

**COMMITTEE AMENDMENT**

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB574 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: John Trebilcock

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 SENATE BILL NO. 574

By: Jolley of the Senate

and

Trebilcock of the House

7  
8  
9 PROPOSED COMMITTEE SUBSTITUTE

10 An Act relating to the practice of dentistry;  
11 amending 59 O.S. 2001, Sections 328.15, as last  
12 amended by Section 16, Chapter 413, O.S.L. 2010,  
13 328.27, as amended by Section 3, Chapter 377, O.S.L.  
14 2005, 328.32, 328.36a and 328.44a, as last amended by  
15 Section 6, Chapter 377, O.S.L. 2005 (59 O.S. Supp.  
16 2010, Sections 328.15, 328.27 and 328.44a), which  
17 relate to the State Dental Act; modifying certain  
18 powers of Board of Dentistry; requiring faculty  
19 permit holders to show certain proof; modifying list  
20 of acts by a dentist which constitute grounds for  
21 penalties by Board; modifying requirements of  
22 laboratory prescriptions issued by a dentist;  
23 requiring Board to make certain forms readily  
24 available; permitting dentists to produce, transfer  
and retain certain copies electronically; permitting  
Board to collect certain fees; amending 59 O.S. 2001,  
Section 738.1, which relates to injunctions; adding  
certain boards that may be granted injunctions  
without bonds; providing duties of Board  
investigators; providing for possession of sidearm  
and badge upon retirement; requiring professional  
liability insurance for dentists; providing for  
exceptions; permitting the Board to promulgate  
certain rules; amending 47 O.S. 2001, Section 2-300,  
as last amended by Section 8, Chapter 437, O.S.L.  
2010 (47 O.S. Supp. 2010, Section 2-300), which  
relates to definitions; modifying certain definition;

1 providing for codification; providing an effective  
2 date; and declaring an emergency.

3  
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 59 O.S. 2001, Section 328.15, as  
6 last amended by Section 16, Chapter 413, O.S.L. 2010 (59 O.S. Supp.  
7 2010, Section 328.15), is amended to read as follows:

8 Section 328.15 A. Pursuant to and in compliance with Article I  
9 of the Administrative Procedures Act, the Board of Dentistry shall  
10 have the power to formulate, adopt, and promulgate rules as may be  
11 necessary to regulate the practice of dentistry in this state and to  
12 implement and enforce the provisions of the State Dental Act.

13 B. The Board is authorized and empowered to:

14 1. Examine and test the qualifications of applicants for a  
15 license or permit to be issued by the Board;

16 2. Affiliate by contract or cooperative agreement with another  
17 state or combination of states for the purpose of conducting  
18 simultaneous regional examinations of applicants for a license to  
19 practice dentistry, dental hygiene, or a dental specialty;

20 3. Maintain a list of the name, current mailing address and  
21 principal office address of all persons who hold a license or permit  
22 issued by the Board;

1        4. Account for all receipts and expenditures of the monies of  
2 the Board, including annually preparing and publishing a statement  
3 of receipts and expenditures of the Board for each fiscal year;

4        5. Within limits prescribed in the State Dental Act, set all  
5 fees and administrative penalties to be imposed and collected by the  
6 Board;

7        6. Maintain an office staff and employ legal counsel and other  
8 advisors to the Board, including advisory committees;

9        7. Investigate and issue investigative and other subpoenas,  
10 pursuant to Article II of the Administrative Procedures Act;

11       8. Initiate individual proceedings and issue orders imposing  
12 administrative penalties, pursuant to Article II of the  
13 Administrative Procedures Act, against any dentist, dental  
14 hygienist, dental assistant, dental laboratory technician, or holder  
15 of a permit to operate a dental laboratory who has violated the  
16 State Dental Act or the rules of the Board;

17       9. Conduct, in a uniform and reasonable manner, inspections of  
18 dental offices and dental laboratories and their business records;

19       10. Establish guidelines for courses of study necessary for  
20 expanded duties of dental assistants and, when appropriate, issue  
21 permits authorizing dental assistants to perform expanded duties;

22       11. Establish continuing education requirements for dentists,  
23 dental hygienists, and dental assistants who hold expanded duty  
24 permits issued by the Board;

1       12. Recognize the parameters of care established and approved  
2 by the American Dental Association;

3       13. Formulate, adopt, and promulgate rules, pursuant to Article  
4 I of the Administrative Procedures Act, as may be necessary to  
5 implement and enforce the provisions of the Oklahoma Dental  
6 Mediation Act;

7       14. Hire one or more investigators to conduct investigations of  
8 alleged violations of the State Dental Act or the rules of the  
9 Board. The investigator may be a certified peace officer who shall  
10 be commissioned with all the powers and authority of peace officers  
11 of this state;

12       15. Seek and receive advice and assistance of the Office of the  
13 Attorney General of this state;

14       16. Promote the dental health of the people of this state;

