ENROLLED SENATE
BILL NO. 507

By: Branan, Laughlin, Williamson, Coffee, Crain, Brown, Ford, Barrington, Bingman, Mazzei, Reynolds, Brogdon and Johnson (Mike), of the Senate

and

Johnson (Rob), Sullivan, Dank, Derby, DeWitt, Enns, Faught, Hickman, Joyner, Kern, Martin (Scott), McCullough, McDaniel (Randy), McNiel, Miller, Murphey, Reynolds, Schwartz, Shannon, Thomsen, Tibbs, Wesselhoft, Worthen and Wright of the House

"An Act relating to civil procedure; requiring appointment of attorney for specified purpose; providing for award of certain fees; requiring plaintiff to attach certain affidavit in civil action for negligence; providing requirements for Oklahoma Uniform Jury Instructions; amending 12 O.S. 2001, Section 588, which relates to general and specific findings; modifying procedure; amending 12 O.S. 2001, Section 684, as amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 684), which relates to dismissal; modifying procedure for dismissal without court order; providing for dismissal of action under certain circumstances; stating requirements for expert opinions; allowing for extension under certain circumstances; requiring plaintiff to provide

certain information; amending Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 727.1), which relates to interest on judgments; modifying time of accrual of prejudgment interest on certain actions; modifying method of computing interest; amending 12 O.S. 2001, Sections 990.4, as last amended by Section 6, Chapter 1, O.S.L. 2005, 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, 2023 and 2702 (12 O.S. Supp. 2006, 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 potential class members to request inclusion in the class; providing procedure for summary judgment; providing requirements for expert testimony; providing role of the court; providing for interpretation; amending 23 O.S. 2001, Sections 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002, and Section 18, Chapter 368, O.S.L. 2004 and 61 (23 O.S. Supp. 2006, Sections 9.1 and 15), which relate to punitive damages, joint and several liability and obligations not arising from contract; providing for punitive damage awards for certain actions; providing for periodic payment of certain damages; modifying exceptions to severability; providing limits of liability for noneconomic damages for certain actions; requiring certain adjustment; defining term; requiring admission of evidence of certain compensation; 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. 2006, Section 11-1112), which relates to child passenger restraint systems;

eliminating prohibitions against admissibility of certain evidence in civil actions; amending Section 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2006, 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. 2006, Section 1-1709.1), which relates to peer review information; providing that certain information is not subject to discovery or admissible at trial; requiring certain findings for certain information to be admissible; 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 effect on other laws; providing that existence of liability insurance is not a waiver of any defense; providing for the applicability of other laws; amending 51 O.S. 2001, Section 155, as last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp. 2006, Section 155), which relates to exemptions from liability; adding certain exemptions; amending 76 O.S. 2001, Sections 5.5, 25 and 31 and Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2006, Section 32), which relate to limitations for certain actions, professional review bodies, civil immunity for volunteers, charitable organizations, not-for-profit corporations and volunteer medical professionals; establishing a statute of repose for certain actions; providing that peer review information is private, confidential and privileged; providing exception; providing notice requirement; providing that certain information is not subject to discovery or

admissible at trial; prohibiting testimony by certain persons; modifying definition; expanding immunity for volunteer medical professionals; creating the Common Sense Consumption Act; providing short title; stating legislative intent; defining terms; providing immunity from civil liability for certain claims; providing exception; providing pleading requirements; providing for stay of discovery and other proceedings in certain circumstances; providing scope of claims covered; stating legislative findings; limiting liability of certain manufacturers; limiting liability of certain associations; clarifying applicability of certain provisions; repealing 47 O.S. 2001, Section 12-420, as amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2006, Section 12-420), which relates to 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. 2006, Sections 1-1708.1F and 1-1708.1F-1), which relate to limits on noneconomic damages in medical liability actions; providing for codification; and providing an effective date.

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

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

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

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

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

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

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

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

2. If the civil action is filed:

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

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

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

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

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

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

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

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

b. an authorization from the party in a form that complies with applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996, for the release of any and all medical records and bills related to the party for a period commencing ten (10) years prior to the incident that is at issue.

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

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

The Oklahoma Uniform Jury Instructions (OUJI) applicable in a civil case shall include an instruction notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax. Any amount that the jury

determines to be proper compensation for personal injury or wrongful death should not be increased or decreased by any consideration for income taxes.

