

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1958

By: Bengé

4  
5  
6 AS INTRODUCED

7 An Act relating to civil procedure; requiring  
8 appointment of attorney for specified purpose;  
9 providing for award of certain fees; requiring  
10 plaintiff to attach certain affidavit in civil action  
11 for negligence; providing requirements for Oklahoma  
12 Uniform Jury Instructions; amending 12 O.S. 2001,  
13 Section 588, which relates to general and specific  
14 findings; modifying procedure; amending 12 O.S. 2001,  
15 Section 684, as amended by Section 4, Chapter 368,  
16 O.S.L. 2004 (12 O.S. Supp. 2008, Section 684), which  
17 relates to dismissal; modifying procedure for  
18 dismissal without court order; providing for  
19 dismissal of action under certain circumstances;  
20 allowing for extension under certain circumstances;  
21 requiring plaintiff to provide certain information;  
22 amending Section 7, Chapter 368, O.S.L. 2004 (12 O.S.  
23 Supp. 2008, Section 727.1), which relates to interest  
24 on judgments; modifying time of accrual of  
prejudgment interest on certain actions; modifying  
method of computing interest; amending 12 O.S. 2001,  
Sections 990.4, as last amended by Section 6, Chapter  
1, O.S.L. 2005, 2004, as amended by Section 7,  
Chapter 402, O.S.L. 2002, 2011, as amended by Section  
10, Chapter 368, O.S.L. 2004, Section 1, Chapter 370,  
O.S.L. 2004, as amended by Section 10, Chapter 12,  
O.S.L. 2007, 2023 and 2702 (12 O.S. Supp. 2008,  
Sections 990.4, 2004, 2011 and 2011.1), which relate  
to stays of enforcement, the Oklahoma Pleading Code,  
frivolous claims or defenses, class actions and  
expert testimony; modifying certain appeal bond  
procedures; modifying time limit for service of  
process; modifying definitions; providing procedure  
for summary judgment; requiring certain standard of  
review upon appeal of order maintaining a class  
action; requiring stay of discovery while appeal is

1 pending; requiring potential class members to request  
2 inclusion in the class; providing procedure for  
3 summary judgment; providing requirements for expert  
4 testimony; providing role of the court; providing for  
5 interpretation; stating legislative intent; amending  
6 15 O.S. 2001, Sections 754 and 761.1, which relate to  
7 the Oklahoma Consumer Protection Act; updating  
8 statutory reference; excepting certain actions,  
9 transactions, and claims from the Oklahoma Consumer  
10 Protection Act; requiring certain losses to be  
11 ascertainable; providing for private right of action  
12 for actual damages; providing for determination of  
13 actual damages; allowing court to order reimbursement  
14 of certain costs and fees; providing for maximum  
15 amount that court may order as reimbursement of  
16 certain costs and fees; requiring certain proof in  
17 order to recover damages; defining terms; providing  
18 for periodic payment of certain damages; amending  
19 Section 18, Chapter 368, O.S.L. 2004, and 23 O.S.  
20 2001, Section 61 (23 O.S. Supp. 2008, Section 15),  
21 which relate to joint and several liability and  
22 obligations not arising from contract; modifying  
23 exceptions to severability; providing limits of  
24 liability for noneconomic damages for certain  
actions; requiring certain adjustment; defining term;  
requiring admission of evidence of certain  
compensation; allowing discretion in limiting award  
of certain damages; providing exception; defining  
term; providing that proof of certain losses must be  
in the form of a net loss after reduction for income  
tax payments or unpaid tax liability; amending 47  
O.S. 2001, Section 11-1112, as last amended by  
Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp.  
2008, Section 11-1112), which relates to child  
passenger restraint systems; eliminating prohibitions  
against admissibility of certain evidence in civil  
actions; amending 51 O.S. 2001, Section 155, as last  
amended by Section 1, Chapter 381, O.S.L. 2004 (51  
O.S. Supp. 2008, Section 155), which relates to  
exemptions from liability; adding certain exemptions;  
amending Section 7, Chapter 390, O.S.L. 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

1 peer review information; providing that certain  
2 information is not subject to discovery or admissible  
3 at trial; requiring certain findings for certain  
4 information to be admissible; creating the Uniform  
5 Emergency Volunteer Health Practitioners Act;  
6 providing short title; defining terms; providing for  
7 application; authorizing the State Department of  
8 Health to regulate volunteer health practitioners in  
9 a declared emergency; requiring certain consultation  
10 and compliance of specified host entities; setting  
11 requirements for a volunteer health practitioner  
12 registration system; permitting certain confirmation;  
13 requiring certain notification; authorizing host  
14 entities to refuse the services of a volunteer health  
15 practitioner; permitting certain volunteer health  
16 practitioners to practice in this state during a  
17 declared emergency; prohibiting certain volunteer  
18 health practitioners from certain protections;  
19 defining terms; clarifying credentialing or  
20 privileging standards; requiring adherence to certain  
21 scopes of practice; prohibiting the providing of  
22 services outside a practitioner's scope of practice;  
23 authorizing the Department or a host entity to  
24 restrict certain services; providing certain  
protection; permitting certain licensing boards to  
impose administrative sanctions; requiring certain  
reporting; requiring certain consideration; providing  
for certain rights, privileges or immunities;  
permitting the Department to incorporate certain  
volunteer health practitioners; authorizing the State  
Board of Health to promulgate rules; requiring  
consideration for uniformity; amending 63 O.S. 2001,  
Sections 683.9 and 683.13, as amended by Sections 9  
and 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 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; creating the School  
Protection Act; providing short title; stating  
purpose of the act; making it unlawful to make a  
false criminal report against an education employee;  
providing punishment; limiting application for  
statements against certain persons; providing for

