19 or entities.

20 The trial court shall reduce any award for punitive damages awarded
21 pursuant to the provisions of subparagraph c of this paragraph by
22 the amount it finds the defendant or insurer has previously paid as
23 a result of all punitive damage verdicts entered in any court of
24 this state for the same conduct by the defendant or insurer. Any

1 award of punitive damages under this subsection awarded in any
2 manner other than as required in this subsection shall be void and
3 reversible error.

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

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

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

21 E. In a claim for punitive damages, a plaintiff shall present
22 prima facie evidence for the punitive damages claim before
23 conducting discovery regarding the financial assets or financial
24 condition of the defendant.

1 F. In determining the amount, if any, of punitive damages to be
2 awarded under either subsection B, C or D of this section, the jury
3 shall make the award based upon the factors set forth in subsection
4 A of this section.

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

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

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

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

22 a. intentionally withheld or intentionally misrepresented
23 information which it was required at any time to
24 submit to the agency and the withholding or

1 misrepresentation of such information was causally
2 related to the injury or harm alleged, or

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

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

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

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

15 J. The provisions of subsections E and G of this section shall
16 apply to all civil actions filed on or after November 1, 2009.

17 SECTION 32. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 9.2 of Title 23, unless there is
19 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
22 date of judgment for:

23 a. medical, health care, or custodial care services,
24

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

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

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

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

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

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

22 D. The court shall make a specific finding of the dollar amount
23 of periodic payments that will compensate the plaintiff for the
24

1 future damages. The court shall specify in its judgment ordering
2 the payment of future damages by periodic payments the:

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

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

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

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

24

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

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

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

16 SECTION 33. AMENDATORY Section 18, Chapter 368, O.S.L.
17 2004 (23 O.S. Supp. 2008, Section 15), is amended to read as
18 follows:

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

24

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

24

1 B. The court shall instruct the jury as to whether any recovery
2 sought by the plaintiff is subject to federal or state income taxes
3 and shall require that any such damage calculations demonstrate the
4 effect of such taxes.

5 SECTION 37. AMENDATORY 47 O.S. 2001, Section 11-1112, as
6 last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp.
7 2008, Section 11-1112), is amended to read as follows:

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

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

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

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

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

24

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

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

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

20 D. A law enforcement officer is hereby authorized to stop a
21 vehicle if it appears that the driver of the vehicle has violated
22 the provisions of this section and to give an oral warning to said
23 driver. The warning shall advise the driver of the possible danger
24

1 to children resulting from the failure to install or use a child
2 passenger restraint system or seat belts in the motor vehicle.

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

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

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

23

24

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

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

8 SECTION 39. AMENDATORY Section 7, Chapter 390, O.S.L.
9 2003 (63 O.S. Supp. 2008, Section 1-1708.1G), is amended to read as
10 follows:

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

21 SECTION 40. AMENDATORY 63 O.S. 2001, Section 1-1709.1,
22 as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S.
23 Supp. 2008, Section 1-1709.1), is amended to read as follows:

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

1 1. "Credentialing or recredentialing data" means:

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

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

20 3. "Health care facility" means:

- 21 a. any hospital or related institution offering or
22 providing health care services under a license issued
23 pursuant to Section 1-706 of this title,
24

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

4 c. the clinical practices of accredited allopathic and
5 osteopathic state medical schools;

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

11 5. "Peer review information" means all records, documents and
12 other information generated during the course of a peer review
13 process, including any reports, statements, memoranda,
14 correspondence, record of proceedings, materials, opinions,
15 findings, conclusions and recommendations, credentialing data and
16 recredentialing data, but does not include:

17 a. the medical records of a patient whose health care in
18 a health care facility is being reviewed,

19 b. incident reports and other like documents regarding
20 health care services being reviewed, regardless of how
21 the reports or documents are titled or captioned,

22 c. the identity of any individuals who have personal
23 knowledge regarding the facts and circumstances
24

1 surrounding the patient's health care in the health
2 care facility,

3 d. factual statements regarding the patient's health care
4 in the health care facility from any individuals who
5 have personal knowledge regarding the facts and
6 circumstances surrounding the patient's health care,
7 which factual statements were generated outside the
8 peer review process,

9 e. the identity of all documents and raw data previously
10 created elsewhere and considered during the peer
11 review process, or

12 f. copies of all documents and raw data previously
13 created elsewhere and considered during the peer
14 review process, whether available elsewhere or not, ~~or~~

15 ~~g. credentialing or recredentialing data regarding the~~
16 ~~health care professional who provided the health care~~
17 ~~services being reviewed or who is the subject of a~~
18 ~~credentialing or recredentialing process; and~~

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

1 B. 1. Peer review information shall be private, confidential
2 and privileged~~+~~

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

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

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

18 C. In any civil action in which a patient or patient's legal
19 representative has alleged that the patient has suffered injuries
20 resulting from negligence by a health care professional in providing
21 health care services to the patient in a health care facility,
22 factual statements, presented during a peer review process utilized
23 by such health care facility, regarding the patient's health care in
24 the health care facility from individuals who have personal

1 knowledge of the facts and circumstances surrounding the patient's
2 health care shall not be subject to discovery, ~~pursuant to the~~
3 ~~Oklahoma Discovery Code, upon an affirmative showing that such~~
4 ~~statements are not otherwise available in any other manner.~~

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

7 a. ~~that~~

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

11 b. ~~that~~

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

20 ~~2.~~ E. Any information discovered pursuant to ~~this subsection.~~

21 a. a claim of independent negligence against a health
22 care facility shall not be admissible as evidence

23 until a judge or jury has first found the health care
24 professional to have been negligent in providing

1 health care services to the patient in such health
2 care facility, and

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

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

10 SECTION 41. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 684.14 of Title 63, unless there
12 is created a duplication in numbering, reads as follows:

13 Sections 41 through 51 of this act shall be known and may be
14 cited as the "Uniform Emergency Volunteer Health Practitioners Act".

15 SECTION 42. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 684.15 of Title 63, unless there
17 is created a duplication in numbering, reads as follows:

18 As used in the Uniform Emergency Volunteer Health Practitioners
19 Act:

20 1. "Disaster relief organization" means an entity that provides
21 emergency or disaster relief services that include health or
22 veterinary services provided by volunteer health practitioners and
23 that:
24

1 a. is designated or recognized as a provider of those
2 services pursuant to a disaster response and recovery
3 plan adopted by an agency of the federal government or
4 the State Department of Health, and

5 b. regularly plans and conducts its activities in
6 coordination with an agency of the federal government
7 or the State Department of Health;

8 2. "Emergency" means an event or condition that is an emergency
9 pursuant to the Oklahoma Emergency Management Act of 2003 or the
10 Catastrophic Health Emergency Powers Act;

11 3. "Emergency declaration" means a declaration of emergency
12 issued by a person authorized to do so under the laws of this state
13 pursuant to the Oklahoma Emergency Management Act of 2003 or the
14 Catastrophic Health Emergency Powers Act;

15 4. "Emergency Management Assistance Compact" means the
16 interstate compact approved by Congress by Public Law No. 104-
17 321,110 Stat. 3877;

18 5. "Entity" means a person other than an individual;

19 6. "Health facility" means an entity licensed under the laws of
20 this or another state to provide health or veterinary services;

21 7. "Health practitioner" means an individual licensed under the
22 laws of this or another state to provide health or veterinary
23 services;