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

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

SECTION 5. AMENDATORY 12 O.S. 2001, Section 684, as amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 684), is amended to read as follows:

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

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

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

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

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

D. The provisions of this section apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subsection A of this section shall be made before a responsive pleading is served or, if

there is none, before the introduction of evidence at the trial or hearing.

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

SECTION 6. AMENDATORY Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 727.1), is amended to read as follows:

Section 727.1

POSTJUDGMENT INTEREST

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

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

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

inclusive of postjudgment interest, shall exceed the total amount of liability of the governmental entity pursuant to The Governmental Tort Claims Act.

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

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

PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section ~~or Section 1-1708.1G of Title 63 of the Oklahoma Statutes~~, beginning November 1, 2007, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering judgment shall add interest on the verdict at a rate prescribed pursuant to subsection I of this section from the date which is thirty-six (36) months after the suit resulting in the judgment was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. No prejudgment interest shall begin to accrue until thirty-six (36) months after the suit resulting in the judgment was commenced. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year ~~in~~ which is thirty-six (36) months after the suit resulting in the judgment ~~is~~ was commenced. This rate shall be in effect until the end of the calendar year in which ~~the suit resulting in judgment was filed~~ interest begins to accrue or until the date judgment is filed, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, the judgment shall bear interest at the

rate prescribed pursuant to subsection I of this section from the date the suit was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment or the date the judgment is filed with the court clerk. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year in which the suit resulting in the judgment is commenced. This rate shall be in effect until the end of the calendar year in which the suit resulting in judgment was filed or until the date the judgment is rendered as expressly stated in the judgment, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date judgment is rendered, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of prejudgment interest has been completed, the amount shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection B of this section. No award of prejudgment interest against this state or its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, including the amount of the judgment awarded pursuant to trial of the action, shall exceed the total amount of liability of the governmental entity pursuant to The Governmental Tort Claims Act.

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

H. If a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest at a rate prescribed pursuant to

subsection I of this section from the date the lien is filed to the date of verdict.

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

J. For purposes of computing postjudgment interest, the provisions of this section shall be applicable to all judgments of the district courts rendered on or after January 1, ~~2005~~ 2008. Effective January 1, ~~2005~~ 2008, the method for computing postjudgment interest prescribed by this section shall be applicable to all judgments remaining unpaid rendered prior to January 1, ~~2005~~ 2008.

K. For purposes of computing prejudgment interest, the provisions of this section shall be applicable to all actions which are filed in the district courts on or after January 1, ~~2005~~ 2008, for which an award of prejudgment interest is authorized by the provisions of this section.

SECTION 7. AMENDATORY 12 O.S. 2001, Section 990.4, as last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp. 2006, Section 990.4), is amended to read as follows:

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

1. While a post-trial motion is pending;

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

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

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

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

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

3. If an appeal is no longer pending.

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

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

a. subject to the limitations hereinafter provided, the bond shall be double the amount of the judgment, decree or final order, unless the bond is executed or guaranteed by a surety as hereinafter provided. The bond shall be for the amount of the judgment, decree or order including costs and interest on appeal where it is executed or guaranteed by an entity with suretyship powers as provided by the laws of Oklahoma. In no case shall the bond exceed Twenty-five Million Dollars ($25,000,000.00). If the party posting the supersedeas bond is an individual or a business with two hundred fifty (250) employees or less on the date of the judgment, the supersedeas bond shall not exceed

One Million Dollars ($1,000,000.00). On a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post bond in the amount required by this paragraph, the court shall balance the likely substantial economic harm to the judgment debtor with the ability of the judgment creditor to collect the judgment in the event the judgment is affirmed on appeal and may lower the bond accordingly. "Substantial economic harm" means insolvency or creating a significant risk of insolvency. ~~The court shall not lower a bond as provided in this paragraph to the extent there is in effect an insurance policy, or agreement under which a third party is liable to satisfy part or all of the judgment entered and such party is required to post all or part of the bond. Upon lowering the bond as provided in this paragraph, the court shall enter an order enjoining a judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the court shall not make any order that interferes with the judgment debtor's use of assets in the normal course of business~~ If it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited pursuant to this subparagraph is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion including, but not limited to, requiring that a bond be posted equal to the full amount of security required pursuant to this section, and

b. instead of filing a supersedeas bond, the appellant may obtain a stay by depositing cash with the court clerk in the amount of the judgment or order plus an amount that the court determines will cover costs and interest on appeal. The court shall have discretion to accept United States Treasury notes or general obligation bonds of the State of Oklahoma in lieu of cash. If the court accepts such notes or bonds, it

shall make appropriate orders for their safekeeping and maintenance during the stay;

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 8. AMENDATORY 12 O.S. 2001, Section 2004, as amended by Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2006, Section 2004), is amended to read as follows:

Section 2004.