1 effect on other laws; providing that existence of  
2 liability insurance is not a waiver of any defense;  
3 providing for the applicability of other laws;  
4 amending 76 O.S. 2001, Sections 5.5, 25 and 31, which  
5 relate to limitations for certain actions,  
6 professional review bodies, civil immunity for  
7 volunteers, charitable organizations, and not-for-  
8 profit corporations; establishing a statute of repose  
9 for certain actions; providing that peer review  
10 information is private, confidential and privileged;  
11 providing exception; providing notice requirement;  
12 providing that certain information is not subject to  
13 discovery or admissible at trial; prohibiting  
14 testimony by certain persons; modifying definition;  
15 creating the Common Sense Consumption Act; providing  
16 short title; stating legislative intent; defining  
17 terms; providing immunity from civil liability for  
18 certain claims; providing exception; providing  
19 pleading requirements; providing for stay of  
20 discovery and other proceedings in certain  
21 circumstances; providing scope of claims covered;  
22 stating legislative findings; limiting liability of  
23 certain manufacturers; limiting liability of certain  
24 associations; clarifying applicability of certain  
provisions; 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;  
repealing 47 O.S. 2001, Section 12-420, as amended by  
Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp.  
2008, Section 12-420), which relates to  
inadmissibility of evidence in civil actions of  
failure to use seatbelt; repealing Section 6, Chapter  
390, O.S.L. 2003, as amended by Section 21, Chapter  
368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L.  
2004 (63 O.S. Supp. 2008, Sections 1-1708.1F and 1-  
1708.1F-1), which relate to limits on noneconomic  
damages in medical liability actions; repealing  
Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp.  
2008, Section 6602), which relates to emergency  
powers regarding licensing and appointment of health  
personnel; providing for codification; and providing  
an effective date.

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

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

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

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

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

- 21 a. the party has consulted and reviewed the facts of the  
22 claim with a qualified expert,
- 23 b. the party has obtained a written opinion from a  
24 qualified expert that clearly identifies the party and

1 includes the expert's determination that, based upon a  
2 review of the pertinent records, facts or other  
3 relevant material, a reasonable interpretation of the  
4 facts supports a finding of liability of the adverse  
5 party against whom the action is brought, and

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

9 2. If the civil action is filed:

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

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

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

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

20 B. 1. The court may, upon application of the party for good  
21 cause shown, grant the party an extension of time, not exceeding  
22 ninety (90) days after the date the petition is filed, to file in  
23 the action an affidavit attesting that the party has obtained a  
24

1 written opinion from a qualified expert as described in paragraph 1  
2 of subsection A of this section.

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

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

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

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

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

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

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

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

20 SECTION 5. AMENDATORY 12 O.S. 2001, Section 684, as  
21 amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008,  
22 Section 684), is amended to read as follows:

23 Section 684. A. ~~Except as provided in Section 5 of this act,~~  
24 An action may be dismissed ~~on the payment of costs and by the~~

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

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

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

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

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

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

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

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

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

21 SECTION 6. AMENDATORY Section 7, Chapter 368, O.S.L.  
22 2004 (12 O.S. Supp. 2008, Section 727.1), is amended to read as  
23 follows:

24 Section 727.1

1 POSTJUDGMENT INTEREST

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

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

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

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

1 The postjudgment interest rate for each calendar year or part of a  
2 calendar year a judgment remains unpaid shall be multiplied by the  
3 original amount of the judgment, including any prejudgment interest,  
4 together with postjudgment interest previously accrued. Interest  
5 shall accrue on a judgment in the manner prescribed by this  
6 subsection until the judgment is satisfied or released.

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

13 PREJUDGMENT INTEREST

14 E. Except as provided by subsection F of this section ~~or~~  
15 ~~Section 1-1708.1G of Title 63 of the Oklahoma Statutes, beginning~~  
16 November 1, 2009, if a verdict for damages by reason of personal  
17 injuries or injury to personal rights including, but not limited to,  
18 injury resulting from bodily restraint, personal insult, defamation,  
19 invasion of privacy, injury to personal relations, or detriment due  
20 to an act or omission of another is accepted by the trial court, the  
21 court in rendering judgment shall add interest on the verdict at a  
22 rate prescribed pursuant to subsection I of this section from the  
23 date which is thirty-six (36) months after the suit resulting in the  
24 judgment was commenced to the earlier of the date the verdict is

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

24

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

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

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

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

24

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

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

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

1 SECTION 7. AMENDATORY 12 O.S. 2001, Section 990.4, as  
2 last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp.  
3 2008, Section 990.4), is amended to read as follows:

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

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

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

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

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

4        3. If an appeal is no longer pending.

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

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

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

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

1           the court shall enter such orders as are necessary to  
2           prevent dissipation or diversion including, but not  
3           limited to, requiring that a bond be posted equal to  
4           the full amount of security required pursuant to this  
5           section, and

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

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

23          3.   When the judgment, decree or final order directs the  
24          delivery of possession of real or personal property, the bond shall

1 be in an amount, to be determined by the court, that will protect  
2 the interests of the parties. The court may consider the value of  
3 the use of the property, any waste that may be committed on or to  
4 the property during the pendency of the stay, the value of the  
5 property, and all costs. When the judgment, decree or final order  
6 is for the sale of mortgaged premises and the payment of a  
7 deficiency arising from the sale, the bond must also provide for the  
8 payment of the deficiency;

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

15 5. In order to protect any monies payable to the Tobacco  
16 Settlement Fund as set forth in Section 50 of Title 62 of the  
17 Oklahoma Statutes, the bond in any action or litigation brought  
18 under any legal theory involving a signatory, successor of a  
19 signatory or an affiliate of a signatory to the Master Settlement  
20 Agreement dated November 23, 1998, or a signatory, successor of a  
21 signatory or an affiliate of a signatory to the Smokeless Tobacco  
22 Master Settlement Agreement, also dated November 23, 1998, shall be  
23 in an amount not to exceed one hundred percent (100%) of the  
24 judgment, exclusive of interest and costs, ten percent (10%) of the

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

17 C. Subsections A and B of this section shall not apply in  
18 actions involving temporary or permanent injunctions, actions for  
19 divorce, separate maintenance, annulment, paternity, custody,  
20 adoption, or termination of parental rights, or in juvenile matters,  
21 ~~post-decree~~ postdecree matrimonial proceedings or habeas corpus  
22 proceedings. The trial or appellate court, in its discretion, may  
23 stay the enforcement of any provision in a judgment, decree or final  
24 order in any of the types of actions or proceedings listed in this

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

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

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

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

24

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

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

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

16 SECTION 8. AMENDATORY 12 O.S. 2001, Section 2004, as  
17 amended by Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2008,  
18 Section 2004), is amended to read as follows:

19 Section 2004.

20 PROCESS

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

24 B. SUMMONS: FORM.

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

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

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

18           1. SERVICE BY PERSONAL DELIVERY.