15       17. Inform, educate, and advise all persons who hold a license  
16 or permit issued by the Board, or who are otherwise regulated by the  
17 Board, regarding the State Dental Act and the rules of the Board;

18       18. Affiliate with the American Association of Dental Examiners  
19 as an active member, pay regular dues, and send members of the Board  
20 as delegates to its meetings;

21       19. Enter into contracts;

22       20. Acquire, ~~rent~~ by purchase, lease, gift, solicitation of  
23 gift or by any other manner, hold, encumber, and dispose of personal  
24 property as is needed, maintain, use and operate or contract for the

1 maintenance, use and operation of or lease of any and all property  
2 of any kind, real, personal or mixed or any interest therein unless  
3 otherwise provided by the State Dental Act; provided, all contracts  
4 for real property shall be subject to the provisions of Section 63  
5 of Title 74 of the Oklahoma Statutes.

6 21. Receive or accept the surrender of a license, permit, or  
7 certificate granted to any person by the Board as provided in  
8 Section 328.44a of this title; and

9 22. Take all other actions necessary to implement and enforce  
10 the State Dental Act.

11 SECTION 2. AMENDATORY 59 O.S. 2001, Section 328.27, as  
12 amended by Section 3, Chapter 377, O.S.L. 2005 (59 O.S. Supp. 2010,  
13 Section 328.27), is amended to read as follows:

14 Section 328.27 A. 1. The Board of Dentistry may, without a  
15 clinical examination, upon presentation of satisfactory credentials,  
16 including completion of the dental hygiene National Boards and both  
17 Part I and Part II of the National Board examination for dentists,  
18 and under such rules as the Board may promulgate, issue a faculty  
19 permit to an applicant who:

- 20 a. is a graduate of a school of dentistry approved by the  
21 Board and is licensed to practice dentistry in another  
22 state or country,  
23  
24

- 1           b.     successfully completes advanced training in a  
2                   specialty approved by the Commission on Dental  
3                   Accreditation of the American Dental Association, or  
4           c.     is a graduate of an accredited dental hygiene program  
5                   and is licensed to practice dental hygiene in another  
6                   state.

7           2.    A faculty permit shall be issued only upon the certification  
8 of the dean of an accredited dental college or the director of an  
9 accredited dental hygiene program located in this state that the  
10 applicant is a bona fide member of the teaching staff of that  
11 college or program.

12           3.   Following the first year of employment, the faculty permit  
13 holder shall show proof of passing an appropriate clinical board  
14 examination recognized by the Board of Dentistry.

15           4.   A faculty permit shall be valid for one (1) year and may be  
16 renewed by the Board at the written request of the dean of an  
17 accredited dental program or the director of an accredited dental  
18 hygiene program.

19           B.    The holder of a faculty permit shall be entitled to perform  
20 services and procedures in the same manner as a person holding a  
21 license to practice dentistry or dental hygiene in this state, but  
22 all services and procedures performed by the faculty permit holder  
23 shall only be without compensation other than that received in  
24 salary from a faculty position or through faculty practice as

1 authorized by the Board. Such services and procedures shall be  
2 performed only within the facilities of an accredited dental college  
3 or accredited dental hygiene program or in a seminar or postgraduate  
4 course and as an adjunct to teaching functions. A holder of a  
5 faculty permit shall only engage in faculty practice of dentistry or  
6 dental hygiene within the facilities designated by the accredited  
7 dental college and including teaching hospitals approved by the  
8 Board.

9 SECTION 3. AMENDATORY 59 O.S. 2001, Section 328.32, is  
10 amended to read as follows:

11 Section 328.32 A. The following acts or occurrences by a  
12 dentist shall constitute grounds for which the penalties specified  
13 in Section 328.44a of this title may be imposed by order of the  
14 Board of Dentistry:

15 1. Pleading guilty or nolo contendere to, or being convicted  
16 of, a felony, a misdemeanor involving moral turpitude, or a  
17 violation of federal or state controlled dangerous substances laws;

18 2. Presenting to the Board a false diploma, license, or  
19 certificate, or one obtained by fraud or illegal means;

20 3. Being, by reason of persistent inebriety or addiction to  
21 drugs, incompetent to continue the practice of dentistry;

22 4. Publishing a false, fraudulent, or misleading advertisement  
23 or statement;

24



1        5. Authorizing or aiding an unlicensed person to practice  
2 dentistry, to practice dental hygiene, or to perform a function for  
3 which a permit from the Board is required;

4        6. Authorizing or aiding a dental hygienist to perform any  
5 procedure prohibited by the State Dental Act or the rules of the  
6 Board;

7        7. Authorizing or aiding a dental assistant to perform any  
8 procedure prohibited by the State Dental Act or the rules of the  
9 Board;

10       8. Failing to pay fees as required by the State Dental Act or  
11 the rules of the Board;

12       9. Failing to complete continuing education requirements;

