

THE HOUSE OF REPRESENTATIVES
Wednesday, February 25, 2009

Committee Substitute for
House Bill No. 1603

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1603 - By: SULLIVAN of the House and COFFEE of the Senate.

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; defining term; providing statute of repose for product liability actions; providing exclusions; clarifying scope and application; amending Section 2, Chapter 368, O.S.L. 2004 and 12 O.S. 2001, Sections 134 and 137 (12 O.S. Supp. 2008, Section 130), which relate to venue; modifying venue for certain actions; authorizing the court to decline to exercise jurisdiction under the doctrine of forum non conveniens; providing that bringing action in county in which venue does not lie does not toll statute of limitations; requiring each plaintiff to establish venue in cases in which there are multiple plaintiffs; providing for interlocutory appeals; providing requirements for Oklahoma Uniform Jury Instructions; amending 12 O.S. 2001, Section 588, which relates to general and specific findings; modifying procedure; amending 12 O.S. 2001, Sections 683 and 684, as amended by Sections 3 and 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008, Sections 683 and 684), which relate to dismissal; modifying procedure for dismissal without court order; providing for dismissal of action under certain circumstances; allowing for extension under certain circumstances; requiring plaintiff to provide certain information; amending Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008, Section 727.1), which relates to interest on judgments; modifying time of accrual of prejudgment interest on certain actions; modifying method of computing interest; amending 12 O.S. 2001, Sections 990.4, as last amended by Section 6, Chapter 1, O.S.L. 2005, 993, 2004, as amended by Section 7, Chapter 402, O.S.L. 2002, 2008, 2009, 2011, as amended by Section 10, Chapter 368, O.S.L. 2004, Section 1, Chapter 370, O.S.L. 2004, as amended by Section 10, Chapter 12, O.S.L. 2007, 2023 and 2702 (12 O.S. Supp. 2008, Sections 990.4, 2004, 2011 and 2011.1), which relate to stays of enforcement, interlocutory appeals, the Oklahoma Pleading Code, frivolous claims or defenses, class actions and expert testimony; modifying

certain appeal bond procedures; modifying grounds and procedure for interlocutory appeals; modifying time limit for service of process; modifying monetary threshold for which amount of damages is not specified; limiting amount of damages that may be recovered under certain circumstances; modifying procedure for petition for special damages; modifying definitions; providing procedure for pretrial conferences; requiring certain standard of review upon appeal of order maintaining a class action; requiring stay of discovery while appeal is pending; requiring potential class members to request inclusion in the class; providing for determination of attorney fees in class actions; requiring plaintiffs to sign representation agreements; providing method of calculating attorney fees for class action cases; providing for judicial discretion to modify the fee award; requiring attorney fees to include noncash benefits in certain circumstances; defining term; providing class membership limitations; providing procedure for summary judgment; providing that certain evidence is admissible in certain actions; providing requirements for expert testimony; providing role of the court; providing for interpretation; stating legislative intent; amending 12 O.S. 2001, Section 3226, as last amended by Section 3, Chapter 519, O.S.L. 2004 (12 O.S. Supp. 2008, Section 3226), which relates to discovery; eliminating requirement that a party produce certain agreement; requiring certain disclosures prior to discovery request; amending 15 O.S. 2001, Sections 754 and 761.1, which relate to the Oklahoma Consumer Protection Act; updating statutory reference; excepting certain actions, transactions, and claims from the Oklahoma Consumer Protection Act; requiring certain losses to be ascertainable; providing for private right of action for actual damages; providing for determination of actual damages; allowing court to order reimbursement of certain costs and fees; providing for maximum amount that court may order as reimbursement of certain costs and fees; requiring certain proof in order to recover damages; defining terms; amending 23 O.S. 2001, Section 9.1, as amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2008, Section 9.1), which relates to punitive damages; modifying factors to be considered in awarding punitive damages; requiring presentation of prima facie evidence for punitive damages claims prior to certain discovery; prohibiting punitive damages in product liability actions under certain conditions; providing restrictions and procedures for punitive damages in medical liability actions; providing for periodic payment of certain damages; amending Section 18, Chapter 368, O.S.L. 2004 and 23 O.S. 2001, Section 61 (23 O.S. Supp. 2008, Section 15), which relate to joint and several liability and obligations not arising from contract; modifying