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

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

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

22          c.    Service shall be made as follows:

23               (1) Upon an individual other than an infant who is  
24               less than fifteen (15) years of age or an

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

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

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

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

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

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

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

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

8 2. SERVICE BY MAIL.

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

19 b. Service by mail shall be accomplished by mailing a  
20 copy of the summons and petition by certified mail,  
21 return receipt requested and delivery restricted to  
22 the addressee. When there is more than one defendant,  
23 the summons and a copy of the petition or order shall  
24 be mailed in a separate envelope to each defendant.

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

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

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

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

15 3. SERVICE BY PUBLICATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 4. SERVICE ON THE SECRETARY OF STATE.

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

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

6 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

24

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

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

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

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

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

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

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

20       c. Service under this paragraph does not, of itself,  
21 require the recognition or enforcement of an order,  
22 judgment, or decree rendered outside this state.  
23  
24

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

4 G. RETURN.

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

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

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

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

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

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

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

7 SECTION 9. AMENDATORY 12 O.S. 2001, Section 2011, as  
8 amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008,  
9 Section 2011), is amended to read as follows:

10 Section 2011.

11 SIGNING OF PLEADINGS

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

23 B. REPRESENTATIONS TO COURT. By presenting to the court,  
24 whether by signing, filing, submitting, or later advocating, a

1 pleading, written motion, or other paper, an attorney or  
2 unrepresented party is certifying that to the best of the person's  
3 knowledge, information, and belief, formed after an inquiry  
4 reasonable under the circumstances:

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

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

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

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

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

1        1.    HOW INITIATED.

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

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

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 10. 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 11. AMENDATORY 12 O.S. 2001, Section 2023, is  
14 amended to read as follows:

15 Section 2023.

16 CLASS ACTIONS

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

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

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

23 3. The claims or defenses of the representative parties are  
24 typical of the claims or defenses of the class; and

1 4. The representative parties will fairly and adequately  
2 protect the interests of the class.

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

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

8 a. inconsistent or varying adjudications with respect to  
9 individual members of the class which would establish  
10 incompatible standards of conduct for the party  
11 opposing the class, or

12 b. adjudications with respect to individual members of  
13 the class which would as a practical matter be  
14 dispositive of the interests of the other members not  
15 parties to the adjudications or substantially impair  
16 or impede their ability to protect their interests; or

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

21 3. The court finds that the questions of law or fact common to  
22 the members of the class predominate over any questions affecting  
23 only individual members, and that a class action is superior to  
24

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

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

14 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE  
15 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS  
16 ACTIONS.

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

22 2. If the order described in paragraph 1 of this subsection  
23 becomes subject to appellate review, the reviewing court shall apply  
24

1 a de novo standard. While the appeal of the order is pending,  
2 discovery shall be stayed.

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

9 a. the court will ~~exclude him from~~ include the potential  
10 member in the class only if he the potential member so  
11 requests by a specified date,

12 b. the judgment, whether favorable or not, will include  
13 all only members who ~~do not request exclusion~~ have  
14 advised the court by the specified date that they  
15 desire to be included in the class, and

16 c. any member who ~~does not request exclusion~~ requests  
17 inclusion may, ~~if he desires,~~ enter an appearance  
18 through ~~his~~ counsel.

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

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

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

23 ~~4.~~ 5. When appropriate:  
24

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

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

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

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

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

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

22           4.    Imposing conditions on the representative parties or on  
23 intervenors;

1        ~~4.~~ 5. Requiring that the pleadings be amended to eliminate  
2 therefrom allegations as to representation of absent persons, and  
3 that the action proceed accordingly; and

4        ~~5.~~ 6. Dealing with similar procedural matters.  
5 The orders may be combined with an order under Section ~~16~~ 2016 of  
6 this ~~act~~ title and may be altered or amended as may be desirable  
7 from time to time.

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

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

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

22        B. FOR DEFENDING PARTY. A party against whom a claim,  
23 counterclaim, or cross-claim is asserted or a declaratory judgment  
24 is sought may move, at any time, with or without supporting

1 affidavits for a summary judgment in the party's favor as to all or  
2 any part thereof.

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

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

1 the trial of the action, the facts so specified shall be deemed  
2 established, and the trial shall be conducted accordingly.

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

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

22 F. WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the  
23 affidavits of a party opposing the motion that the party cannot for  
24 reasons stated present by affidavit facts essential to justify the

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

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

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

23 I. APPEALS. An order denying summary judgment, summary  
24 disposition of issues, or partial summary adjudication will be

1 | appealable as part of any appeal from an appealable order or  
2 | judgment which is later rendered in the case.

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

6 | SECTION 13. AMENDATORY 12 O.S. 2001, Section 2702, is  
7 | amended to read as follows:

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

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

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

- 22 | 1. The testimony is based upon sufficient facts or data;  
23 | 2. The testimony is the product of reliable principles and  
24 | methods; and

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

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

14       D. BARS TO EXPERT TESTIMONY.

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

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

24

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

13        F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

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

18        2. Except as otherwise stipulated or directed by the court,  
19 this disclosure shall, with respect to a witness who is retained or  
20 specially employed to provide expert testimony in the case or whose  
21 duties as an employee of the party regularly involve giving expert  
22 testimony, be accompanied by a written report prepared and signed by  
23 the witness. The report shall contain a complete statement of all  
24 opinions to be expressed and the basis and reasons therefor; the

1 data or other information relied upon by the witness in forming the  
2 opinions; any exhibits to be used as a summary of or support for the  
3 opinions; the qualifications of the witness, including a list of all  
4 publications authored by the witness within the preceding ten (10)  
5 years; the compensation to be paid for the study and testimony; and  
6 a listing of any other cases in which the witness has testified as  
7 an expert at trial or by deposition within the preceding four (4)  
8 years.