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

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

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

11 (2) counseling, assessment, procedures, or other
12 services,

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

16 c. funeral, cremation, cemetery, or other mortuary
17 services;

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

20 10. "License" means authorization by a state to engage in
21 health or veterinary services that are unlawful without the
22 authorization and includes authorization under the laws of this
23 state to an individual to provide health or veterinary services
24

1 based upon a national certification issued by a public or private
2 entity;

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

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

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

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

22 a. diagnosis, treatment, or prevention of an animal
23 disease, injury, or other physical or mental condition
24

1 by the prescription, administration, or dispensing of
2 vaccine, medicine, surgery, or therapy,

3 b. use of a procedure for reproductive management, and

4 c. monitoring and treatment of animal populations for
5 diseases that have spread or demonstrate the potential
6 to spread to humans; and

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

16 SECTION 43. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 684.16 of Title 63, unless there
18 is created a duplication in numbering, reads as follows:

19 This Uniform Emergency Volunteer Health Practitioners Act
20 applies to volunteer health practitioners registered with a
21 registration system that complies with Section 45 of this act and
22 who provide health or veterinary services in this state for a host
23 entity while an emergency declaration is in effect.

1 SECTION 44. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 684.17 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

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

6 1. The duration of practice by volunteer health practitioners;

7 2. The geographical areas in which volunteer health
8 practitioners may practice;

9 3. The types of volunteer health practitioners who may
10 practice; and

11 4. Any other matters necessary to coordinate effectively the
12 provision of health or veterinary services during the emergency.

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

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

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

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

1 SECTION 45. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 684.18 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

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

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

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

10 3. Be capable of confirming the accuracy of information
11 concerning whether a health practitioner is licensed and in good
12 standing before health services or veterinary services are provided
13 under the Uniform Emergency Volunteer Health Practitioners Act; and

14 4. Meet one of the following conditions:

15 a. be an emergency system for advance registration of
16 volunteer health practitioners established by a state
17 and funded through the Health Resources Services
18 Administration under Section 319I of the Public Health
19 Services Act, 42 U.S.C., Section 247d-7b,

20 b. be a local unit consisting of trained and equipped
21 emergency response, public health, and medical
22 personnel formed pursuant to Section 2801 of the
23 Public Health Services Act, 42 U.S.C., Section 300hh,

24 c. be operated by a:

- 1 (1) disaster relief organization,
- 2 (2) licensing board,
- 3 (3) national or regional association of licensing
- 4 boards or health practitioners,
- 5 (4) health facility that provides comprehensive
- 6 inpatient and outpatient health-care services,
- 7 including a tertiary care and teaching hospital,
- 8 or
- 9 (5) governmental entity, or

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

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

21 C. Upon request of a person in this state authorized under
22 subsection B of this section, or a similarly authorized person in
23 another state, a registration system located in this state shall
24 notify the person of the identities of volunteer health

1 practitioners and whether the practitioners are licensed and in good
2 standing.

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

7 SECTION 46. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 684.19 of Title 63, unless there
9 is created a duplication in numbering, reads as follows:

10 A. While an emergency declaration is in effect, a volunteer
11 health practitioner, registered with a registration system that
12 complies with Section 45 of this act and licensed and in good
13 standing in the state upon which the registration of the
14 practitioner is based, may practice in this state to the extent
15 authorized by the Uniform Emergency Volunteer Health Practitioners
16 Act as if the practitioner were licensed in this state.

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

24

1 SECTION 47. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 684.20 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. For purposes of this section:

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

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

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

19 SECTION 48. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 684.21 of Title 63, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Subject to subsections B and C of this section, a volunteer
23 health practitioner shall adhere to the scope of practice for a
24

1 similarly licensed practitioner established by the licensing
2 provisions, practice acts, or other laws of this state.

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

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

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

18 E. A volunteer health practitioner does not engage in
19 unauthorized practice unless the practitioner has reason to know of
20 any limitation, modification, or restriction under this section or
21 that a similarly licensed practitioner in this state would not be
22 permitted to provide the services. A volunteer health practitioner
23 has reason to know of a limitation, modification, or restriction or
24

1 that a similarly licensed practitioner in this state would not be
2 permitted to provide a service if:

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

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

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

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

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

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

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

7 SECTION 49. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 684.22 of Title 63, unless there
9 is created a duplication in numbering, reads as follows:

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

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

24

1 SECTION 50. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 684.23 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

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

14 SECTION 51. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 684.24 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

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

21 SECTION 52. AMENDATORY 63 O.S. 2001, Section 683.9, as
22 amended by Section 9, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008,
23 Section 683.9), is amended to read as follows:

24

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

14 1. To activate the Emergency Operations Plan, and to assume
15 regulatory control over all essential resources of this state,
16 directly or through the boards, agencies, offices and officers
17 established by ~~said~~ the Emergency Operations Plan, to determine
18 priorities of such resources and allocate such resources as the
19 Governor may deem necessary in cooperation with the political
20 subdivisions of this state, the federal government, or other states.
21 "Resources" shall mean all economic resources within this state
22 including but not limited to food, manpower, health ~~and health~~
23 ~~manpower~~, water, transportation, economic stabilization, electric
24

1 power, petroleum, gas, and solid fuel, industrial production,
2 construction and housing-;

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

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

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

21 5. To perform and exercise such other functions, powers, and
22 duties as are necessary to promote and secure the safety and
23 protection of the civilian population and to carry out the
24

1 provisions of the Emergency Operations Plan in a national or state
2 emergency.

3 SECTION 53. AMENDATORY 63 O.S. 2001, Section 683.13, as
4 amended by Section 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008,
5 Section 683.13), is amended to read as follows:

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

19 B. Any requirement for a license to practice any professional,
20 mechanical, or other skill shall not apply to any authorized
21 emergency management worker from any state rendering mutual aid and
22 who holds a comparable license in that state, who shall practice
23 such professional, mechanical, or other skill during an emergency
24 declared under the provisions of this act, when such professional,

1 mechanical or other skill is exercised in accordance with the
2 provisions of this act.

3 C. As used in this section, the term "emergency management
4 worker" shall include any full or part-time paid, volunteer, or
5 auxiliary employee of this state, or other states, territories,
6 possession or the District of Columbia, of the federal government,
7 or any neighboring country, or of any political subdivision thereof,
8 or of any agency or organization, performing emergency management
9 services under state supervision, and who has been properly trained
10 in the performance of emergency management functions, at any place
11 in this state subject to the order or control of, or pursuant to a
12 request of, the state government or any political subdivision
13 thereof. The term "emergency management worker" shall not include
14 any volunteer health practitioner subject to the provisions of the
15 Uniform Emergency Volunteer Health Practitioners Act.

16 D. Any emergency management worker, as defined in this section,
17 performing emergency management services at any place in this state
18 pursuant to agreements, compacts, or arrangements for mutual aid and
19 assistance, to which the state or a political subdivision thereof is
20 a party, shall possess the same powers, duties, immunities, and
21 privileges the person would ordinarily possess if performing the
22 same duties in the state, province, or political subdivision thereof
23 in which normally employed or rendering services.