exceptions to severability; providing limits of liability for noneconomic damages for certain actions; requiring certain adjustment; defining term; requiring admission of evidence of certain payments; limiting evidence to amounts paid; excluding certain payments; allowing discretion in limiting award of certain damages; providing exception; defining term; providing that proof of certain losses must be in the form of a net loss after reduction for income tax payments or unpaid tax liability; amending 47 O.S. 2001, Sections 11-1112, as last amended by Section 1, Chapter 361, O.S.L. 2005 and 12-420, as amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2008, Sections 11-1112 and 12-420), which relate to child passenger restraint systems and seat belts; eliminating prohibitions against admissibility of certain evidence in civil actions; amending 51 O.S. 2001, Section 155, as last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp. 2008, Section 155), which relates to exemptions from liability; adding certain exemptions; amending Section 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2008, Section 1-1708.1G), which relates to prejudgment interest for medical liability actions; providing time that prejudgment interest accrues; amending 63 O.S. 2001, Section 1-1709.1, as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2008, Section 1-1709.1), which relates to 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; creating the Uniform Emergency Volunteer Health Practitioners Act; providing short title; defining terms; providing for application; authorizing the State Department of Health to regulate volunteer health practitioners in a declared emergency; requiring certain consultation and compliance of specified host entities; setting requirements for a volunteer health practitioner registration system; permitting certain confirmation; requiring certain notification; authorizing host entities to refuse the services of a volunteer health practitioner; permitting certain volunteer health practitioners to practice in this state during a declared emergency; prohibiting certain volunteer health practitioners from certain protections; defining terms; clarifying credentialing or privileging standards; requiring adherence to certain scopes of practice; prohibiting the providing of services outside a practitioner's scope of practice; authorizing the Department or a host entity to restrict certain services; providing certain protection; permitting certain licensing boards to impose administrative sanctions; requiring certain reporting; requiring certain consideration; providing for certain rights, privileges or immunities; permitting the Department to incorporate certain

volunteer health practitioners; authorizing the State Board of Health to promulgate rules; requiring consideration for uniformity; amending 63 O.S. 2001, Sections 683.9 and 683.13, as amended by Sections 9 and 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008, Sections 683.9 and 683.13), which relate to the Emergency Management Act of 2003; modifying definition; providing certain exclusion; stating legislative findings; defining terms; providing for confidentiality of certain records; prohibiting certain testimony; limiting liability of certain persons; prohibiting submission of certain information into evidence; amending 76 O.S. 2001, Sections 5.5, 25 and 31, which relate to limitations for certain actions, professional review bodies, civil immunity for volunteers, charitable organizations, and not-for-profit corporations; establishing a statute of repose for certain actions; providing that peer review information is private, confidential and privileged; providing exception; providing notice requirement; providing that certain information is not subject to discovery or admissible at trial; prohibiting testimony by certain persons; modifying definition; 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; creating the Product Liability Act; providing short title; defining terms; providing that a manufacturer or seller shall not be liable for inherently unsafe products; providing procedures and requirements in actions alleging design defect; limiting liability of nonmanufacturing sellers; providing rebuttable presumption in actions relating to pharmaceutical products; providing rebuttable presumption concerning compliance with government standards; defining term; making evidence regarding measures taken after injury inadmissible; requiring filing of certain affidavit and procedures therefor; creating the Asbestos and Silica Claims Priorities Act; providing legislative findings; stating purposes; defining terms; providing elements of proof and proceedings for asbestos or silica claims; providing that certain evidence does not create a presumption; providing that certain evidence is inadmissible; providing for discovery; providing for consolidation of claims; authorizing the court to decline to exercise jurisdiction in certain circumstances; providing for venue; providing a statute of limitations; establishing two-disease rule; providing scope of applicability of the Asbestos and Silica Claims Priorities

Act; creating the Innocent Successor Asbestos-Related Liability Fairness Act; defining terms; providing limitations on successor asbestos-related liabilities; providing method for establishing fair market value of gross assets; providing for adjustment of fair market value; providing scope of act; providing date of application; repealing Section 1, Chapter 368, O.S.L. 2004 (5 O.S. Supp. 2008, Section 7.1), which relates to the award of attorney fees in class actions; repealing Section 4, Chapter 390, O.S.L. 2003, Section 6, Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 and Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2008, Sections 1-1708.1D, 1-1708.1F and 1-1708.1F-1), which relate to limits on noneconomic damages in medical liability actions; repealing Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp. 2008, Section 6602), which relates to emergency powers regarding licensing and appointment of health personnel; providing for codification; providing for noncodification; providing for severability; and providing an effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 H. This section shall not apply to any claim to which the General Aviation
17 Revitalization Act of 1994 (Pub. L. No. 103-298, 108 Stat. 1552) (1994), 49 U.S.C., Section
18 40101 or its exceptions are applicable.