PROCESS

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

B. SUMMONS: FORM.

1. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise, the plaintiff's

address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to appear, judgment by default will be rendered against the defendant for the relief demanded in the petition.

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

C. BY WHOM SERVED: PERSON TO BE SERVED.

1. SERVICE BY PERSONAL DELIVERY.

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

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

be delivered by an attorney of record for the plaintiff to such person.

c. Service shall be made as follows:

(1) Upon an individual other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the petition personally or by leaving copies thereof at the person's dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive service of process;

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

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

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

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

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

2. SERVICE BY MAIL.

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

b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to

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

c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph c of paragraph 1 of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in

division (5) of subparagraph c of paragraph 1 of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any default or judgment by default shall be set aside upon motion of the defendant in the manner prescribed in Section 1031.1 of this title, or upon petition of the defendant in the manner prescribed in Section 1033 of this title if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. A petition shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the filing of the judgment.

3. SERVICE BY PUBLICATION.

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

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

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

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

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

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

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

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

c. Service pursuant to this paragraph shall be made by publication of a notice, signed by the court clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must

answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the court is based on property, any real property subject to the jurisdiction of the court and any property or debts to be attached or garnished must be described in the notice.

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

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

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

(4) In an action to foreclose a mortgage, it is sufficient that the publication notice state that if the defendant does not answer, the defendant's interest in the property will be foreclosed. It is not necessary to state that a judgment forever

barring the defendant from all right, title, interest, estate, property and equity of redemption in or to said property or any part thereof is requested or will be entered if the defendant does not answer.

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

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

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

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

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

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

4. SERVICE ON THE SECRETARY OF STATE.

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

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

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

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

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

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

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

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

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

d. Within three (3) working days after receiving the summons and petition, the Secretary of State shall

send notice by letter, certified mail, return receipt requested, directed to the corporation at its registered office or the last-known address found in the office of the Secretary of State, or if no address is found there, to the corporation's last-known address provided by the plaintiff. The notice shall enclose a copy of the summons and petition and any other papers served upon the Secretary of State. The corporation shall not be required to serve its answer until forty (40) days after service of the summons and petition on the Secretary of State.

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

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

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

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

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

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

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

E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

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

a. by personal delivery in the manner prescribed for service within this state,

b. in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction,

c. in the manner prescribed by paragraph 2 of subsection C of this section,

d. as directed by the foreign authority in response to a letter rogatory,

e. in the manner prescribed by paragraph 3 of subsection C of this section only when permitted by subparagraphs a and b of paragraph 3 of subsection C of this section, or

f. as directed by the court.

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

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

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

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

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

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

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

G. RETURN.

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

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

3. If service was by mail, the person mailing the summons and petition shall endorse on the copy of the summons or order of the court that is filed in the action the date and place of mailing and the date when service was receipted or service was rejected, and

shall attach to the copy of the summons or order a copy of the return receipt or returned envelope, if and when received, showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also show the date and place of any subsequent mailing pursuant to paragraph 2 of subsection C of this section. When the summons and petition are mailed by the court clerk, the court clerk shall notify the plaintiff's attorney within three (3) days after receipt of the returned card or envelope showing that the card or envelope has been received.

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

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

SECTION 9. AMENDATORY 12 O.S. 2001, Section 2011, as amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006, Section 2011), is amended to read as follows:

Section 2011.

SIGNING OF PLEADINGS

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

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

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

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

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

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

C. SANCTIONS. If, after notice and a reasonable opportunity to respond, the court determines that subsection B of this section has been violated, the court shall, subject to the conditions stated

below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subsection B of this section or are responsible for the violation.

1. HOW INITIATED.

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

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

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

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

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

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

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

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

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

SECTION 10. AMENDATORY Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp. 2006, Section 2011.1), is amended to read as follows:

Section 2011.1 In any action not arising out of contract, the court shall, upon granting a motion to dismiss an action or a motion

for summary judgment or subsequent to adjudication on the merits, determine whether a claim or defense asserted in the action by a nonprevailing party was frivolous. As used in this section, "frivolous" means the action was knowingly asserted in bad faith~~, was unsupported by any credible evidence, was not grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law~~ or without any rational argument based in law or facts to support the position of the litigant. Upon so finding, the court shall enter a judgment ordering such nonprevailing party to reimburse the prevailing party for reasonable costs, including attorney fees, incurred with respect to such claim or defense. In addition, the court may impose any sanction authorized by Section 2011 of ~~Title 12 of the Oklahoma Statutes~~ this title.