24

1 SECTION 54. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1924.2 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 The Legislature finds that:

5 1. Skilled nursing facilities, as defined in 42 U.S.C., Section
6 1395i-3, participating in the Medicare program and nursing
7 facilities, as defined in 42 U.S.C., Section 1396r, participating in
8 the Medicaid program are required to establish and maintain quality
9 assessment and assurance committees to identify issues with respect
10 to which quality assessment and assurance activities are necessary
11 and to develop and implement appropriate plans of action to correct
12 identified quality deficiencies pursuant to 42 U.S.C., Sections
13 1395i-3 and 1396r and rules promulgated by the State Department of
14 Health;

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

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

1 participating in effective quality assessment and assurance
2 activities and medical error review activities;

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

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

14 SECTION 55. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-1924.3 of Title 63, unless
16 there is created a duplication in numbering, reads as follows:

17 For purposes of this section and Sections 56 through 58 of this
18 act:

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

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

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

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

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

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

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

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

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

7 SECTION 56. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-1924.4 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

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

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

23 C. Records created solely for the quality assessment and
24 assurance committee, and related solely to the purpose of the

1 committee, shall be confidential and privileged and not disclosed,
2 but other records reviewed or consulted by the committee do not
3 become confidential and privileged solely by virtue of being turned
4 over to, or reviewed by, the committee.

5 SECTION 57. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-1924.5 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

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

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

22 SECTION 58. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-1924.6 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

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

6 1. The deficiency determination is final, adjudicated and has
7 been appealed;

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

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

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

19 SECTION 59. AMENDATORY 76 O.S. 2001, Section 5.5, is
20 amended to read as follows:

21 Section 5.5 A. Any claim filed herein shall be filed within
22 two (2) years of the date of injury, death or damage to property,
23 or, if applicable, within one (1) year of the date of a final
24 adjudication on any legal action taken by the claimant against any

1 person responsible for the injury, death or damage to property, or
2 be barred by limitations from recovery.

3 B. Regardless of when the cause of action shall have accrued,
4 any action for damages based in tort shall be brought within eight
5 (8) years from the date of the act or omission that gives rise to
6 the claim. This subsection is intended as a statute of repose and
7 any action which is not brought within eight (8) years after the act
8 or omission giving rise to the claim is time-barred.

9 SECTION 60. AMENDATORY 76 O.S. 2001, Section 25, is
10 amended to read as follows:

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

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

24

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

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

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

20 SECTION 61. AMENDATORY 76 O.S. 2001, Section 31, is
21 amended to read as follows:

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

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

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

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

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

18 D. Definitions.

19 1. For the purposes of this section, the term "volunteer" means
20 a person who enters into a service or undertaking of the person's
21 free will without compensation or expectation of compensation in
22 money or other thing of value in order to provide a service, care,
23 assistance, advice, or other benefit ~~where the person does not offer~~
24 ~~that type of service, care, assistance, advice or other benefit for~~

1 ~~sale to the public~~; provided, being legally entitled to receive
2 compensation for the service or undertaking performed shall not
3 preclude a person from being considered a volunteer.

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

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

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

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

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

3 SECTION 62. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 33 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

6 Sections 62 through 65 of this act shall be known and may be
7 cited as the "Common Sense Consumption Act".

8 SECTION 63. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 34 of Title 76, unless there is
10 created a duplication in numbering, reads as follows:

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

16 SECTION 64. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 35 of Title 76, unless there is
18 created a duplication in numbering, reads as follows:

19 As used in the Common Sense Consumption Act:

- 20 1. "Claim" means any claim by or on behalf of a natural person,
21 as well as any derivative or other claim arising therefrom asserted
22 by or on behalf of any other individual, corporation, company,
23 association, firm, partnership, society, joint-stock company, or any
24

1 other entity, including any governmental entity or governmental
2 officer, or private attorney;

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

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

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

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

17 SECTION 65. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 36 of Title 76, unless there is
19 created a duplication in numbering, reads as follows:

20 A. Except as provided in subsection B of this section, a
21 manufacturer, packer, distributor, carrier, holder, seller, marketer
22 or advertiser of a food, as defined in Section 201(f) of the Federal
23 Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an
24 association of one or more such entities, shall not be subject to

1 civil liability arising under any law of this state, including all
2 statutes, regulations, rules, common law, public policies, court or
3 administrative decisions or decrees, or other state action having
4 the effect of law, for any claim arising out of weight gain,
5 obesity, a health condition associated with weight gain or obesity,
6 or other generally known condition allegedly caused by or allegedly
7 likely to result from long-term consumption of food.

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

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

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

22 C. In any action exempted under paragraph 1 of subsection B of
23 this section, the complaint initiating such action shall state with
24 particularity the following: the statute, regulation or other law

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

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

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

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

8 SECTION 66. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 51 of Title 76, unless there is
10 created a duplication in numbering, reads as follows:

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

14 SECTION 67. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 52 of Title 76, unless there is
16 created a duplication in numbering, reads as follows:

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

22 SECTION 68. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 53 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

1 No association of persons who hold licenses under Section 923 of
2 Chapter 44 of Title 18, United States Code, as in effect on January
3 1, 1999, is liable to any person or entity, or to the estate,
4 successors or survivors of either, for any injury suffered,
5 including wrongful death and property damage, because of the use of
6 a firearm sold or manufactured by any licensee who is a member of
7 such association.

8 SECTION 69. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 54 of Title 76, unless there is
10 created a duplication in numbering, reads as follows:

11 The provisions of Sections 66 through 68 of this act do not
12 apply to actions for deceit, breach of contract, or expressed or
13 implied warranties, or for injuries resulting from failure of
14 firearms to operate in a normal or usual manner due to defects or
15 negligence in design or manufacture. The provisions of Sections 66
16 through 68 of this act do not apply to actions arising from the
17 unlawful sale or transfer of firearms, or to instances in which the
18 transferor knew, or should have known, that the recipient would
19 engage in the unlawful sale or transfer of the firearm, or would
20 use, or purposely allow the use of, the firearm in an unlawful,
21 negligent, or improper fashion. For purposes of this section, the
22 potential of a firearm to cause serious injury, damage, or death as
23 a result of normal function does not constitute a defective
24 condition of the product. A firearm may not be deemed defective on

1 the basis of its potential to cause serious injury, damage, or death
2 when discharged.

3 SECTION 70. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 55 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

6 Sections 70 through 78 of this act shall be known and may be
7 cited as the "Product Liability Act".

8 SECTION 71. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 56 of Title 76, unless there is
10 created a duplication in numbering, reads as follows:

11 In the Product Liability Act:

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

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

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

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

6 SECTION 72. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 57 of Title 76, unless there is
8 created a duplication in numbering, reads as follows:

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

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

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

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

19 SECTION 73. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 58 of Title 76, unless there is
21 created a duplication in numbering, reads as follows:

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

1 1. There was a safer alternative design; and

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

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

7 1. Would have prevented or significantly reduced the risk of
8 the claimant's personal injury, property damage, or death without
9 substantially impairing the product's utility; and

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

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

20 D. This section does not apply to:

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

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

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

6 SECTION 74. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 59 of Title 76, unless there is
8 created a duplication in numbering, reads as follows:

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

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

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

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

18 4. That:

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

22 b. the warning or instruction was inadequate, and

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

1 5. That:

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

10 6. That:

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

14 7. That the manufacturer of the product is:

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

17 SECTION 75. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 60 of Title 76, unless there is
19 created a duplication in numbering, reads as follows:

20 A. In a product liability action alleging that an injury was
21 caused by a failure to provide adequate warnings or information with
22 regard to a pharmaceutical product, there is a rebuttable
23 presumption that the defendant or defendants, including a health
24 care provider, manufacturer, distributor, and prescriber, are not

1 liable with respect to the allegations involving failure to provide
2 adequate warnings or information if:

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

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

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

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

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

- 1 3. a. The defendant recommended, promoted, or advertised the
2 pharmaceutical product for an indication not approved
3 by the United States Food and Drug Administration,
4 b. The product was used as recommended, promoted, or
5 advertised, and
6 c. The claimant's injury was causally related to the
7 recommended, promoted, or advertised use of the
8 product;
- 9 4. a. The defendant prescribed the pharmaceutical product
10 for an indication not approved by the United States
11 Food and Drug Administration, and
12 b. The product was used as prescribed, and
13 c. The claimant's injury was causally related to the
14 prescribed use of the product; or
- 15 5. The defendant, before or after premarket approval or
16 licensing of the product, engaged in conduct that would constitute a
17 violation of 18 U.S.C., Section 201 and that conduct caused the
18 warnings or instructions approved for the product by the United
19 States Food and Drug Administration to be inadequate.

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

23 A. In a product liability action brought against a product
24 manufacturer or seller, there is a rebuttable presumption that the

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

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

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

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

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

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

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

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

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

20 E. This section does not extend to products covered by Section
21 75 of this act.

22 SECTION 77. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 62 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

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

12 SECTION 78. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 63 of Title 76, unless there is
14 created a duplication in numbering, reads as follows:

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

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

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

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

1 voluntarily dismissed an action and has subsequently commenced a new
2 action.

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

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

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

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

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

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

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

22 SECTION 79. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 64 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

1 Sections 79 through 85 of this act shall be known and may be
2 cited as the "Asbestos and Silica Claims Priorities Act".

3 SECTION 80. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 65 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

6 A. FINDINGS. The Legislature finds that:

7 1. Asbestos is a mineral that was widely used prior to the mid-
8 1970s for insulation, fireproofing, and other purposes;

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

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

15 4. The United States Supreme Court has described asbestos
16 litigation in this country as a "crisis";

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

22 6. The costs of compensating unimpaired claimants and
23 litigating their claims jeopardize the ability of defendants to
24 compensate people with cancer and other serious diseases; threatens

1 the savings, retirement benefits, and jobs of current and retired
2 employees; and adversely impacts affected communities;

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

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

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

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

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

22 12. Silica claims, like asbestos claims, often involve
23 individuals with no demonstrable impairment. Claimants frequently
24

1 are identified through the use of interstate, for-profit, screening
2 companies;

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

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

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

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

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

24

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

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

7 3. Enhance the ability of the courts to supervise and manage
8 asbestos and silica claims.

9 SECTION 81. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 66 of Title 76, unless there is
11 created a duplication in numbering, reads as follows:

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

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

19 2. "Asbestos" means chrysotile, amosite, crocidolite, tremolite
20 asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform
21 winchite, asbestiform richterite, asbestiform amphibole minerals,
22 and any of these minerals that have been chemically treated or
23 altered, including all minerals defined as asbestos in 29 C.F.R.
24 1910 at the time an asbestos claim is made;

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

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

15 5. "Board-certified in internal medicine" means a physician who
16 is certified by the American Board of Internal Medicine or the
17 American Osteopathic Board of Internal Medicine and whose
18 certification was current at the time of the performance of any
19 examination and rendition of any report required by the Asbestos and
20 Silica Claims Priorities Act;

21 6. "Board-certified in occupational medicine" means a physician
22 who is certified in the subspecialty of occupational medicine by the
23 American Board of Preventive Medicine or the American Osteopathic
24 Board of Preventive Medicine and whose certification was current at

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

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

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

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

24

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

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

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

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

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

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

1 16. "Exposed person" means any person claiming exposure to
2 asbestos or silica or to asbestos-containing or silica-containing
3 products;

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

7 18. "FVC" means forced vital capacity, which is the maximal
8 volume of air expired with maximum effort from a position of full
9 inspiration;

10 19. "ILO system and ILO scale" means the radiological ratings
11 and system for the classification of chest X-rays of the
12 International Labor Office provided in Guidelines for the Use of ILO
13 International Classification of Radiographs of Pneumoconioses in
14 effect on the day any X-rays of the exposed person were reviewed by
15 a certified B-reader;

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

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

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

5 23. "Official Statements of the American Thoracic Society"
6 means lung function testing standards set forth in statements from
7 the American Thoracic Society (and, if applicable, the European
8 Respiratory Society), including standardizations of spirometry,
9 standardizations of lung volume testing, standardizations of
10 diffusion capacity testing or single-breath determination of carbon
11 monoxide uptake in the lung, and interpretive strategies for lung
12 function tests, which are in effect on the day of the pulmonary
13 function testing of the exposed person;

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

23 25. "Pathological evidence of silicosis" means a statement by a
24 board-certified pathologist that more than one representative

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

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

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

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

1 in the applicable AMA Guides to the Evaluation of Permanent
2 Impairment;

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

11 30. "Qualified physician" means a board-certified internist,
12 oncologist, pathologist, pulmonary specialist, radiologist, or
13 specialist in occupational and environmental medicine, as may be
14 appropriate to the actual diagnostic specialty in question, that
15 meets all of the following requirements:

16 a. the physician personally conducted a physical
17 examination of the exposed person and has taken or has
18 directed to be taken at his supervision, direction and
19 control, a detailed occupational, exposure, medical,
20 smoking and social history from the exposed person, or
21 if the exposed person is deceased, from the person
22 most knowledgeable about the information forming the
23 basis of the asbestos or silica claim,

24

- 1 b. the physician treated or is treating the exposed
2 person, and has or had a doctor-patient relationship
3 with the exposed person at the time of the physical
4 examination, or in the case of a board-certified
5 pathologist, examined tissue samples or pathological
6 slides of the exposed person at the request of the
7 treating physician,
- 8 c. the physician spends no more than ten percent (10%) of
9 the physician's professional practice time providing
10 consulting or expert services in actual or potential
11 civil actions, and whose medical group, professional
12 corporation, clinic, or other affiliated group earns
13 not more than twenty percent (20%) of its revenue
14 providing such services,
- 15 d. the physician is currently licensed to practice, or
16 was licensed to practice on the day any examination or
17 pulmonary function testing was conducted, and actively
18 practices or practiced in the state where the claimant
19 resides, the claimant's civil action was filed, or the
20 claimant resided at the time of the examination,
- 21 e. the physician received or is receiving payment for the
22 treatment of the exposed person from the exposed
23 person, a member of the exposed person's family, or
24 the exposed person's health care plan,

- 1 f. the physician prepared the report, or directly
2 supervised the preparation and final review of the
3 report, and
- 4 g. the physician may not, as the basis for a diagnosis,
5 rely, in whole or in part, on any of the reports or
6 opinions of any doctor, clinic, laboratory, or testing
7 company that performed an examination, test, or
8 screening of the exposed person in violation of any
9 law, regulation, licensing requirement, or medical
10 code of practice of the state in which the
11 examination, test, or screening was conducted, or that
12 was conducted without clearly establishing a doctor-
13 patient relationship with the exposed person or
14 medical personnel involved in the examination, test,
15 or screening process, or that required the exposed
16 person to agree to retain the legal service of a law
17 firm;