13       10. Representing himself or herself to the public as a  
14 specialist in a dental specialty without holding a dental specialty  
15 license therefor;

16       11. Representing himself or herself to the public as a  
17 specialist whose practice is limited to a dental specialty, when  
18 such representation is false, fraudulent, or misleading;

19       12. Endangering the health of patients by reason of having a  
20 highly communicable disease and continuing to practice dentistry  
21 without taking appropriate safeguards;

22       13. Being a menace to the public health by reasons of  
23 practicing dentistry in an unsafe or unsanitary manner or place;

24       14. Being shown to be mentally unsound;

1        15. Being shown to be grossly immoral and that such condition  
2 represents a threat to patient care or treatment;

3        16. Being incompetent to practice dentistry while delivering  
4 care to a patient;

5        17. Committing gross negligence in the practice of dentistry;

6        18. Committing repeated acts of negligence in the practice of  
7 dentistry;

8        19. Offering to effect or effecting a division of fees, or  
9 agreeing to split or divide a fee for dental services with any  
10 person, in exchange for the person bringing or referring a patient;

11       20. Being involuntarily committed to an institution for  
12 treatment for substance abuse, until recovery or remission;

13       21. Using or attempting to use the services of a dental  
14 laboratory or dental laboratory technician without issuing a  
15 laboratory prescription, except as provided in subsection C of  
16 Section 328.36 of this title;

17       22. Aiding, abetting, or encouraging a dental hygienist  
18 employed by the dentist to make use of an oral prophylaxis list, or  
19 the calling by telephone or by use of letters transmitted through  
20 the mails to solicit patronage from patients formerly served in the  
21 office of any dentist formerly employing such hygienist;

22       23. Having more than the equivalent of two full-time dental  
23 hygienists for each dentist actively practicing in the same dental  
24 office who will supervise the dental hygienists;

1        24. Knowingly patronizing or using the services of a dental  
2 laboratory or dental laboratory technician who has not complied with  
3 the provisions of the State Dental Act and the rules of the Board;

4        25. Authorizing or aiding a dental hygienist, dental assistant,  
5 dental laboratory technician, or holder of a permit to operate a  
6 dental laboratory to violate any provision of the State Dental Act  
7 or the rules of the Board;

8        26. Willfully disclosing confidential information;

9        27. Writing a false, unnecessary, or excessive prescription for  
10 any drug or narcotic which is a controlled dangerous substance under  
11 either federal or state law;

12       28. Prescribing or administering any drug or treatment without  
13 having established a valid dentist-patient relationship;

14       29. Engaging in nonconsensual physical contact with a patient  
15 which is sexual in nature, or engaging in a verbal communication  
16 which is intended to be sexually demeaning to a patient;

17       30. Practicing dentistry without displaying, at the dentist's  
18 primary place of practice, the license issued to the dentist by the  
19 Board to practice dentistry and the current renewal certificate;

20       31. Being dishonest in a material way with a patient;

21       32. Failing to retain all patient records for at least three  
22 (3) years, except that the failure to retain records shall not be a  
23 violation of the State Dental Act if the dentist shows that the  
24

1 records were lost, destroyed, or removed by another, without the  
2 consent of the dentist;

3 33. Failing to retain the dentist's copy of any laboratory  
4 prescription for at least three (3) years, except that the failure  
5 to retain records shall not be a violation of the State Dental Act  
6 if the dentist shows that the records were lost, destroyed, or  
7 removed by another, without the consent of the dentist;

8 34. Allowing any corporation, organization, group, person, or  
9 other legal entity, except another dentist or a professional entity  
10 that is in compliance with the registration requirements of  
11 subsection B of Section 328.31 of this title, to direct, control, or  
12 interfere with the dentist's clinical judgment. Clinical judgment  
13 shall include, but not be limited to, such matters as selection of a  
14 course of treatment, control of patient records, policies and  
15 decisions relating to pricing, credit, refunds, warranties and  
16 advertising, and decisions relating to office personnel and hours of  
17 practice. Nothing in this paragraph shall be construed to:

- 18 a. limit a patient's right of informed consent, or
- 19 b. to prohibit insurers, preferred provider organizations  
20 and managed care plans from operating pursuant to the  
21 applicable provisions of the Oklahoma Insurance Code  
22 and the Public Health Code;

23 35. Violating the state dental act of another state resulting  
24 in a plea of guilty or nolo contendere, conviction or suspension or

1 revocation of the license of the dentist under the laws of that  
2 state;

3 36. Violating or attempting to violate the provisions of the  
4 State Dental Act or the rules of the Board, as a principal,  
5 accessory or accomplice; ~~or~~

6 37. Failing to comply with the terms and conditions of an order  
7 imposing suspension of a license or placement on probation issued  
8 pursuant to Section 328.44a of this title; or

9 38. Failing to cooperate during an investigation or providing  
10 false information, verbally or in writing, to the Board, the Board's  
11 investigator or an agent of the Board.