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

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

23 G. INTERPRETATION. In interpreting and applying this section,  
24 the courts of this state shall follow the opinions of the Supreme

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

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

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

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

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

24 I. STANDARD OF REVIEW.

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

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

11        J. SEVERABILITY CLAUSE. The provisions of this section are  
12 severable. If any portion of this section is declared  
13 unconstitutional or the application of any part of this section to  
14 any person or circumstance is held invalid, the remaining portions  
15 of the section and their applicability to any person or circumstance  
16 shall remain valid and enforceable.

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

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

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

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

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

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

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

24

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

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

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

1 not well grounded in fact, or was unwarranted by existing law or a  
2 good faith argument for the extension, modification, or reversal of  
3 existing law. Upon so finding, the court ~~shall~~ may enter a judgment  
4 ordering such nonprevailing party to reimburse the prevailing party  
5 an amount not to exceed Ten Thousand Dollars (\$10,000.00) for  
6 reasonable costs, including ~~attorney's~~ attorney fees, incurred with  
7 respect to such claim or defense.

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

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

24

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

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

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

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

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

1 court, as the court shall deem necessary and proper. For the  
2 purposes of this section, the district court issuing an injunction  
3 shall retain jurisdiction, and in such cases, the Attorney General,  
4 acting in the name of the state, or a district attorney may petition  
5 for recovery of civil penalties.

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

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

1 this subsection shall be deemed guilty of a felony and shall be  
2 subject to imprisonment in the ~~State Penitentiary~~ custody of the  
3 Department of Corrections, for not more than ten (10) years, or a  
4 fine not to exceed Five Thousand Dollars (\$5,000.00), or both such  
5 fine and imprisonment.

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

9 A. As used in this section:

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

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

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

- 19 a. loss of income, wages, or earning capacity and other
- 20 pecuniary losses, or
- 21 b. loss of inheritance; and

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

24

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

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

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

- 15 1. Recipient of the payments;
- 16 2. Dollar amount of the payments;
- 17 3. Interval between payments; and
- 18 4. Number of payments or the period of time over which payments  
19 must be made.

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

23 F. As a condition to authorizing periodic payments of future  
24 damages, the court shall require a defendant who is not adequately

1 insured to provide evidence of financial responsibility in an amount  
2 adequate to assure full payment of damages awarded by the judgment.

3 The judgment shall provide for payments to be funded by:

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

7 2. An obligation of the United States;

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

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

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

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

22 I. For purposes of computing the award of attorney fees when  
23 the plaintiff is awarded a recovery that will be paid in periodic  
24 payments, the court shall place a total value on the payments based

1 on the plaintiff's projected life expectancy and reduce the amount  
2 to present value.

3 SECTION 18. AMENDATORY Section 18, Chapter 368, O.S.L.  
4 2004 (23 O.S. Supp. 2008, Section 15), is amended to read as  
5 follows:

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

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

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

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

24

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

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

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

11        B. For the breach of an obligation not arising from contract,  
12 if the plaintiff receives compensation or is to receive compensation  
13 in the future for the injuries or harm that gave rise to the cause  
14 of action from a source wholly independent of the defendant, such  
15 fact shall be admitted into evidence and the amount may be deducted  
16 from the amount of damages that the plaintiff recovers from the  
17 defendant. Claims subject to a right of subrogation or to  
18 compensation resulting from the proceeds of life insurance shall not  
19 be subject to this section.

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

23        A. Except as provided in subsection B of this section, in any  
24 action not arising out of contract, the amount of noneconomic

1 damages awarded shall not exceed Three Hundred Thousand Dollars  
2 (\$300,000.00), regardless of the number of parties against whom the  
3 action is brought or the number of actions brought with respect to  
4 the personal injury. The dollar amount prescribed by this  
5 subsection shall be adjusted annually based upon any positive  
6 increase in the Consumer Price Index that measures the average  
7 changes in prices of goods and services purchased by urban wage  
8 earners and clerical workers' families and single workers living  
9 alone (CPI-W) for the preceding calendar year. The adjustment  
10 required by this subsection shall be made by the State Treasurer and  
11 certified to the Administrative Director of the Courts on April 1 of  
12 each year or not later than thirty (30) days after the date upon  
13 which the Bureau of Labor Statistics releases the CPI-W inflationary  
14 data for the preceding calendar year, whichever date first occurs.  
15 No adjustment to the dollar amount prescribed by this subsection  
16 shall be made for any year in which there is a decline in the  
17 Consumer Price Index.

18 B. If the jury finds by clear and convincing evidence that the  
19 acts of the party which caused the damages were grossly negligent or  
20 committed intentionally or with malice toward others, and the court  
21 finds, on the record and out of the presence of the jury that there  
22 is evidence beyond a reasonable doubt that the defendant was grossly  
23 negligent or acted intentionally or with malice toward others, the  
24 jury in a separate proceeding, conducted after the jury has made

1 such a finding and awarded actual damages, may award noneconomic  
2 damages in an amount the jury deems appropriate without regard to  
3 the limitation set forth in subsection A of this section. Any award  
4 of noneconomic damages under this subsection awarded in any manner  
5 other than as required in this section shall be void and reversible.

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

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

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

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

20 A. If any plaintiff seeks recovery for loss of earnings, loss  
21 of earning capacity, loss of contributions of a pecuniary value, or  
22 loss of inheritance, evidence to prove the loss must be presented in  
23 the form of a net loss after reduction for income tax payments or  
24

1 unpaid tax liability pursuant to any state or federal income tax  
2 law.