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

23 32. "Radiological evidence of diffuse bilateral pleural
24 thickening" means a quality 1 chest X-ray under the ILO system, or a

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

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

15 34. "Silica" means a respirable crystalline form of silicon
16 dioxide, including quartz, cristobalite, and tridymite;

17 35. "Silica claim" means any claim for damages, losses,
18 indemnification, contribution, or other relief of whatever nature
19 arising out of, based on, or in any way related to the alleged
20 health effects associated with the inhalation of silica, to the
21 extent such claims are recognized, including loss of consortium,
22 personal injury or death, mental or emotional injury, risk or fear
23 of disease or other injury, the costs of medical monitoring or
24 surveillance, and any claim made by or on behalf of any person

1 exposed to silica, or a representative, spouse, parent, child, or
2 other relative of the exposed person. The term "silica claim" does
3 not include a claim for compensatory benefits pursuant to a workers'
4 compensation law or a veterans' benefits program;

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

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

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

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

- 17 a. the predominate cause of the physical impairment
18 alleged in the asbestos or silica claim was exposure
19 to asbestos or silica from the defendant, from the
20 premises of the defendant, or as a result of a product
21 from the defendant,
- 22 b. there is credible evidence that the claimant
23 identified the specific product, operation or specific
24

1 premises at issue and the location, duration, and
2 specific circumstances of exposure,

3 c. the exposure to asbestos or asbestos-containing
4 product or silica or silica-containing product
5 happened on a frequent or recurring basis over an
6 extended period of time and in close proximity to the
7 exposed person and constituted more than incidental
8 contact with the product, operation, or location,

9 d. the exposed person inhaled asbestos fibers or silica
10 from the defendant, from the premises of the
11 defendant, or as a result of a product from the
12 defendant in sufficient quantities capable of causing
13 his harm, and

14 e. a qualified physician determined with a reasonable
15 degree of medical certainty that the physical
16 impairment of the exposed person would not have
17 occurred but for the exposure to asbestos or silica
18 from the defendant, from the premises of the
19 defendant, or as a result of a product from the
20 defendant;

21 40. "Substantial occupational exposure to asbestos" means
22 employment of a cumulative period of at least ten (10) years in an
23 industry and occupation in which, for a substantial portion of a
24 normal work year for that occupation, the exposed person handled raw

1 asbestos fibers; fabricated asbestos-containing products; altered,
2 repaired, or otherwise worked with an asbestos-containing product;
3 or worked in close proximity to other workers engaged in any of
4 these activities;

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

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

21 43. "Timed gas dilution" means a method for measuring total
22 lung capacity in which the subject breathes into a spirometer
23 containing a known concentration of an inert and insoluble gas for a
24 specific time, and the concentration of that inert and insoluble gas

1 in the lung is compared to the concentration of that type of gas in
2 the spirometer;

3 44. "Total lung capacity" means the volume of gas contained in
4 the lungs at the end of a maximal inspiration;

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

8 46. "Workers' compensation law" means a law respecting a
9 program administered by a state or the United States to provide
10 compensatory benefits, funded by a responsible employer or its
11 insurance carrier, for occupational diseases or injuries or for
12 disability or death caused by occupational diseases or injuries.
13 The term includes the Longshore and Harbor Workers' Compensation Act
14 (33 U.S.C., Section 901 et seq.) and the Federal Employees'
15 Compensation Act (Chap. 81 of Title 5, United States Code). The
16 term does not include the Act of April 22, 1908, commonly known as
17 the Federal Employers' Liability Act (45 U.S.C., Section 51 et
18 seq.), or any claim for exemplary or punitive damages by an
19 employee, estate, heir, representative or any other person or entity
20 against the employer of an exposed person arising out of or related
21 to asbestos-related injury or silica-related injury.

22 SECTION 82. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 67 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

1 A. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

2 Preliminary Proceedings.

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

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

18 3. DEFENDANT'S RIGHT TO CHALLENGE. The defendant shall be
19 afforded a reasonable opportunity to challenge the adequacy of the
20 proffered prima facie evidence.

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

24 B. NEW CLAIM REQUIRED INFORMATION.

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

- 6 a. the name, address, date of birth, social security
7 number, marital status, occupation, and employer of
8 the claimant, the exposed person, and any person
9 through which the claimant alleges exposure,
- 10 b. the claimant's relationship to the exposed person or
11 person through which the claimant alleges exposure,
- 12 c. the specific location and manner of each alleged
13 exposure, including for persons alleging exposure
14 through another person, the specific premises at which
15 such other person was exposed, the beginning and
16 ending dates of each alleged exposure, and the
17 identity of the manufacturer of the specific asbestos
18 or silica product at issue,
- 19 d. the identity of the defendant or defendants against
20 whom the claimant asserts a claim,
- 21 e. the specific asbestos-related or silica-related
22 disease claimed to exist,
- 23 f. information as to any lawsuits filed or claims made by
24 or on behalf of the claimant and exposed person,

1 including any claims made against bankruptcy trusts,
2 and information as to the case caption, docket number,
3 identification of the court or bankruptcy trust in
4 which the claim is or was pending, and a description
5 of the status of the case or claim, and

6 g. any supporting documentation relating to subparagraphs
7 c through f of this paragraph.

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

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

21 1. Radiological or pathological evidence of asbestosis or
22 radiological evidence of diffuse bilateral pleural thickening or a
23 computed tomography or high-resolution computed tomography scan
24 showing evidence of asbestosis or diffuse pleural thickening;

1 2. Evidence verifying that a qualified physician has taken a
2 detailed occupational and exposure history from the exposed person
3 or, if the person is deceased, from the person most knowledgeable
4 about the exposures that form the basis of the claim, including
5 identification of all of the exposed person's principal places of
6 employment and exposures to airborne contaminants and whether each
7 place of employment involved exposures to airborne contaminants,
8 including asbestos fibers or other disease-causing dusts or fumes,
9 that may cause pulmonary impairment and the nature, duration, and
10 level of any exposure;

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

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

20 5. Evidence verifying that a qualified physician, on the basis
21 of a personal medical examination and pulmonary function testing of
22 the exposed person, or if the exposed person is deceased, based upon
23 the person's medical records, that the claimant has, or deceased
24 person had, a permanent respiratory impairment rating of at least

1 Class 2 as defined by and evaluated pursuant to the AMA's Guides to
2 the Evaluation of Permanent Impairment;

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

8 a. forced vital capacity below the predicted lower limit
9 of normal and FEV1/FVC ratio, using actual values, at
10 or above the predicted lower limit of normal,

11 b. total lung capacity, by plethysmography or timed gas
12 dilution, below the predicted lower limit of normal,
13 or

14 c. a chest X-ray showing bilateral small, irregular
15 opacities (s, t, or u) graded by a certified B-reader
16 at least 2/1 on the ILO scale; and

17 7. Evidence verifying that the qualified physician signing the
18 detailed narrative medical report and diagnosis has concluded that
19 exposure to asbestos was a substantial contributing factor to the
20 physical impairment and not more probably the result of other
21 causes. An opinion that the medical findings and impairment are
22 "consistent with" or "compatible with" exposure to asbestos, or
23 words to that effect, do not satisfy the requirements of this
24 subsection.