12 B. The provisions of the State Dental Act shall not be  
13 construed to prohibit any dentist from displaying or otherwise  
14 advertising that the dentist is also currently licensed, registered,  
15 certified, or otherwise credentialed pursuant to the laws of this  
16 state or a nationally recognized credentialing board, if authorized  
17 by the laws of the state or credentialing board to display or  
18 otherwise advertise as a licensed, registered, certified, or  
19 credentialed dentist.

20 SECTION 4. AMENDATORY 59 O.S. 2001, Section 328.36a, is  
21 amended to read as follows:

22 Section 328.36a A. A dentist may utilize a dental laboratory  
23 technician and a dental laboratory to perform or provide dental  
24 laboratory technology. Except as provided in subsection C of

1 Section 328.36 of this title, a dentist who utilizes the services of  
2 a dental laboratory technician or dental laboratory shall furnish a  
3 laboratory prescription for each patient for whom a work product is  
4 prescribed.

5 B. Laboratory prescriptions issued by a dentist shall be ~~in~~  
6 ~~duplicate on consecutively numbered forms approved by the Board of~~  
7 ~~Dentistry and~~ containing the minimum information required by  
8 subsection D of this section and shall be produced or printed by  
9 each dentist. Such forms shall be provided by the Board of  
10 Dentistry or downloaded from the Board's website. All forms shall  
11 be completed in full and signed by the prescribing dentist. The  
12 owner of a dental laboratory shall retain each original laboratory  
13 prescription received from a prescribing dentist and produce the  
14 document for inspection and copying by a member of the Board or by  
15 an agent or employee of the Board, for a period of three (3) years  
16 from the date of the laboratory prescription. The prescribing  
17 dentist shall retain the duplicate copy of each laboratory  
18 prescription and produce the document for inspection and copying by  
19 a member of the Board or by an agent or employee of the Board, for a  
20 period of three (3) years from the date of the laboratory  
21 prescription.

22 C. The patient's name or the identification number of the  
23 laboratory prescription shall appear on all dental models and  
24 correspond to all dental restorations, appliances or other devices

1 being constructed, reproduced or repaired. Any dental model,  
2 restoration, appliance or other device in the possession of a dental  
3 laboratory technician or dental laboratory without a laboratory  
4 prescription and corresponding number on the model, restoration,  
5 appliance or device shall be prima facie evidence of a violation of  
6 the State Dental Act. After completion, the prescribed work product  
7 shall be returned by the dental laboratory technician or dental  
8 laboratory to the prescribing dentist or the dental office of the  
9 dentist with the name or number of the laboratory prescription  
10 accompanying the invoice.

11 D. At a minimum, prescriptions shall contain the following  
12 information:

13 1. The name and address of the dental laboratory;

14 2. The patient's name and/or identifying number. In the event  
15 such identifying number is used, the name of the patient shall be  
16 written on a copy of the prescription retained by the dentist;

17 3. A description of the work to be completed with diagrams, if  
18 applicable;

19 4. A description of the type of materials to be used;

20 5. The actual date on which the authorization or prescription  
21 was written or completed;

22 6. The signature in ink or by electronic method of the dentist  
23 issuing the prescription and the state license number and address of  
24 such dentist; and

1        7. A section to be completed by the dental laboratory and  
2 returned to the issuing dentist that shall disclose all information  
3 and certify that the information is accurate by including the  
4 signature of a reasonable part of the primary contractor.

5        E. The Board shall make readily available a sample form on the  
6 Board's website for use by any licensee at no cost.

7        F. A dentist may produce, transfer and retain copies of the  
8 form electronically.

9        SECTION 5.        AMENDATORY        59 O.S. 2001, Section 328.44a, as  
10 last amended by Section 6, Chapter 377, O.S.L. 2005 (59 O.S. Supp.  
11 2010, Section 328.44a), is amended to read as follows:

12        Section 328.44a A. The Board of Dentistry is authorized, after  
13 notice and opportunity for a hearing pursuant to Article II of the  
14 Administrative Procedures Act, to issue an order imposing one or  
15 more of the following penalties whenever the Board finds, by clear  
16 and convincing evidence, that a dentist, dental hygienist, dental  
17 assistant, dental laboratory technician, or holder of a permit to  
18 operate a dental laboratory has committed any of the acts or  
19 occurrences set forth in Sections 328.29, 328.32, 328.33, 328.39 and  
20 328.39a of this title:

21        1. Refusal to issue a license or permit, or a renewal thereof,  
22 provided for in the State Dental Act;

23        2. Suspension of a license or permit issued by the Board for a  
24 period of time deemed appropriate by the Board;



1        3. Revocation of a license or permit issued by the Board;

2        4. Imposition of an administrative penalty not to exceed One  
3 Thousand Five Hundred Dollars (\$1,500.00) per violation;

4        5. Issuance of a censure;

5        6. Placement on probation for a period of time and under such  
6 terms and conditions as deemed appropriate by the Board;

7        7. Probation monitoring fees, which shall be the responsibility  
8 of the licensee on all probations;

9        8. Restriction of the services that can be provided by a  
10 dentist or dental hygienist, under such terms and conditions as  
11 deemed appropriate by the Board; or

12        ~~8.~~ 9. Assessment for the cost of the investigation and hearing  
13 process including attorney fees.