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

5 SECTION 22. 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 23. AMENDATORY 51 O.S. 2001, Section 155, as  
2 last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp.  
3 2008, Section 155), is amended to read as follows:

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

6 1. Legislative functions;

7 2. Judicial, quasi-judicial, or prosecutorial functions, other  
8 than claims for wrongful criminal felony conviction resulting in  
9 imprisonment provided for in Section 154 of this title;

10 3. Execution or enforcement of the lawful orders of any court;

11 4. Adoption or enforcement of or failure to adopt or enforce a  
12 law, whether valid or invalid, including, but not limited to, any  
13 statute, charter provision, ordinance, resolution, rule, regulation  
14 or written policy;

15 5. Performance of or the failure to exercise or perform any act  
16 or service which is in the discretion of the state or political  
17 subdivision or its employees;

18 6. Civil disobedience, riot, insurrection or rebellion or the  
19 failure to provide, or the method of providing, police, law  
20 enforcement or fire protection;

21 7. Any claim based on the theory of attractive nuisance;

22 8. Snow or ice conditions or temporary or natural conditions on  
23 any public way or other public place due to weather conditions,  
24

1 unless the condition is affirmatively caused by the negligent act of  
2 the state or a political subdivision;

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

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

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

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

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

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

22 15. Absence, condition, location or malfunction of any traffic  
23 or road sign, signal or warning device unless the absence,  
24 condition, location or malfunction is not corrected by the state or

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

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

15 17. Misrepresentation, if unintentional;

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

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

24

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

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

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

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

- 17           a. in an effort to quell a riot,
- 18           b. in response to a natural disaster or military attack,
- 19           or
- 20           c. if participating in a military mentor program ordered
- 21           by the court;

22       24. Provision, equipping, operation or maintenance of any  
23 prison, jail or correctional facility, or injuries resulting from  
24 the parole or escape of a prisoner or injuries by a prisoner to any

1 other prisoner; provided, however, this provision shall not apply to  
2 claims from individuals not in the custody of the Department of  
3 Corrections based on accidents involving motor vehicles owned or  
4 operated by the Department of Corrections;

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

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

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

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

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

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

23 31. Any confirmation of the existence or nonexistence of any  
24 effective financing statement on file in the office of the Secretary

1 of State made in good faith by an employee of the office of the  
2 Secretary of State as required by the provisions of Section 1-9-  
3 320.6 of Title 12A of the Oklahoma Statutes;

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

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

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

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

16 SECTION 24. AMENDATORY Section 7, Chapter 390, O.S.L.  
17 2003 (63 O.S. Supp. 2008, Section 1-1708.1G), is amended to read as  
18 follows:

19 Section 1-1708.1G ~~Notwithstanding the provisions of Section 727~~  
20 ~~of Title 12 of the Oklahoma Statutes or~~ any other provision of the  
21 Oklahoma Statutes to the contrary, prejudgment interest in a medical  
22 liability action shall be determined using a rate equal to the  
23 average United States Treasury Bill rate of the preceding calendar  
24 year as certified to the Administrative Director of the Courts by

1 the State Treasurer on the first regular business day in January of  
2 each year. Prejudgment interest shall accrue from the time provided  
3 in subsection E of Section 727.1 of Title 12 of the Oklahoma  
4 Statutes.

5 SECTION 25. AMENDATORY 63 O.S. 2001, Section 1-1709.1,  
6 as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S.  
7 Supp. 2008, Section 1-1709.1), is amended to read as follows:

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

9 1. "Credentialing or recredentialing data" means:

- 10 a. the application submitted by a health care  
11 professional requesting appointment or reappointment  
12 to the medical staff of a health care facility or  
13 requesting clinical privileges or other permission to  
14 provide health care services at a health care  
15 facility,
- 16 b. any information submitted by the health care  
17 professional in support of such application,
- 18 c. any information, unless otherwise privileged, obtained  
19 by the health care facility during the credentialing  
20 or recredentialing process regarding such application,  
21 and
- 22 d. the decision made by the health care facility  
23 regarding such application;
- 24

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

5       3. "Health care facility" means:

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

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

12          c. the clinical practices of accredited allopathic and  
13          osteopathic state medical schools;

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

19       5. "Peer review information" means all records, documents and  
20 other information generated during the course of a peer review  
21 process, including any reports, statements, memoranda,  
22 correspondence, record of proceedings, materials, opinions,  
23 findings, conclusions and recommendations, credentialing data and  
24 recredentialing data, but does not include:

- 1 a. the medical records of a patient whose health care in  
2 a health care facility is being reviewed,
- 3 b. incident reports and other like documents regarding  
4 health care services being reviewed, regardless of how  
5 the reports or documents are titled or captioned,
- 6 c. the identity of any individuals who have personal  
7 knowledge regarding the facts and circumstances  
8 surrounding the patient's health care in the health  
9 care facility,
- 10 d. factual statements regarding the patient's health care  
11 in the health care facility from any individuals who  
12 have personal knowledge regarding the facts and  
13 circumstances surrounding the patient's health care,  
14 which factual statements were generated outside the  
15 peer review process,
- 16 e. the identity of all documents and raw data previously  
17 created elsewhere and considered during the peer  
18 review process, or
- 19 f. copies of all documents and raw data previously  
20 created elsewhere and considered during the peer  
21 review process, whether available elsewhere or not, ~~or~~
- 22 ~~g. credentialing or recredentialing data regarding the~~  
23 ~~health care professional who provided the health care~~
- 24

1 ~~services being reviewed or who is the subject of a~~  
2 ~~credentialing or recredentialing process; and~~

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

9 B. 1. Peer review information shall be private, confidential  
10 and privileged~~;~~

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

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

21 2. Nothing in this section shall be construed to abrogate,  
22 alter or affect any provision in the Oklahoma Statutes which  
23 provides that information regarding liability insurance of a health  
24

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

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

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

16 a. ~~that~~

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

20 b. ~~that~~

21 2. That the health care facility was independently negligent as  
22 a result of permitting the health care professional to provide  
23 health care services to the patient in the health care facility,  
24

1 the recommendations made and action taken as a result of any peer  
2 review process utilized by such health care facility regarding the  
3 health care professional prior to the date of the alleged negligence  
4 shall not be subject to discovery pursuant to the Oklahoma Discovery  
5 Code or admissible at trial.