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

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

18 2. Evidence verifying that a qualified physician has taken a
19 detailed medical, social, and smoking history from the exposed
20 person or, if he is deceased, from the person most knowledgeable,
21 including a thorough review of the past and present medical problems
22 and their most probable cause;

23 3. A diagnostic report signed by a qualified physician who is
24 board-certified in pathology, pulmonary medicine or oncology

1 verifying that the exposed person has primary lung cancer and that
2 exposure to asbestos was a substantial contributing factor,
3 including pathological evidence of the presence of a primary lung
4 cancer if the diagnosis is made by a qualified physician who is
5 board-certified in pulmonary medicine;

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

9 5. Evidence demonstrating:

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

1 information concerning occupational and exposure
2 history,

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

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

15 6. Evidence verifying that the qualified physician signing the
16 detailed narrative medical report and diagnosis has concluded that
17 exposure to asbestos was a substantial contributing factor to the
18 lung cancer of the exposed person and not more probably the result
19 of other causes. An opinion stating that the medical findings and
20 lung cancer are "consistent with" or "compatible with" exposure to
21 asbestos, or words to that effect, do not satisfy the requirements
22 of this subsection.

23 E. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED CANCER OF THE
24 COLON, RECTUM, LARYNX, PHARYNX, OR ESOPHAGUS (OTHER CANCER). No

1 person shall bring or maintain an asbestos claim related to an
2 alleged asbestos-related cancer of the colon, rectum, larynx,
3 pharynx, or esophagus (other cancer) in the absence of a prima facie
4 showing of a primary cancer of the colon, rectum, larynx, pharynx,
5 or esophagus for which exposure to asbestos was a substantial
6 contributing factor. The prima facie showing shall be made as to
7 each defendant and include a detailed narrative medical report and
8 diagnosis signed under oath by a qualified physician that includes
9 all of the following:

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

19 2. Evidence verifying that a qualified physician has taken a
20 detailed medical, social, and smoking history from the exposed
21 person or, if the person is deceased, from the person most
22 knowledgeable, including a thorough review of the past and present
23 medical problems of the exposed person and their most probable
24 cause;

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

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

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

22 6. If a claimant alleges an asbestos claim based upon cancer of
23 the colon, rectum, larynx, pharynx, or esophagus and alleges that
24 the exposure of the claimant to asbestos was the result of living

1 with an exposed person, the clamant shall have evidence verifying
2 that the exposed person had substantial occupational exposure to
3 asbestos or exposure to asbestos at least equal to twenty-five fiber
4 per cc years as determined to a reasonable degree of scientific
5 probability by a scientifically valid retrospective exposure
6 reconstruction conducted by a certified industrial hygienist or
7 certified safety professional based upon all reasonably available
8 quantitative air monitoring data and all other reasonably available
9 information concerning occupational and exposure history; and

10 7. Evidence verifying that the qualified physician signing the
11 detailed narrative medical report and diagnosis has concluded that
12 exposure to asbestos was a substantial contributing factor to the
13 cancer and not more probably the result of other causes. An opinion
14 stating that the medical findings and cancer are "consistent with"
15 or "compatible with" exposure to asbestos, or words to that effect
16 do not satisfy the requirements of this subsection.

17 F. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED MESOTHELIOMA. No
18 person shall bring or maintain an asbestos claim related to alleged
19 mesothelioma in the absence of a prima facie showing of an asbestos-
20 related mesothelioma. The prima facie showing shall be made as to
21 each defendant and include all of the following:

22 1. A report by a qualified physician who is board-certified in
23 pathology, pulmonary medicine or oncology verifying a diagnosis of
24 mesothelioma and that exposure to asbestos was a substantial

1 contributing factor, including pathological evidence of the presence
2 of a mesothelioma if the diagnosis is made by a qualified physician
3 who is board-certified in pulmonary medicine; and

4 2. Evidence of identifiable exposure to asbestos resulting from
5 substantial occupational exposure or exposure to asbestos fibers
6 brought into the home of the claimant by a person with substantial
7 occupational exposure to asbestos.

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

20 1. A diagnosis of an asbestos-related disease based on findings
21 by a qualified physician and credible evidence of identifiable
22 exposure to asbestos resulting from substantial occupational
23 exposure or exposure to asbestos fibers brought into the home of the
24

1 claimant by a person with substantial occupational exposure to
2 asbestos;

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

11 3. The court holds an evidentiary hearing and finds that the
12 claimant has established a prima facie showing of physical
13 impairment to which exposure to asbestos was a substantial
14 contributing factor.

15 H. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICOSIS
16 CLAIMS. No person shall bring or maintain a silica claim related to
17 alleged silicosis in the absence of a prima facie showing of
18 physical impairment as a result of silicosis. The prima facie
19 showing shall be made as to each defendant and include a detailed
20 narrative medical report and diagnosis signed under oath by a
21 qualified physician that includes all of the following:

22 1. Radiological or pathological evidence of silicosis or a
23 computed tomography or high-resolution computed tomography scan
24 showing evidence of silicosis;

1 2. Evidence verifying that a qualified physician has taken a
2 detailed occupational and exposure history from the exposed person
3 or, if the person is deceased, from the person most knowledgeable
4 about the exposures that form the basis of the claim, including
5 identification of all principal places of employment and exposures
6 to airborne contaminants and whether each place of employment
7 involved exposures to airborne contaminants, including silica or
8 other disease-causing dusts or fumes, that may cause pulmonary
9 impairment and the nature, duration, and level of any exposure;

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

15 4. Evidence demonstrating that a sufficient latency period
16 elapsed between the date of first exposure to silica and the day of
17 diagnosis;

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

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

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

17 1. Evidence verifying that a qualified physician has taken a
18 detailed occupational and exposure history from the exposed person
19 or, if the exposed person is deceased, from the person most
20 knowledgeable about the exposures that form the basis of the claim,
21 including identification of all principal places of employment and
22 exposures to airborne contaminants and whether each place of
23 employment involved exposures to airborne contaminants, including
24

1 disease-causing dusts or fumes, that may cause cancer and the
2 nature, duration, and level of any exposure;

3 2. Evidence verifying that a qualified physician has taken a
4 detailed medical, social, and smoking history from the exposed
5 person or, if the person is deceased, from the person most
6 knowledgeable, including a thorough review of the past and present
7 medical problems and their most probable cause;

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

15 4. Evidence demonstrating that at least fifteen (15) years
16 elapsed between the date of first exposure to silica and the date of
17 diagnosis;

18 5. Evidence demonstrating:

19 a. if the exposed person is a nonsmoker, radiological or
20 pathological evidence of silicosis or a computed
21 tomography or high-resolution computed tomography scan
22 showing evidence of silicosis or evidence verifying
23 substantial occupational exposure to silica, and
24

1 b. if the exposed person is a smoker, radiological or
2 pathological evidence of silicosis or a computed
3 tomography or high-resolution computed tomography scan
4 showing evidence of silicosis and evidence verifying
5 substantial occupational exposure to silica; and

6 6. Evidence verifying that the qualified physician signing the
7 detailed narrative medical report and diagnosis has concluded that
8 exposure to silica was a substantial contributing factor to the lung
9 cancer of the exposed person and not more probably the result of
10 other causes. An opinion stating that the medical findings and lung
11 cancer are "consistent with" or "compatible with" exposure to
12 silica, or words to that effect, do not satisfy the requirements of
13 this subsection.