14        B. A dentist, dental hygienist, dental assistant, dental  
15 laboratory technician, or holder of a permit to operate a dental  
16 laboratory, against whom a penalty is imposed by an order of the  
17 Board pursuant to the provisions of this section, shall have the  
18 right to seek a judicial review of such order pursuant to Article II  
19 of the Administrative Procedures Act.

20        SECTION 6.        AMENDATORY        59 O.S. 2001, Section 738.1, is  
21 amended to read as follows:

22        Section 738.1 Injunctions, without bond, may be granted by  
23 district courts to the Board of Podiatric Medical Examiners, the  
24 Board of Chiropractic Examiners, the State Board of Medical

1 Licensure and Supervision, the Board of Examiners in Optometry, the  
2 Board of Pharmacy, the Board of Dentistry, the Board of Veterinary  
3 Medical Examiners or the State Board of Osteopathic Examiners, for  
4 the purpose of enforcing the respective acts and laws creating and  
5 establishing these boards.

6 SECTION 7. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 328.15A of Title 59, unless  
8 there is created a duplication in numbering, reads as follows:

9 A. Investigators for the Board shall be authorized to:

10 1. Perform such services as are necessary in the investigation  
11 of criminal activity or preparation of administrative actions; and

12 2. Investigate and inspect records of all licenses in order to  
13 determine whether licensees are in compliance with applicable  
14 narcotics and dangerous drug laws and regulations.

15 B. Board investigators certified as peace officers by the  
16 Council on Law Enforcement Education and Training shall have  
17 statewide jurisdiction to perform the duties authorized by  
18 subsection A of this subsection. Such investigators shall have the  
19 powers now or hereafter vested in law to peace officers.

20 C. Upon retirement, a Board investigator shall be entitled to  
21 receive the continued custody and possession of the sidearm and  
22 badge he or she carried immediately prior to retirement.

1       SECTION 8.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 328.53 of Title 59, unless there  
3 is created a duplication in numbering, reads as follows:

4       A. All dentists in active practice licensed by the Board of  
5 Dentistry shall maintain a policy for professional liability  
6 insurance; provided, however, that such requirement shall not apply  
7 to dentists:

8       1. Covered by a group or hospital malpractice insurance policy;

9       2. Practicing in a state facility subject to The Governmental  
10 Tort Claims Act, Section 151 et seq. of Title 51 of the Oklahoma  
11 Statutes;

12       3. Practicing in a federal facility subject to the Federal Tort  
13 Claims Act; or

14       4. Providing care as a volunteer under a special volunteer  
15 license pursuant to Section 328.23a of Title 59 of the Oklahoma  
16 Statutes.

17       B. The Board of Dentistry may promulgate rules as necessary to  
18 carry out the provisions of this section, including, but not limited  
19 to, minimum requirements for professional liability insurance  
20 policies and penalties for noncompliance.

21       SECTION 9.       AMENDATORY       47 O.S. 2001, Section 2-300, as  
22 last amended by Section 8, Chapter 437, O.S.L. 2010 (47 O.S. Supp.  
23 2010, Section 2-300), is amended to read as follows:

24       Section 2-300. As used in Section 2-300 et seq. of this title:

- 1        1. "System" means the Oklahoma Law Enforcement Retirement  
2 System;
- 3        2. "Act" means Section 2-300 et seq. of this title;
- 4        3. "Board" means the Oklahoma Law Enforcement Retirement Board  
5 of the System;
- 6        4. "Executive Director" means the managing officer of the  
7 System employed by the Board;
- 8        5. "Fund" means the Oklahoma Law Enforcement Retirement Fund;
- 9        6. a. "Member" means:
- 10                (1) all commissioned law enforcement officers of the  
11                        Oklahoma Highway Patrol Division of the  
12                        Department of Public Safety who have obtained  
13                        certification from the Council on Law Enforcement  
14                        Education and Training, and all cadets of a  
15                        Patrol Academy of the Department of Public  
16                        Safety,
- 17                (2) law enforcement officers and criminalists of the  
18                        Oklahoma State Bureau of Investigation,
- 19                (3) law enforcement officers of the Oklahoma State  
20                        Bureau of Narcotics and Dangerous Drugs Control  
21                        designated to perform duties in the investigation  
22                        and prevention of crime and the enforcement of  
23                        the criminal laws of this state,
- 24