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

21 Section 130. The venue of civil actions for damages brought pursuant to the
22 Affordable Access to Health Care Act, Section 1-1708.1A et seq. of Title 63 of the

1 Oklahoma Statutes, shall be in a county where the cause of action or any portion thereof
2 arose, or in any county in which any of the defendants reside, or in the case of a
3 corporation, in a county in which it is situated, or has its principal office or place of
4 business, ~~or in any county where a codefendant of such corporation may be sued.~~ Upon a
5 finding of lack of venue, the court shall transfer or dismiss the action; provided, however,
6 that if the court finds lack of venue and that a dismissal would operate as a dismissal
7 with prejudice, the court shall transfer the action.

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

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

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

19 Section 137. A. In addition to the other counties in which an action may be brought
20 against a nonresident of this state, ~~or~~ other than a foreign corporation, such action may
21 be brought in any county in which there may be property of or debts owing to such

1 defendant, or where such defendant may be found, ~~or in any county where a codefendant~~
2 ~~may properly be sued; if.~~

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

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

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

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

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

- 21 1. Whether an alternate forum exists in which the claim or action may be tried;
- 22 2. Whether the alternate forum provides an adequate remedy;

1 3. Whether maintenance of the claim in the court in which the case is filed would
2 work a substantial injustice to the moving party;

3 4. Whether the alternate forum can exercise jurisdiction over all the defendants
4 properly joined in the claim of the plaintiff;

5 5. Whether the balance of the private interests of the parties and the public
6 interest of the state predominate in favor of the claim or action being brought in an
7 alternate forum; and

8 6. Whether the stay or dismissal would prevent unreasonable duplication or
9 proliferation of litigation.

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

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

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

18 A. In a suit in which there is more than one plaintiff, whether the plaintiffs are
19 included by joinder, by intervention, because the lawsuit was begun by more than one
20 plaintiff, or otherwise, each plaintiff shall, independently of every other plaintiff,
21 establish proper venue. If a plaintiff cannot independently establish proper venue, that
22 plaintiff's part of the suit, including all of that plaintiff's claims and causes of action,

1 shall be transferred to a county of proper venue or dismissed, as is appropriate, unless
2 that plaintiff, independently of every other plaintiff, establishes that:

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

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

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

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

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

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

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

16 C. The court of appeals shall:

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

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

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

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

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

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

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

18 2. If the civil action is filed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Section 684. A. ~~Except as provided in Section 5 of this act, an~~ An action may be
17 dismissed ~~on the payment of costs and by the plaintiff~~ without an order of court by the
18 plaintiff filing a notice of dismissal at any time before ~~a petition of intervention or~~
19 ~~answer praying for affirmative relief against the plaintiff is filed in the action.~~ A
20 plaintiff may, at any time before the trial is commenced, on payment of the costs and
21 without any order of court, ~~dismiss the action after the filing of a petition of intervention~~
22 ~~or answer praying for affirmative relief, but such dismissal shall not prejudice the right~~

1 of the intervenor or defendant to proceed with the action. Any defendant or intervenor
2 may, in like manner, dismiss an action against the plaintiff, without an order of court, at
3 any time before the trial is begun, on payment of the costs made on the claim filed by the
4 defendant or intervenor. All parties to a civil action may at any time before trial, without
5 an order of court, and on payment of costs, by agreement, dismiss the action.

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

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

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

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

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

18 If a plaintiff who has once dismissed an action in any court commences an action
19 based upon or including the same claim against the same defendant, the court may make
20 such order for the payment of costs of the action previously dismissed as it may deem
21 proper and may stay the proceedings in the action until the plaintiff has complied with
22 the order. If an action is refiled and the plaintiff does not comply with the time limits for

1 service required by subsection I of Section 2004 of this title, the action shall be dismissed
2 with prejudice.

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

5 Section 727.1

6 POSTJUDGMENT INTEREST

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

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

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

1 the total amount of liability of the governmental entity pursuant to The Governmental
2 Tort Claims Act.