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

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

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

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

20       SECTION 26.       NEW LAW       A new section of law to be codified  
21 in the Oklahoma Statutes as Section 684.14 of Title 63, unless there  
22 is created a duplication in numbering, reads as follows:

23  
24

1 This section and Sections 27 through 36 of this act shall be  
2 known and may be cited as the "Uniform Emergency Volunteer Health  
3 Practitioners Act".

4 SECTION 27. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 684.15 of Title 63, unless there  
6 is created a duplication in numbering, reads as follows:

7 As used in the Uniform Emergency Volunteer Health Practitioners  
8 Act:

9 1. "Disaster relief organization" means an entity that provides  
10 emergency or disaster relief services that include health or  
11 veterinary services provided by volunteer health practitioners and  
12 that:

13 a. is designated or recognized as a provider of those  
14 services pursuant to a disaster response and recovery  
15 plan adopted by an agency of the federal government or  
16 the State Department of Health, and

17 b. regularly plans and conducts its activities in  
18 coordination with an agency of the federal government  
19 or the State Department of Health;

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

23 3. "Emergency declaration" means a declaration of emergency  
24 issued by a person authorized to do so under the laws of this state

1 pursuant to the Oklahoma Emergency Management Act of 2003 or the  
2 Catastrophic Health Emergency Powers Act;

3 4. "Emergency Management Assistance Compact" means the  
4 interstate compact approved by Congress by Public Law No. 104-  
5 321,110 Stat. 3877;

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

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

9 7. "Health practitioner" means an individual licensed under the  
10 laws of this or another state to provide health or veterinary  
11 services;

12 8. "Health services" means the provision of treatment, care,  
13 advice or guidance, or other services, or supplies, related to the  
14 health or death of individuals or human populations, to the extent  
15 necessary to respond to an emergency, including:

- 16 a. the following, concerning the physical or mental  
17 condition or functional status of an individual or  
18 affecting the structure or function of the body:
- 19 (1) preventive, diagnostic, therapeutic,  
20 rehabilitative, maintenance, or palliative care,  
21 and
  - 22 (2) counseling, assessment, procedures, or other  
23 services,

24

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

4           c.    funeral, cremation, cemetery, or other mortuary  
5                    services;

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

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

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

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

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

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

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

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

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

3 SECTION 28. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 684.16 of Title 63, unless there  
5 is created a duplication in numbering, reads as follows:

6 This Uniform Emergency Volunteer Health Practitioners Act  
7 applies to volunteer health practitioners registered with a  
8 registration system that complies with Section 30 of this act and  
9 who provide health or veterinary services in this state for a host  
10 entity while an emergency declaration is in effect.

11 SECTION 29. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 684.17 of Title 63, unless there  
13 is created a duplication in numbering, reads as follows:

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

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

17 2. The geographical areas in which volunteer health  
18 practitioners may practice;

19 3. The types of volunteer health practitioners who may  
20 practice; and

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

23

24

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

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

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

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

13 SECTION 30. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 684.18 of Title 63, unless there  
15 is created a duplication in numbering, reads as follows:

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

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

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

22 3. Be capable of confirming the accuracy of information  
23 concerning whether a health practitioner is licensed and in good  
24

1 standing before health services or veterinary services are provided  
2 under the Uniform Emergency Volunteer Health Practitioners Act; and

3 4. Meet one of the following conditions:

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

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

13 c. be operated by a:

14 (1) disaster relief organization,

15 (2) licensing board,

16 (3) national or regional association of licensing  
17 boards or health practitioners,

18 (4) health facility that provides comprehensive  
19 inpatient and outpatient health-care services,  
20 including a tertiary care and teaching hospital,  
21 or

22 (5) governmental entity, or

23

24

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

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

12          C.   Upon request of a person in this state authorized under  
13 subsection B of this section, or a similarly authorized person in  
14 another state, a registration system located in this state shall  
15 notify the person of the identities of volunteer health  
16 practitioners and whether the practitioners are licensed and in good  
17 standing.

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

22          SECTION 31.       NEW LAW        A new section of law to be codified  
23 in the Oklahoma Statutes as Section 684.19 of Title 63, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. While an emergency declaration is in effect, a volunteer  
2 health practitioner, registered with a registration system that  
3 complies with Section 30 of this act and licensed and in good  
4 standing in the state upon which the registration of the  
5 practitioner is based, may practice in this state to the extent  
6 authorized by the Uniform Emergency Volunteer Health Practitioners  
7 Act as if the practitioner were licensed in this state.

8       B. A volunteer health practitioner qualified under subsection A  
9 of this section is not entitled to the protections of the Uniform  
10 Emergency Volunteer Health Practitioners Act if the practitioner is  
11 licensed in more than one state and any license of the practitioner  
12 is suspended, revoked, or subject to an agency order limiting or  
13 restricting practice privileges, or has been voluntarily terminated  
14 under threat of sanction.

15       SECTION 32.       NEW LAW       A new section of law to be codified  
16 in the Oklahoma Statutes as Section 684.20 of Title 63, unless there  
17 is created a duplication in numbering, reads as follows:

18       A. For purposes of this section:

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

22       2. "Privileging" means the authorizing by an appropriate  
23 authority, such as a governing body, of a health practitioner to  
24 provide specific treatment, care, or services at a health facility

1 subject to limits based on factors that include license, education,  
2 training, experience, competence, health status, and specialized  
3 skill.

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

9 SECTION 33. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 684.21 of Title 63, unless there  
11 is created a duplication in numbering, reads as follows:

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

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

22 C. The State Department of Health may modify or restrict the  
23 health or veterinary services that volunteer health practitioners  
24 may provide pursuant to the Uniform Emergency Volunteer Health

1 Practitioners Act. An order under this subsection may take effect  
2 immediately, without prior notice or comment, and is not a rule  
3 within the meaning of the Administrative Procedures Act.