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

Section 2023.

CLASS ACTIONS

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

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

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

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

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

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

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

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

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

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

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

a. the interest of members of the class in individually controlling the prosecution or defense of separate actions,

b. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class,

c. the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and

d. the difficulties likely to be encountered in the management of a class action.

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

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

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

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

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

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

~~Where~~ If the class contains more than five hundred (500) potential members who can be identified through reasonable effort, it shall not be necessary to direct individual notice to more than five hundred (500) potential members, but the potential members to whom individual notice is not directed shall be given notice in such manner as the court shall direct, which may include publishing notice in newspapers, magazines, trade journals or other publications, posting it in appropriate places, and taking other steps that are reasonably calculated to bring the notice to the attention of such members~~,~~; provided, that the cost of giving such notice shall be reasonable in view of the amounts that may be recovered by the class ~~members who are being notified~~. ~~Members~~

Potential members to whom individual notice was not directed may request ~~exclusion from~~ inclusion in the class at any time before the issue of liability is determined~~, and~~; provided, commencing an individual action before the issue of liability is determined in the class action shall ~~be the equivalent of requesting~~ result in exclusion from the class.

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

4. When appropriate:

a. an action may be brought or maintained as a class action with respect to particular issues, or

b. a class may be divided into subclasses and each subclass treated as a class.

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

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

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

2. Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they

consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Rationally based on the perception of the witness;

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

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

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

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

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

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

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

D. BARS TO EXPERT TESTIMONY.

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

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

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

F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

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

2. Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information relied upon by the witness in forming the opinions; any exhibits to be used as a summary of or support for the

opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years.

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

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

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

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

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

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

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

I. STANDARD OF REVIEW.

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

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

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

K. EFFECTIVE DATE. This section shall become effective upon enactment and shall apply to all actions commenced on or after the effective date and to all pending actions in which trial has not been scheduled or in which trial has been scheduled in excess of ninety (90) days after the effective date.

SECTION 14. AMENDATORY 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2006, Section 9.1), is amended to read as follows:

Section 9.1 A. In an action for the breach of an obligation not arising from contract, the jury, in addition to actual damages, may, subject to the provisions and limitations in subsections B, C and D of this section and Section 15 of this act, award punitive damages for the sake of example and by way of punishing the defendant based upon the following factors:

1. The seriousness of the hazard to the public arising from the defendant's misconduct;

2. The profitability of the misconduct to the defendant;

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

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

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

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

7. The financial condition of the defendant.

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

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

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

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

b. the amount of the actual damages awarded.

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

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

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

2. An insurer has intentionally and with malice breached its duty to deal fairly and act in good faith with its insured;

the jury, in a separate proceeding conducted after the jury has made such finding and awarded actual damages, may award punitive damages in an amount not to exceed the greatest of:

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

b. twice the amount of actual damages awarded, or

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

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

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

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

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

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

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

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

G. This section shall apply to all civil actions filed after the effective date of this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.2 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the provisions of Section 9.1 of Title 23 of the Oklahoma Statutes or any other provision of the laws of this state, in a professional liability action the jury may only award punitive damages, in addition to actual damages, if the jury finds by clear and convincing evidence that the defendant has been guilty of intentional or gross negligence.

B. Any punitive damages shall be awarded in a separate proceeding conducted after the jury has made the finding required by subsection A of this section and has awarded actual damages.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 9.3 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

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

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

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

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

d. loss of earnings;

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

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

b. loss of inheritance; and

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

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

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

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

1. Recipient of the payments;

2. Dollar amount of the payments;

3. Interval between payments; and

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

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

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

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

2. An obligation of the United States;

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

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

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

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

the recipient of the award without reduction. Following the satisfaction or termination of any obligations specified in the judgment for periodic payments, any obligation of the defendant health care provider to make further payments ends and any security given reverts to the defendant.

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

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

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

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

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

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

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

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

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

B. For the breach of an obligation not arising from contract, if the plaintiff receives compensation or is to receive compensation in the future for the injuries or harm that gave rise to the cause of action from a source wholly independent of the defendant, such fact shall be admitted into evidence and the amount shall be deducted from the amount of damages that the plaintiff recovers from the defendant.