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

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

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

8 PREJUDGMENT INTEREST

9 E. Except as provided by subsection F of this section ~~or Section 1-1708.1G of Title~~
10 ~~63 of the Oklahoma Statutes~~, beginning November 1, 2009, if a verdict for damages by
11 reason of personal injuries or injury to personal rights including, but not limited to,
12 injury resulting from bodily restraint, personal insult, defamation, invasion of privacy,
13 injury to personal relations, or detriment due to an act or omission of another is accepted
14 by the trial court, the court in rendering judgment shall add interest on the verdict at a
15 rate prescribed pursuant to subsection I of this section from the date which is thirty-six
16 (36) months after the suit resulting in the judgment was commenced to the earlier of the
17 date the verdict is accepted by the trial court as expressly stated in the judgment, or the
18 date the judgment is filed with the court clerk. No prejudgment interest shall begin to
19 accrue until thirty-six (36) months after the suit resulting in the judgment was
20 commenced. The interest rate for computation of prejudgment interest shall begin with
21 the rate prescribed by subsection I of this section which is in effect for the calendar year
22 ~~in~~ which is thirty-six (36) months after the suit resulting in the judgment ~~is~~ was

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

13 F. If a verdict of the type described by subsection E of this section is rendered
14 against this state or its political subdivisions, including counties, municipalities, school
15 districts, and public trusts of which this state or a political subdivision of this state is a
16 beneficiary, the judgment shall bear interest at the rate prescribed pursuant to
17 subsection I of this section from the date the suit was commenced to the earlier of the
18 date the verdict is accepted by the trial court as expressly stated in the judgment or the
19 date the judgment is filed with the court clerk. The interest rate for computation of
20 prejudgment interest shall begin with the rate prescribed by subsection I of this section
21 which is in effect for the calendar year in which the suit resulting in the judgment is
22 commenced. This rate shall be in effect until the end of the calendar year in which the

1 suit resulting in judgment was filed or until the date the judgment is rendered as
2 expressly stated in the judgment, whichever first occurs. Beginning on January 1 of the
3 next succeeding calendar year until the end of that calendar year, or until the date
4 judgment is rendered, whichever first occurs, and for each succeeding calendar year
5 thereafter, the prejudgment interest rate shall be the rate in effect for judgments
6 rendered during each calendar year as certified by the Administrative Director of the
7 Courts pursuant to subsection I of this section. After the computation of prejudgment
8 interest has been completed, the amount shall be added to the amount of the judgment
9 rendered pursuant to the trial of the action, and the total amount of the resulting
10 judgment shall become the amount upon which postjudgment interest is computed
11 pursuant to subsection B of this section. No award of prejudgment interest against this
12 state or its political subdivisions, including counties, municipalities, school districts, and
13 public trusts of which this state or a political subdivision of this state is a beneficiary,
14 including the amount of the judgment awarded pursuant to trial of the action, shall
15 exceed the total amount of liability of the governmental entity pursuant to The
16 Governmental Tort Claims Act.

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

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

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

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

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 3. If an appeal is no longer pending.

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

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

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

1 provided in this paragraph to the extent there is in effect an insurance
2 policy, or agreement under which a third party is liable to satisfy part
3 or all of the judgment entered and such party is required to post all or
4 part of the bond. Upon lowering the bond as provided in this
5 paragraph, the court shall enter an order enjoining a judgment debtor
6 from dissipating or transferring assets to avoid satisfaction of the
7 judgment, but the court shall not make any order that interferes with
8 the judgment debtor's use of assets in the normal course of business If
9 it is proven by a preponderance of the evidence that the appellant for
10 whom the bond has been limited pursuant to this subparagraph is
11 intentionally dissipating or diverting assets outside of the ordinary
12 course of its business for the purpose of avoiding payment of the
13 judgment, the court shall enter such orders as are necessary to prevent
14 dissipation or diversion including, but not limited to, requiring that a
15 bond be posted equal to the full amount of security required pursuant
16 to this section, and

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

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

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

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

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

20 5. In order to protect any monies payable to the Tobacco Settlement Fund as set
21 forth in Section 50 of Title 62 of the Oklahoma Statutes, the bond in any action or
22 litigation brought under any legal theory involving a signatory, successor of a signatory

1 or an affiliate of a signatory to the Master Settlement Agreement dated November 23,
2 1998, or a signatory, successor of a signatory or an affiliate of a signatory to the
3 Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall
4 be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of
5 interest and costs, ten percent (10%) of the net worth of the judgment debtor, or Twenty-
6 five Million Dollars (\$25,000,000.00), whichever is less. However, if it is proved by a
7 preponderance of the evidence that the appellant for whom the bond has been limited
8 pursuant to this paragraph is intentionally dissipating or diverting assets outside of the
9 ordinary course of its business for the purpose of avoiding payment of the judgment, the
10 court shall enter such orders as are necessary to prevent dissipation or diversion,
11 including, but not limited to, requiring that a bond be posted equal to the full amount of
12 security required pursuant to this section. For purposes of this paragraph, “Master
13 Settlement Agreement” shall have the same meaning as that term is defined in
14 paragraph 5 of Section 600.22 of Title 37 of the Oklahoma Statutes, and “Smokeless
15 Tobacco Master Settlement Agreement” means the settlement agreement and related
16 documents entered into on November 23, 1998, by this state and leading United States
17 smokeless tobacco product manufacturers.