14 J. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR OTHER
15 SILICA-RELATED CLAIMS. No person shall bring or maintain a silica
16 claim related to an alleged silica-related condition, other than
17 silicosis or silica-related lung cancer, in the absence of a prima
18 facie showing of physical impairment as a result of a medical
19 condition for which exposure to silica was a substantial
20 contributing factor. The prima facie showing shall be made as to
21 each defendant and include a detailed narrative medical report and
22 diagnosis signed under oath by a qualified physician that includes
23 all of the following:

1 1. A diagnosis of a silica-related disease based on findings by
2 a qualified physician and credible evidence of identifiable
3 exposure, to silica resulting from substantial occupational
4 exposure, or exposure brought into the home of the claimant by a
5 person with substantial occupational exposure;

6 2. Evidence verifying that the qualified physician signing the
7 detailed narrative medical report and diagnosis has concluded that
8 exposure was a substantial contributing factor to the medical
9 findings and impairment and not more probably the result of other
10 causes. An opinion stating that the medical findings and impairment
11 are "consistent with" or "compatible with" exposure to silica, or
12 words to that effect, do not satisfy the requirements of this
13 subsection; and

14 3. The court holds an evidentiary hearing and finds that the
15 claimant has established a prima facie showing of physical
16 impairment to which exposure was a substantial contributing factor.

17 K. COMPLIANCE WITH TECHNICAL STANDARDS. Evidence relating to
18 physical impairment under the Asbestos and Silica Claims Priorities
19 Act, including pulmonary function testing and diffusing studies,
20 shall:

21 1. Comply with the quality controls, equipment requirements,
22 methods of calibration and techniques set forth in the AMA's Guides
23 to the Evaluation of Permanent Impairment and all standards set
24 forth in the Official Statements of the American Thoracic Society

1 which are in effect on the date of any examination or pulmonary
2 function testing of the exposed person required by the Asbestos and
3 Silica Claims Priorities act;

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

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

11 L. PREMISES OWNERS. In any asbestos or silica claim, a
12 premises owner, or any entity performing any operations on a
13 premises, is not liable to a plaintiff for asbestos or silica claims
14 unless that plaintiff's alleged exposure occurred while the exposed
15 person was at the premises.

16 SECTION 83. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 68 of Title 76, unless there is
18 created a duplication in numbering, reads as follows:

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

24

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

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

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

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

15 D. CONSOLIDATION. 1. A court may consolidate for trial any
16 number and type of asbestos or silica claims with the consent of all
17 the parties. In the absence of such consent, the court may
18 consolidate for trial only asbestos claims or silica claims relating
19 to the exposed person and members of the household of the exposed
20 person.

21 2. No class action or any other form of mass-aggregation claim
22 filing relating to more than one exposed person, except claims
23 relating to the exposed person and member of the household of the
24 exposed person, shall be permitted for asbestos or silica claims.

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

3 SECTION 84. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 68 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

6 STATUTE OF LIMITATIONS; TWO-DISEASE RULE. A. STATUTE OF
7 LIMITATIONS. 1. With respect to an asbestos or silica claim not
8 barred by limitations in this state as of the effective date of the
9 Asbestos and Silica Claims Priorities Act, a claimant's cause of
10 action shall not accrue, nor shall the running of limitations
11 commence, prior to the earlier of the date:

- 12 a. the exposed person received a medical diagnosis of an
13 asbestos-related impairment or silica-related
14 impairment,
- 15 b. the exposed person discovered facts that would have
16 led a reasonable person to obtain a medical diagnosis
17 with respect to the existence of an asbestos-related
18 impairment or silica-related impairment, or
- 19 c. the date of death of the exposed person having an
20 asbestos-related or silica-related impairment.

21 2. Nothing in the section shall be construed to revive or
22 extend limitations with respect to any claim for asbestos-related
23 impairment or silica-related impairment that was otherwise time-
24 barred as a matter of applicable state law as of November 1, 2009.

1 3. Nothing in this section shall be construed so as to
2 adversely affect, impair, limit, modify or nullify any settlement or
3 other agreements with respect to an asbestos or silica claim entered
4 into prior to November 1, 2009.

5 B. TWO-DISEASE RULE. An asbestos or silica claim arising out
6 of a nonmalignant condition shall be a distinct cause of action from
7 a claim for an asbestos-related or silica-related cancer. Where
8 otherwise permitted under state law, no damages shall be awarded for
9 fear or increased risk of future disease in any civil action
10 asserting an asbestos or silica claim.

11 SECTION 85. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 69 of Title 76, unless there is
13 created a duplication in numbering, reads as follows:

14 EFFECTIVE DATE. The Asbestos and Silica Claims Priorities Act
15 shall apply to all asbestos or silica claims filed on or after
16 November 1, 2009. The Asbestos and Silica Claims Priorities Act
17 shall also apply to any pending asbestos or silica claims in which
18 trial has not commenced by November 1, 2009, except that any
19 provisions of these sections which would be unconstitutional if
20 applied retroactively shall be applied prospectively.

21 SECTION 86. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 70 of Title 76, unless there is
23 created a duplication in numbering, reads as follows:

24

1 SHORT TITLE. Sections 86 through 93 of this act shall be known
2 and may be cited as the "Innocent Successor Asbestos-Related
3 Liability Fairness Act".

4 SECTION 87. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 71 of Title 76, unless there is
6 created a duplication in numbering, reads as follows:

7 DEFINITIONS. As used in the Innocent Successor Asbestos-Related
8 Liability Fairness Act:

9 1. "Asbestos claim" means any claim, wherever or whenever made,
10 for damages, losses, indemnification, contribution, or other relief
11 arising out of, based on, or in any way related to asbestos,
12 including:

- 13 a. the health effects of exposure to asbestos, including
14 any claim for:
 - 15 (1) personal injury or death,
 - 16 (2) mental or emotional injury,
 - 17 (3) risk of disease or other injury, or
 - 18 (4) the costs of medical monitoring or surveillance,
- 19 b. any claim made by or on behalf of any person exposed
20 to asbestos, or a representative, spouse, parent,
21 child, or other relative of the person, and
- 22 c. any claim for damage or loss caused by the
23 installation, presence, or removal of asbestos;

24

1 2. "Corporation" means a corporation for profit, including a
2 domestic corporation organized under the laws of this state, or a
3 foreign corporation organized under laws other than the laws of this
4 state;

5 3. "Innocent successor" means a corporation that assumes or
6 incurs or has assumed or incurred successor asbestos-related
7 liabilities that is a successor and became a successor before
8 January 1, 1972, or is any of that successor corporation's
9 successors, and that after a merger or consolidation did not
10 continue in the business of mining asbestos, in the business of
11 selling or distributing asbestos fibers, or in the business of
12 manufacturing, distributing, removing, or installing asbestos-
13 containing products that were the same or substantially the same as
14 those products previously manufactured, distributed, removed, or
15 installed by the transferor;

16 4. "Successor asbestos-related liabilities" means any
17 liabilities, whether known or unknown, asserted or unasserted,
18 absolute or contingent, accrued or unaccrued, liquidated or
19 unliquidated, or due or to become due, which are related to asbestos
20 claims and were assumed or incurred by a corporation as a result of
21 or in connection with a merger or consolidation, or the plan of
22 merger or consolidation related to the merger or consolidation with
23 or into another corporation, or that are related in any way to
24 asbestos claims based on the exercise of control or the ownership of

1 stock of the corporation before the merger or consolidation. The
2 term includes liabilities that, after the time of the merger or
3 consolidation for which the fair market value of total gross assets
4 is determined pursuant to Section 90 of this act, were or are paid
5 or otherwise discharged, or committed to be paid or otherwise
6 discharged, by or on behalf of the corporation, or by a successor of
7 the corporation, or by or on behalf of a transferor, in connection
8 with settlements, judgments, or other discharges in this state or
9 another jurisdiction; and

10 5. "Transferor" means a corporation from which successor
11 asbestos-related liabilities are or were assumed or incurred.