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

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

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

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

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

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

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61.3 of Title 23, unless there is created a duplication in numbering, reads as follows:

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

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

SECTION 21. AMENDATORY 47 O.S. 2001, Section 11-1112, as last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp. 2006, Section 11-1112), is amended to read as follows:

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

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

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

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

2. The driver of an ambulance or emergency vehicle;

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

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

5. The transportation of a child who weighs more than forty (40) pounds and who is being transported in the back seat of a vehicle while wearing only a lap safety belt when the back seat of the vehicle is not equipped with combination lap and shoulder safety belts, or when the combination lap and shoulder safety belts in the back seat are being used by other children who weigh more than forty (40) pounds. Provided, however, for purposes of this paragraph, back seat shall include all seats located behind the front seat of a vehicle operated by a licensed child care facility or church. Provided further, there shall be a rebuttable presumption that a child has met the weight requirements of this paragraph if at the

request of any law enforcement officer, the licensed child care facility or church provides the officer with a written statement verified by the parent or legal guardian that the child weighs more than forty (40) pounds.

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

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

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

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

SECTION 22. AMENDATORY Section 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2006, Section 1-1708.1G), is amended to read as follows:

Section 1-1708.1G Notwithstanding ~~the provisions of Section 727 of Title 12 of the Oklahoma Statutes or~~ any other provision of the Oklahoma Statutes to the contrary, prejudgment interest in a medical

liability action shall be determined using a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year. Prejudgment interest shall accrue from the time provided in subsection E of Section 727.1 of Title 12 of the Oklahoma Statutes.

SECTION 23. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2006, Section 1-1709.1), is amended to read as follows:

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

1. "Credentialing or recredentialing data" means:

a. the application submitted by a health care professional requesting appointment or reappointment to the medical staff of a health care facility or requesting clinical privileges or other permission to provide health care services at a health care facility,

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

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

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

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

3. "Health care facility" means:

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

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

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

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

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

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

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

c. the identity of any individuals who have personal knowledge regarding the facts and circumstances surrounding the patient's health care in the health care facility,

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

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

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

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

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

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

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

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

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

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

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

~~a. that~~

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

~~b. that~~

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

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

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

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

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

E. Any information discovered pursuant to a claim of independent negligence against a health care facility shall not be admissible as evidence until a judge or jury has first found the health care professional to have been negligent in providing health care services to the patient in such health care facility.

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

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1924.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that:

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

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

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

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

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

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

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1924.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of Sections 24 through 28 of this act:

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

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

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

a. submitted to, reviewed or generated by, or produced at the request of a quality assessment and assurance committee for purposes of quality assessment, assurance or improvement, including without limitation proceedings, records, reports, statements, notes,

incident reports, memoranda, minutes, conclusions, deliberations, findings, and internal working papers, or

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

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

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

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1924.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

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

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1924.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

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

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1924.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

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

2. The deficiency determination or Minimum Data Set (MDS) related documentation is otherwise admissible under the State Rules of Civil Procedure, as applicable; and

3. The statements of deficiencies, plans of correction or Minimum Data Set (MDS) related documentation are directly related to the harm allegedly caused to the patient that is the subject of the proceeding.

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

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-206 of Title 70, unless there is created a duplication in numbering, reads as follows:

Sections 29 through 33 of this act shall be known and may be cited as the "School Protection Act".

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-207 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-208 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

B. Except as otherwise provided in this section, any student between seven (7) years of age and seventeen (17) years of age who acts with specific intent in making a false accusation of criminal activity against an education employee to law enforcement authorities or school district officials, or both, shall, upon conviction, at the discretion of the court, be subject to any of the following:

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

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

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

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

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-209 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-210 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

SECTION 34. AMENDATORY 51 O.S. 2001, Section 155, as last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp. 2006, Section 155), is amended to read as follows:

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

1. Legislative functions;

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

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

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

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

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

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

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

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

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

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

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

13. Inspection powers or functions, including failure to make an inspection, review or approval, or making an inadequate or negligent inspection, review or approval of any property, real or personal, to determine whether the property complies with or

violates any law or contains a hazard to health or safety, or fails to conform to a recognized standard;

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

15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning device unless the absence, condition, location or malfunction is not corrected by the state or political subdivision responsible within a reasonable time after actual or constructive notice or the removal or destruction of such signs, signals or warning devices by third parties, action of weather elements or as a result of traffic collision except on failure of the state or political subdivision to correct the same within a reasonable time after actual or constructive notice. Nothing herein shall give rise to liability arising from the failure of the state or any political subdivision to initially place any of the above signs, signals or warning devices. The signs, signals and warning devices referred to herein are those used in connection with hazards normally connected with the use of roadways or public ways and do not apply to the duty to warn of special defects such as excavations or roadway obstructions;