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

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

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

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

23 F. In addition to the authority granted by law of this state  
24 other than the Uniform Emergency Volunteer Health Practitioners Act

1 to regulate the conduct of health practitioners, a licensing board  
2 or other disciplinary authority in this state:

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

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

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

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

19 SECTION 34. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 684.22 of Title 63, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. The Uniform Emergency Volunteer Health Practitioners Act  
23 does not limit rights, privileges, or immunities provided to  
24 volunteer health practitioners by laws other than the Uniform

1 Emergency Volunteer Health Practitioners Act. Except as otherwise  
2 provided in subsection B of this section, the Uniform Emergency  
3 Volunteer Health Practitioners Act does not affect requirements for  
4 the use of health practitioners pursuant to the Emergency Management  
5 Assistance Compact.

6 B. The State Department of Health, pursuant to the Emergency  
7 Management Assistance Compact, may incorporate into the emergency  
8 forces of this state volunteer health practitioners who are not  
9 officers or employees of this state, a political subdivision of this  
10 state, or a municipality or other local government within this  
11 state.

12 SECTION 35. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 684.23 of Title 63, unless there  
14 is created a duplication in numbering, reads as follows:

15 The State Board of Health may promulgate rules to implement the  
16 Uniform Emergency Volunteer Health Practitioners Act. In doing so,  
17 the State Department of Health shall consult with and consider the  
18 recommendations of the entity established to coordinate the  
19 implementation of the Emergency Management Assistance Compact and  
20 shall also consult with and consider rules promulgated by similarly  
21 empowered agencies in other states to promote uniformity of  
22 application of the Uniform Emergency Volunteer Health Practitioners  
23 Act and make the emergency response systems in the various states  
24 reasonably compatible.

1 SECTION 36. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 684.24 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

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

8 SECTION 37. AMENDATORY 63 O.S. 2001, Section 683.9, as  
9 amended by Section 9, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008,  
10 Section 683.9), is amended to read as follows:

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

24

1           1. To activate the Emergency Operations Plan, and to assume  
2 regulatory control over all essential resources of this state,  
3 directly or through the boards, agencies, offices and officers  
4 established by ~~said~~ the Emergency Operations Plan, to determine  
5 priorities of such resources and allocate such resources as the  
6 Governor may deem necessary in cooperation with the political  
7 subdivisions of this state, the federal government, or other states.  
8 "Resources" shall mean all economic resources within this state  
9 including but not limited to food, manpower, health ~~and health~~  
10 ~~manpower~~, water, transportation, economic stabilization, electric  
11 power, petroleum, gas, and solid fuel, industrial production,  
12 construction and housing-; i

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

16           3. To provide for the evacuation of all or part of the  
17 population from any stricken or threatened area or areas within this  
18 state and to take such steps as are necessary for the receipt and  
19 care of such evacuees-; i

20           4. Subject to the provisions of the State Constitution, to  
21 remove from office any public officer having administrative  
22 responsibilities under this act for willful failure to obey any  
23 order, rule or regulation adopted pursuant to this act. Such  
24 removal shall be upon charges after service upon such person of a

1 copy of such charges and after giving such person an opportunity to  
2 be heard in the defense of such person. Pending the preparation and  
3 disposition of charges, the Governor may suspend such person for a  
4 period not exceeding thirty (30) days. A vacancy resulting from  
5 removal or suspension pursuant to this section shall be filled by  
6 the Governor until it is filled as otherwise provided by law; and

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

12 SECTION 38. AMENDATORY 63 O.S. 2001, Section 683.13, as  
13 amended by Section 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008,  
14 Section 683.13), is amended to read as follows:

15 Section 683.13 A. All functions hereunder and all other  
16 activities relating to emergency management are hereby declared to  
17 be governmental functions. The provisions of this section shall not  
18 affect the right of any person to receive benefits to which the  
19 person would otherwise be entitled under this act, or under the  
20 workers' compensation law, or under any pension law, nor the right  
21 of any such person to receive any benefits or compensation under any  
22 Act of Congress. Any municipal fireman or policeman engaged in any  
23 emergency management activities, while complying with or attempting  
24 to comply with this act or any rule or regulation pursuant thereto,

1 shall be considered as serving in his or her regular line of duty  
2 and shall be entitled to all benefits of any applicable pension  
3 fund.

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

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

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

9 SECTION 39. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 1-1924.2 of Title 63, unless  
11 there is created a duplication in numbering, reads as follows:

12 The Legislature finds that:

13 1. Skilled nursing facilities, as defined in 42 U.S.C., Section  
14 1395i-3, participating in the Medicare program and nursing  
15 facilities, as defined in 42 U.S.C., Section 1396r, participating in  
16 the Medicaid program are required to establish and maintain quality  
17 assessment and assurance committees to identify issues with respect  
18 to which quality assessment and assurance activities are necessary  
19 and to develop and implement appropriate plans of action to correct  
20 identified quality deficiencies pursuant to 42 U.S.C., Sections  
21 1395i-3 and 1396r and rules promulgated by the State Department of  
22 Health;

23 2. The Centers for Medicare and Medicaid Services and the State  
24 Department of Health have recognized the effectiveness of such

1 quality assessment and assurance programs to measure, monitor and  
2 improve the quality of care furnished by skilled nursing facilities  
3 and nursing facilities;

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

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

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

21 SECTION 40. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1-1924.3 of Title 63, unless  
23 there is created a duplication in numbering, reads as follows:

24

1 For purposes of this section and Sections 41 through 43 of this  
2 act:

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

10 2. "Quality assessment and assurance committee" means any  
11 committee of a skilled nursing facility or a nursing facility which  
12 conducts quality assessment and assurance activities;

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

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

23 b. submitted or reported by a skilled nursing facility or  
24 a nursing facility to an accredited organization,

1 trade association, or other entity for purposes of  
2 improving quality of care in the skilled nursing  
3 facility or the nursing facility industry;

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

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

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

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

23 B. A person who reviews or creates quality assessment and  
24 assurance committee records or who participates in any proceeding

1 that reviews or creates such records may not be permitted or  
2 required to testify in any civil judicial or administrative  
3 proceeding with respect to such records or with respect to any  
4 finding, recommendation, evaluation, opinion, or action taken by  
5 such person or body in connection with such records.