- 1 (4) law enforcement officers of the Oklahoma  
2 Alcoholic Beverage Laws Enforcement Commission  
3 designated to perform duties in the investigation  
4 and prevention of crime and the enforcement of  
5 the criminal laws of this state,
- 6 (5) employees of the Communications Section of the  
7 Oklahoma Highway Patrol Division, radio  
8 technicians, and tower technicians of the  
9 Department of Public Safety, who are employed in  
10 any such capacity as of June 30, 2008, and who  
11 remain employed on or after July 1, 2008, until a  
12 termination of service, or until a termination of  
13 service with an election of a vested benefit from  
14 the System, or until retirement. Effective July  
15 1, 2008, a person employed for the first time as  
16 an employee of the Department of Public Safety in  
17 the Communications Division as an information  
18 systems telecommunication technician of the  
19 Department of Public Safety shall not be a member  
20 of the System,
- 21 (6) park rangers of the Oklahoma Tourism and  
22 Recreation Department and any park manager or  
23 park supervisor of the Oklahoma Tourism and  
24 Recreation Department who was employed in such a

1 position prior to July 1, 1985, and who elects on  
2 or before September 1, 1996, to participate in  
3 the System, and

4 (7) inspectors of the Board of Pharmacy and  
5 investigators of the Board of Dentistry.

6 b. Effective July 1, 1987, a member does not include a  
7 "leased employee" as defined under Section 414(n) (2) of  
8 the Internal Revenue Code of 1986, as amended.

9 Effective July 1, 1999, any individual who agrees with  
10 the participating employer that the individual's  
11 services are to be performed as a leased employee or  
12 an independent contractor shall not be a member  
13 regardless of any classification as a common-law  
14 employee by the Internal Revenue Service or any other  
15 governmental agency, or any court of competent  
16 jurisdiction.

17 c. All persons who shall be offered a position of a  
18 commissioned law enforcement officer as an employee of  
19 one of the agencies described in subparagraph a of  
20 this paragraph shall participate in the System upon  
21 the person meeting the requisite post-offer-pre-  
22 employment physical examination standards which shall  
23 be subject to the following requirements:  
24

- (1) all such persons shall be of good moral character, free from deformities, mental or physical conditions, or disease and alcohol or drug addiction which would prohibit the person from performing the duties of a law enforcement officer,
- (2) said physical-medical examination shall pertain to age, sight, hearing, agility and other conditions the requirements of which shall be established by the Board,
- (3) the person shall be required to meet the conditions of this subsection prior to the beginning of actual employment but after an offer of employment has been tendered by a participating employer,
- (4) the Board shall have authority to deny or revoke membership of any person submitting false information in such person's membership application, and
- (5) the Board shall have final authority in determining eligibility for membership in the System, pursuant to the provisions of this subsection;

1        7. "Normal retirement date" means the date at which the member  
2 is eligible to receive the unreduced payments of the member's  
3 accrued retirement benefit. Such date shall be the first day of the  
4 month coinciding with or following the date the member:

5            a. completes twenty (20) years of vesting service, or

6            b. attains sixty-two (62) years of age with ten (10)  
7                years of vesting service, or

8            c. attains sixty-two (62) years of age, if:

9                (1) the member has been transferred to this System  
10                      from the Oklahoma Public Employees Retirement  
11                      System on or after July 1, 1981, and

12                (2) the member would have been vested had the member  
13                      continued to be a member of the Oklahoma Public  
14                      Employees Retirement System.

15        With respect to distributions under the System made for calendar  
16 years beginning on or after January 1, 2005, the System shall apply  
17 the minimum distribution incidental benefit requirements, incidental  
18 benefit requirements, and minimum distribution requirements of  
19 Section 401(a)(9) of the Internal Revenue Code of 1986, as amended,  
20 in accordance with the final regulations under Section 401(a)(9) of  
21 the Internal Revenue Code of 1986, as amended, which were issued in  
22 April 2002 and June 2004, notwithstanding any provision of the  
23 System to the contrary. With respect to distributions under the  
24 System made for calendar years beginning on or after January 1,



1 2001, through December 31, 2004, the System shall apply the minimum  
2 distribution requirements and incidental benefit requirements of  
3 Section 401(a)(9) of the Internal Revenue Code of 1986, as amended,  
4 in accordance with the regulations under Section 401(a)(9) of the  
5 Internal Revenue Code of 1986, as amended, which were proposed in  
6 January 2001, notwithstanding any provision of the System to the  
7 contrary.

8       Effective July 1, 1989, notwithstanding any other provision  
9 contained herein to the contrary, in no event shall commencement of  
10 distribution of the accrued retirement benefit of a member be  
11 delayed beyond April 1 of the calendar year following the later of:  
12 (1) the calendar year in which the member reaches seventy and one-  
13 half (70 1/2) years of age; or (2) the actual retirement date of the  
14 member. The preceding sentence does not allow deferral of benefit  
15 commencement beyond the age of sixty-five (65).