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

17. Misrepresentation, if unintentional;

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

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

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

21. Participation in any activity approved by a local board of education and held within a building or on the grounds of the school

district served by that local board of education before or after normal school hours or on weekends;

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

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

a. in an effort to quell a riot,

b. in response to a natural disaster or military attack, or

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 35. AMENDATORY 76 O.S. 2001, Section 5.5, is amended to read as follows:

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

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

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

SECTION 36. AMENDATORY 76 O.S. 2001, Section 25, is amended to read as follows:

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

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

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

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

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

SECTION 37. AMENDATORY 76 O.S. 2001, Section 31, is amended to read as follows:

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

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

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

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

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

D. Definitions.

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

compensation for the service or undertaking performed shall not preclude a person from being considered a volunteer.

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

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

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

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

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

SECTION 38. AMENDATORY Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2006, Section 32), is amended to read as follows:

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

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

1. The volunteer medical professional services were provided ~~at a free clinic where neither the professional nor the clinic receives~~ without any kind of compensation being paid for ~~any~~ the treatment provided ~~at the clinic~~;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

after the rendering of the service, care, assistance, advice or other benefit as a volunteer medical professional.

F. For the purpose of this section, the term "volunteer medical professional" and "referred volunteer medical professional" means a person who voluntarily provides professional medical services without compensation or expectation of compensation of any kind. A volunteer medical professional or a referred volunteer medical professional shall include the following licensed professionals:

1. Physician;

2. Physician's assistant;

3. Registered nurse;

4. Advanced nurse practitioner or vocational nurse;

5. Pharmacist;

6. Podiatrist;

7. Dentist or dental hygienist; or

8. Optometrist.

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

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

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

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

H. This section shall apply to all civil actions filed on or after November 1, ~~2004~~ 2007.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 33 of Title 76, unless there is created a duplication in numbering, reads as follows:

Sections 39 through 42 of this act shall be known and may be cited as the "Common Sense Consumption Act".

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 34 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 35 of Title 76, unless there is created a duplication in numbering, reads as follows:

As used in the Common Sense Consumption Act:

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

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

3. "Knowing and willful violation" means that:

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

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

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 36 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, a manufacturer, packer, distributor, carrier, holder, seller, marketer or advertiser of a food, as defined in Section 201(f) of the Federal Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an association of one or more such entities, shall not be subject to civil liability arising under any law of this state, including all statutes, regulations, rules, common law, public policies, court or administrative decisions or decrees, or other state action having the effect of law, for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food.

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

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

2. Any other material violation of federal or state law applicable to the manufacturing, marketing, distribution,

advertising, labeling, or sale of food, provided that such violation is knowing and willful, and the claimed injury was proximately caused by such violation.

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

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

E. The provisions of the Common Sense Consumption Act shall apply to all covered claims pending on November 1, 2007, and all claims filed thereafter, regardless of when the claim arose.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 41 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 42 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 43 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 44 of Title 76, unless there is created a duplication in numbering, reads as follows:

The provisions of Sections 43 through 46 of this act do not apply to actions for deceit, breach of contract, or expressed or implied warranties, or for injuries resulting from failure of firearms to operate in a normal or usual manner due to defects or negligence in design or manufacture. The provisions of Sections 43 through 46 of this act do not apply to actions arising from the unlawful sale or transfer of firearms, or to instances where the transferor knew, or should have known, that the recipient would

engage in the unlawful sale or transfer of the firearm, or would use, or purposely allow the use of, the firearm in an unlawful, negligent, or improper fashion. For purposes of this section, the potential of a firearm to cause serious injury, damage, or death as a result of normal function does not constitute a defective condition of the product. A firearm may not be deemed defective on the basis of its potential to cause serious injury, damage, or death when discharged.

SECTION 47. REPEALER 47 O.S. 2001, Section 12-420, as amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2006, Section 12-420), is hereby repealed.

SECTION 48. REPEALER Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004, and Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2006, Sections 1-1708.1F and 1-1708.1F-1), are hereby repealed.

SECTION 49. This act shall become effective November 1, 2007.

Passed the Senate the 19th day of April, 2007.

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Presiding Officer of the Senate

Passed the House of Representatives the 17th day of April, 2007.

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Presiding Officer of the House of Representatives