6 SECTION 42. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 1-1924.5 of Title 63, unless  
8 there is created a duplication in numbering, reads as follows:

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

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

23

24

1 SECTION 43. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-1924.6 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

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

9 1. The deficiency determination is final, adjudicated and has  
10 been appealed;

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

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

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

22 SECTION 44. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 24-200 of Title 70, unless there  
24 is created a duplication in numbering, reads as follows:

1 This section and Sections 45 through 48 of this act shall be  
2 known and may be cited as the "School Protection Act".

3 SECTION 45. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 24-201 of Title 70, unless there  
5 is created a duplication in numbering, reads as follows:

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

10 SECTION 46. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 24-202 of Title 70, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. Except as otherwise provided in this section, any person  
14 eighteen (18) years of age or older who acts with specific intent in  
15 making a false accusation of criminal activity against an education  
16 employee to law enforcement authorities or school district  
17 officials, or both, shall be guilty of a misdemeanor and, upon  
18 conviction, punished by a fine of not more than Two Thousand Dollars  
19 (\$2,000.00).

20 B. Except as otherwise provided in this section, any student  
21 between seven (7) years of age and seventeen (17) years of age who  
22 acts with specific intent in making a false accusation of criminal  
23 activity against an education employee to law enforcement  
24 authorities or school district officials, or both, shall, upon

1 conviction, at the discretion of the court, be subject to any of the  
2 following:

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

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

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

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

12 SECTION 47. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 24-203 of Title 70, unless there  
14 is created a duplication in numbering, reads as follows:

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

20 SECTION 48. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 24-204 of Title 70, unless there  
22 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

21 B. Peer review information shall be private, confidential and  
22 privileged except that a peer review body shall be permitted to  
23 provide relevant peer review information to a state agency or board  
24 which licensed the professional whose competence and performance is

1 being reviewed in a peer review process or who is the subject of a  
2 credentialing or recredentialing process. Notice that the  
3 information is being provided to a state agency or board shall be  
4 given to the professional.

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

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

17 E. No person involved in a peer review process may testify  
18 regarding the peer review process in any civil proceeding or  
19 disclose by responses to written discovery requests any peer review  
20 information.

21 SECTION 51. AMENDATORY 76 O.S. 2001, Section 31, is  
22 amended to read as follows:  
23  
24

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

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

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

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

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

21 D. Definitions.

22 1. For the purposes of this section, the term "volunteer" means  
23 a person who enters into a service or undertaking of the person's  
24 free will without compensation or expectation of compensation in

1 money or other thing of value in order to provide a service, care,  
2 assistance, advice, or other benefit ~~where the person does not offer~~  
3 ~~that type of service, care, assistance, advice or other benefit for~~  
4 ~~sale to the public; provided, being legally entitled to receive~~  
5 ~~compensation for the service or undertaking performed shall not~~  
6 ~~preclude a person from being considered a volunteer.~~

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

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

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

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

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

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

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

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

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

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

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

22 As used in the Common Sense Consumption Act:

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

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

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

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

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

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

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

22 A. Except as provided in subsection B of this section, a  
23 manufacturer, packer, distributor, carrier, holder, seller, marketer  
24 or advertiser of a food, as defined in Section 201(f) of the Federal

1 Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an  
2 association of one or more such entities, shall not be subject to  
3 civil liability arising under any law of this state, including all  
4 statutes, regulations, rules, common law, public policies, court or  
5 administrative decisions or decrees, or other state action having  
6 the effect of law, for any claim arising out of weight gain,  
7 obesity, a health condition associated with weight gain or obesity,  
8 or other generally known condition allegedly caused by or allegedly  
9 likely to result from long-term consumption of food.

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

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

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

24

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

18 D. In any action exempted under subsection B of this section,  
19 all discovery and other proceedings shall be stayed during the  
20 pendency of any motion to dismiss unless the court finds upon the  
21 motion of any party that particularized discovery is necessary to  
22 preserve evidence or to prevent undue prejudice to that party.  
23 During the pendency of any stay of discovery pursuant to this  
24 subsection, unless otherwise ordered by the court, any party to the

1 action with actual notice of the allegations contained in the  
2 complaint shall treat all documents, data compilations, including  
3 electronically recorded or stored data, and tangible objects that  
4 are in the custody or control of such party and that are relevant to  
5 the allegations, as if they were the subject of a continuing request  
6 for production of documents from an opposing party under Section  
7 3234 of Title 12 of the Oklahoma Statutes.

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

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

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

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

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

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

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

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

14 The provisions of this section and Sections 56 through 58 of  
15 this act do not apply to actions for deceit, breach of contract, or  
16 expressed or implied warranties, or for injuries resulting from  
17 failure of firearms to operate in a normal or usual manner due to  
18 defects or negligence in design or manufacture. The provisions of  
19 this section and Sections 56 through 58 of this act do not apply to  
20 actions arising from the unlawful sale or transfer of firearms, or  
21 to instances where the transferor knew, or should have known, that  
22 the recipient would engage in the unlawful sale or transfer of the  
23 firearm, or would use, or purposely allow the use of, the firearm in  
24 an unlawful, negligent, or improper fashion. For purposes of this

1 section, the potential of a firearm to cause serious injury, damage,  
2 or death as a result of normal function does not constitute a  
3 defective condition of the product. A firearm may not be deemed  
4 defective on the basis of its potential to cause serious injury,  
5 damage, or death when discharged.

6 SECTION 60. REPEALER Section 1, Chapter 368, O.S.L. 2004  
7 (5 O.S. Supp. 2008, Section 7.1), is hereby repealed.

8 SECTION 61. REPEALER 47 O.S. 2001, Section 12-420, as  
9 amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2008,  
10 Section 12-420), is hereby repealed.

11 SECTION 62. REPEALER Section 6, Chapter 390, O.S.L.  
12 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 and Section  
13 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2008, Sections 1-1708.1F  
14 and 1-1708.1F-1), are hereby repealed.

15 SECTION 63. REPEALER Section 19, Chapter 473, O.S.L.  
16 2003 (63 O.S. Supp. 2008, Section 6602), is hereby repealed.

17 SECTION 64. This act shall become effective November 1, 2009.

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