16       A member who was required to join the System effective July 1,  
17 1980, because of the transfer of the employing agency from the  
18 Oklahoma Public Employees Retirement System to the System, and was  
19 not a member of the Oklahoma Public Employees Retirement System on  
20 the date of such transfer shall be allowed to receive credit for  
21 prior law enforcement service rendered to this state, if the member  
22 is not receiving or eligible to receive retirement credit or  
23 benefits for such service in any other public retirement system,  
24 upon payment to the System of the employee contribution the member

1 would have been subject to had the member been a member of the  
2 System at the time, plus five percent (5%) interest. Service credit  
3 received pursuant to this paragraph shall be used in determining the  
4 member's retirement benefit, and shall be used in determining years  
5 of service for retirement or vesting purposes;

6 8. "Actual paid base salary" means the salary received by a  
7 member, excluding payment for any accumulated leave or uniform  
8 allowance. Salary shall include any amount of nonelective salary  
9 reduction under Section 414(h) of the Internal Revenue Code of 1986;

10 9. "Final average salary" means the average of the highest  
11 thirty (30) consecutive complete months of actual paid gross salary.  
12 Gross salary shall include any amount of elective salary reduction  
13 under Section 457 of the Internal Revenue Code of 1986, as amended,  
14 and any amount of nonelective salary reduction under Section 414(h)  
15 of the Internal Revenue Code of 1986, as amended. Effective July 1,  
16 1992, gross salary shall include any amount of elective salary  
17 reduction under Section 125 of the Internal Revenue Code of 1986, as  
18 amended. Effective July 1, 1998, gross salary shall include any  
19 amount of elective salary reduction not includable in the gross  
20 income of the member under Section 132(f)(4) of the Internal Revenue  
21 Code of 1986, as amended. Effective July 1, 1998, for purposes of  
22 determining a member's compensation, any contribution by the member  
23 to reduce his or her regular cash remuneration under Section  
24 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be

1 treated as if the member did not make such an election. Only salary  
2 on which required contributions have been made may be used in  
3 computing the final average salary. Gross salary shall not include  
4 severance pay.

5 In addition to other applicable limitations, and notwithstanding  
6 any other provision to the contrary, for plan years beginning on or  
7 after July 1, 2002, the annual gross salary of each "Noneligible  
8 Member" taken into account under the System shall not exceed the  
9 Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA")  
10 annual salary limit. The EGTRRA annual salary limit is Two Hundred  
11 Thousand Dollars (\$200,000.00), as adjusted by the Commissioner for  
12 increases in the cost of living in accordance with Section  
13 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The  
14 annual salary limit in effect for a calendar year applies to any  
15 period, not exceeding twelve (12) months, over which salary is  
16 determined ("determination period") beginning in such calendar year.  
17 If a determination period consists of fewer than twelve (12) months,  
18 the EGTRRA salary limit will be multiplied by a fraction, the  
19 numerator of which is the number of months in the determination  
20 period, and the denominator of which is twelve (12). For purposes  
21 of this section, a "Noneligible Member" is any member who first  
22 became a member during a plan year commencing on or after July 1,  
23 1996.

1 For plan years beginning on or after July 1, 2002, any reference  
2 in the System to the annual salary limit under Section 401(a)(17) of  
3 the Internal Revenue Code of 1986, as amended, shall mean the EGTRRA  
4 salary limit set forth in this provision.

5 Effective January 1, 2008, gross salary for a plan year shall  
6 also include gross salary, as described above, for services, but  
7 paid by the later of two and one-half (2 1/2) months after a  
8 member's severance from employment or the end of the calendar year  
9 that includes the date the member terminated employment, if it is a  
10 payment that, absent a severance from employment, would have been  
11 paid to the member while the member continued in employment with the  
12 employer.

13 Effective January 1, 2008, any payments not described above  
14 shall not be considered gross salary if paid after severance from  
15 employment, even if they are paid by the later of two and one-half  
16 (2 1/2) months after the date of severance from employment or the  
17 end of the calendar year that includes the date of severance from  
18 employment, except payments to an individual who does not currently  
19 perform services for the employer by reason of qualified military  
20 service within the meaning of Section 414(u)(5) of the Internal  
21 Revenue Code of 1986, as amended, to the extent these payments do  
22 not exceed the amounts the individual would have received if the  
23 individual had continued to perform services for the employer rather  
24 than entering qualified military service.

1 Effective January 1, 2008, back pay, within the meaning of  
2 Section 1.415(c)-2(g)(8) of the Income Tax Regulations, shall be  
3 treated as gross salary for the limitation year to which the back  
4 pay relates to the extent the back pay represents wages and  
5 compensation that would otherwise be included in this definition.