12 SECTION 88. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 72 of Title 76, unless there is
14 created a duplication in numbering, reads as follows:

15 APPLICABILITY. A. The limitations in Section 89 of this act
16 shall apply to any innocent successor corporation.

17 B. The limitations in Section 89 of this act shall not apply
18 to:

19 1. Workers' compensation benefits paid by or on behalf of an
20 employer to an employee under this state's Workers' Compensation Act
21 or a comparable workers' compensation law of another jurisdiction;

22 2. Any claim against a corporation that does not constitute a
23 successor asbestos-related liability; or

24

1 3. Any obligations under the National Labor Relations Act, 29
2 U.S.C., Section 151 et seq., as amended, or under any collective
3 bargaining agreement.

4 SECTION 89. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 73 of Title 76, unless there is
6 created a duplication in numbering, reads as follows:

7 LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. A.
8 Except as further limited in subsection B of this section, the
9 cumulative successor asbestos-related liabilities of an innocent
10 successor corporation are limited to the fair market value of the
11 total gross assets of the transferor determined as of the time of
12 the merger or consolidation. The innocent successor corporation
13 does not have any responsibility for successor asbestos-related
14 liabilities in excess of this limitation.

15 B. If the transferor had assumed or incurred successor
16 asbestos-related liabilities in connection with a prior merger or
17 consolidation with a prior transferor, then the fair market value of
18 the total assets of the prior transferor, determined as of the time
19 of such earlier merger or consolidation, shall be substituted for
20 the limitation set forth in subsection A of this section for
21 purposes of determining the limitation of liability of an innocent
22 successor corporation.

23

24

1 SECTION 90. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 74 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. A. An
5 innocent successor corporation may establish the fair market value
6 of total gross assets for the purpose of the limitations under
7 Section 89 of this act through any method reasonable under the
8 circumstances, including:

9 1. By reference to the going concern value of the assets or to
10 the purchase price attributable to or paid for the assets in an
11 arm's-length transaction; or

12 2. In the absence of other readily available information from
13 which fair market value can be determined, by reference to the value
14 of the assets recorded on a balance sheet.

15 B. Total gross assets include intangible assets.

16 C. To the extent total gross assets include any liability
17 insurance issued to the transferor whose assets are being valued for
18 the purposes of this section, the applicability, terms, conditions,
19 and limits of such insurance shall not be affected by this act, nor
20 shall the Innocent Successor Asbestos-Related Liability Fairness Act
21 otherwise affect the rights and obligations of a transferor,
22 successor, or insurer under any insurance contract and/or any
23 related agreements, including, without limitation, rights and
24 obligations under preenactment settlements between a transferor or

1 successor and its insurers resolving liability insurance coverage,
2 and the rights of an insurer to seek payment for applicable
3 deductibles, retrospective premiums or self-insured retentions or to
4 seek contribution from a successor for uninsured or self-insured
5 periods or periods where insurance is uncollectible or otherwise
6 unavailable. Without limiting the foregoing, to the extent total
7 gross assets include any such liability insurance, a settlement of a
8 dispute concerning any such liability insurance coverage entered
9 into by a transferor or successor with the insurers of the
10 transferor before the effective date of the Innocent Successor
11 Asbestos-Related Liability Fairness Act shall be determinative of
12 the total coverage of such liability insurance to be included in the
13 calculation of the transferor's total gross assets.

14 SECTION 91. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 75 of Title 76, unless there is
16 created a duplication in numbering, reads as follows:

17 ADJUSTMENT. A. Except as provided in subsections B, C, and D
18 of this section, the fair market value of total gross assets at the
19 time of a merger or consolidation increases annually at a rate equal
20 to the sum of:

21 1. The prime rate as listed in the first edition of "The Wall
22 Street Journal" published for each calendar year since the merger or
23 consolidation, unless the prime rate is not published in that
24 edition of "The Wall Street Journal", in which case any reasonable

1 determination of the prime rate on the first day of the year may be
2 used; and

3 2. One percent (1%).

4 B. The rate provided for in subsection A of this section shall
5 not be compounded.

6 C. The adjustment of fair market value of total gross assets
7 continues as provided under subsection A of this section until the
8 date the adjusted value is first exceeded by the cumulative amounts
9 of successor asbestos-related liabilities paid or committed to be
10 paid by or on behalf of the innocent successor corporation or a
11 predecessor, or by or on behalf of a transferor, after the time of
12 the merger or consolidation for which the fair market value of total
13 gross assets is determined.

14 D. No adjustment of the fair market value of total gross assets
15 shall be applied to any liability insurance that may be included in
16 the definition of total gross assets by subsection C of Section 90
17 of this act.

18 SECTION 92. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 76 of Title 76, unless there is
20 created a duplication in numbering, reads as follows:

21 SCOPE OF ACT. The courts of this state shall construe the
22 provisions of the Innocent Successor Asbestos-Related Liability
23 Fairness Act liberally with regard to innocent successors.

24

1 SECTION 93. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 77 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 EFFECTIVE DATE. The Innocent Successor Asbestos-Related
5 Liability Fairness Act shall apply to all asbestos claims filed
6 against an innocent successor on or after the effective date of the
7 Innocent Successor Asbestos-Related Liability Fairness Act. The
8 Innocent Successor Asbestos-Related Liability Fairness Act shall
9 also apply to any pending asbestos claims against an innocent
10 successor in which trial has not commenced as of the effective date
11 of the Innocent Successor Asbestos-Related Liability Fairness Act,
12 except that any provisions of these sections which would be
13 unconstitutional if applied retroactively shall be applied
14 prospectively.

15 SECTION 94. REPEALER Section 1, Chapter 368, O.S.L. 2004
16 (5 O.S. Supp. 2008, Section 7.1), is hereby repealed.

17 SECTION 95. REPEALER Section 4, Chapter 390, O.S.L.
18 2003, Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21,
19 Chapter 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L. 2004
20 (63 O.S. Supp. 2008, Sections 1-1708.1D, 1-1708.1F and 1-1708.1F-1),
21 are hereby repealed.

22 SECTION 96. REPEALER Section 19, Chapter 473, O.S.L.
23 2003 (63 O.S. Supp. 2008, Section 6602), is hereby repealed.

24

1 SECTION 97. The provisions of this act are severable and if any
2 part or provision shall be held void the decision of the court so
3 holding shall not affect or impair any of the remaining parts or
4 provisions of this act.

5 SECTION 98. This act shall become effective November 1, 2009.

6 Passed the House of Representatives the 4th day of March, 2009.

7

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9

Presiding Officer of the House of
Representatives

10

11

Passed the Senate the ____ day of _____, 2009.

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Presiding Officer of the Senate

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