6 Effective for years beginning after December 31, 2008, gross  
7 salary shall also include differential wage payments under Section  
8 414(u)(12) of the Internal Revenue Code of 1986, as amended;

9 10. "Credited service" means the period of service used to  
10 determine the amount of benefits payable to a member. Credited  
11 service shall consist of the period during which the member  
12 participated in the System or the predecessor Plan as an active  
13 employee in an eligible membership classification, plus any service  
14 prior to the establishment of the predecessor Plan which was  
15 credited under the predecessor Plan and for law enforcement officers  
16 and criminalists of the Oklahoma State Bureau of Investigation and  
17 the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control  
18 who became members of the System on July 1, 1980, any service  
19 credited under the Oklahoma Public Employees Retirement System as of  
20 June 30, 1980, and for members of the Communications and Lake Patrol  
21 Divisions of the Oklahoma Department of Public Safety, who became  
22 members of the System on July 1, 1981, any service credited under  
23 the predecessor Plan or the Oklahoma Public Employees Retirement  
24 System as of June 30, 1981, and for law enforcement officers of the

1 Alcoholic Beverage Laws Enforcement Commission who became members of  
2 the System on July 1, 1982, any service credited under the Oklahoma  
3 Public Employees Retirement System as of June 30, 1982, and for park  
4 rangers of the Oklahoma Tourism and Recreation Department who became  
5 members of the System on July 1, 1985, any service credited under  
6 the Oklahoma Public Employees Retirement System as of June 30, 1985,  
7 and for inspectors of the Oklahoma State Board of Pharmacy who  
8 became members of the System on July 1, 1986, any service credited  
9 under the Oklahoma Public Employees Retirement System as of June 30,  
10 1986, for law enforcement officers of the Oklahoma Capitol Patrol  
11 Division of the Department of Public Safety who became members of  
12 the System effective July 1, 1993, any service credited under the  
13 Oklahoma Public Employees Retirement System as of June 30, 1993, and  
14 for all commissioned officers in the Gunsmith/Ammunition Reloader  
15 Division of the Department of Public Safety who became members of  
16 the System effective July 1, 1994, any service credited under the  
17 Oklahoma Public Employees Retirement System as of June 30, 1994, and  
18 for the park managers or park supervisors of the Oklahoma Tourism  
19 and Recreation Department who were employed in such a position prior  
20 to July 1, 1985, and who elect to become members of the System  
21 effective September 1, 1996, any service transferred pursuant to  
22 subsection C of Section 2-309.6 of this title and any service  
23 purchased pursuant to subsection B of Section 2-307.2 of this title.  
24 Effective August 5, 1993, an authorized leave of absence shall

1 include a period of absence pursuant to the Family and Medical Leave  
2 Act of 1993;

3 11. "Disability" means a physical or mental condition which, in  
4 the judgment of the Board, totally and presumably permanently  
5 prevents the member from engaging in the usual and customary duties  
6 of the occupation of the member and thereafter prevents the member  
7 from performing the duties of any occupation or service for which  
8 the member is qualified by reason of training, education or  
9 experience. A person is not under a disability when capable of  
10 performing a service to the employer, regardless of occupation,  
11 providing the salary of the employee is not diminished thereby;

12 12. "Limitation year" means the year used in applying the  
13 limitations of Section 415 of the Internal Revenue Code of 1986,  
14 which year shall be the calendar year;

15 13. "Line of duty" means any action which a member whose  
16 primary function is crime control or reduction or enforcement of the  
17 criminal law is obligated or authorized by rule, regulations,  
18 condition of employment or service, or law to perform, including  
19 those social, ceremonial, or athletic functions to which the member  
20 is assigned, or for which the member is compensated, by the agency  
21 the member serves;

22 14. "Personal injury" or "injury" means any traumatic injury as  
23 well as diseases which are caused by or result from such an injury,  
24 but not occupational diseases;

1        15. "Catastrophic nature" means consequences of an injury that  
2 permanently prevent an individual from performing any gainful work;

3        16. "Traumatic injury" means a wound or a condition of the body  
4 caused by external force, including injuries inflicted by bullets,  
5 explosives, sharp instruments, blunt objects or other physical  
6 blows, chemicals, electricity, climatic conditions, infectious  
7 diseases, radiation, and bacteria, but excluding stress and strain;  
8 and

9        17. "Beneficiary" means the individual designated by the member  
10 on a beneficiary designation form supplied by the Oklahoma Law  
11 Enforcement Retirement System, or if there is no designated  
12 beneficiary or if the designated beneficiary predeceases the member,  
13 the estate of the member. If the member's spouse is not designated  
14 as the sole primary beneficiary, the member's spouse must sign a  
15 consent.

16        SECTION 10. This act shall become effective July 1, 2011.

17        SECTION 11. It being immediately necessary for the preservation  
18 of the public peace, health and safety, an emergency is hereby  
19 declared to exist, by reason whereof this act shall take effect and  
20 be in full force from and after its passage and approval.

21  
22        53-1-7444        AM        04/11/11  
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