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

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

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

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

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

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

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

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

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

11 Section 993. A. When an order:

- 12 1. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify an
13 attachment;
- 14 2. Denies a temporary or permanent injunction, grants a temporary or permanent
15 injunction except where granted at an ex parte hearing, or discharges, vacates, or
16 modifies or refuses to discharge, vacate, or modify a temporary or permanent injunction;
- 17 3. Discharges, vacates, or modifies or refuses to discharge, vacate, or modify a
18 provisional remedy which affects the substantial rights of a party;
- 19 4. Appoints a receiver except where the receiver was appointed at an ex parte
20 hearing, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of
21 a receiver;

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

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

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

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

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

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

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

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

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

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

1 Section 2004.

2 PROCESS

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

6 B. SUMMONS: FORM.

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

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

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

20 1. SERVICE BY PERSONAL DELIVERY.

21 a. At the election of the plaintiff, process, other than a subpoena, shall be
22 served by a sheriff or deputy sheriff, a person licensed to make service

1 of process in civil cases, or a person specially appointed for that
2 purpose. The court shall freely make special appointments to serve all
3 process, other than a subpoena, under this paragraph.

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

18 c. Service shall be made as follows:

19 (1) Upon an individual other than an infant who is less than fifteen
20 (15) years of age or an incompetent person, by delivering a copy
21 of the summons and of the petition personally or by leaving
22 copies thereof at the person's dwelling house or usual place of

1 abode with some person then residing therein who is fifteen (15)
2 years of age or older or by delivering a copy of the summons and
3 of the petition to an agent authorized by appointment or by law
4 to receive service of process;

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

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

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

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

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

18 2. SERVICE BY MAIL.

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

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

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

21 c. Service by mail shall not be the basis for the entry of a default or a
22 judgment by default unless the record contains a return receipt

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

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

12 3. SERVICE BY PUBLICATION.

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

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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

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BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 general circulation which is published in an adjoining county. All
2 named parties and their unknown successors who may be served by
3 publication may be included in one notice. The notice shall state the
4 court in which the petition is filed and the names of the plaintiff and
5 the parties served by publication, and shall designate the parties
6 whose unknown successors are being served. The notice shall also
7 state that the named defendants and their unknown successors have
8 been sued and must answer the petition on or before a time to be
9 stated (which shall not be less than forty-one (41) days from the date of
10 the first publication), or judgment, the nature of which shall be stated,
11 will be rendered accordingly. If jurisdiction of the court is based on
12 property, any real property subject to the jurisdiction of the court and
13 any property or debts to be attached or garnished must be described in
14 the notice.

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

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(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

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1 knowledge of the publication. No default judgment may be entered on
2 such service until proof of service by publication is filed with and
3 approved by the court.

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

15 f. A party against whom a default judgment or order has been rendered,
16 without other service than by publication in a newspaper, may, at any
17 time within three (3) years after the filing of the judgment or order,
18 have the judgment or order set aside in the manner prescribed in
19 Sections 1031.1 and 1033 of this title. Before the judgment or order is
20 set aside, the applicant shall notify the adverse party of the intention
21 to make an application and shall file a full answer to the petition, pay
22 all costs if the court requires them to be paid, and satisfy the court by

1 affidavit or other evidence that during the pendency of the action the
2 applicant had no actual notice thereof in time to appear in court and
3 make a defense. The title to any property which is the subject of and
4 which passes to a purchaser in good faith by or in consequence of the
5 judgment or order to be opened shall not be affected by any
6 proceedings under this subparagraph. Nor shall proceedings under
7 this subparagraph affect the title of any property sold before judgment
8 under an attachment. The adverse party, on the hearing of an
9 application to open a judgment or order as provided by this
10 subparagraph, shall be allowed to present evidence to show that
11 during the pendency of the action the applicant had notice thereof in
12 time to appear in court and make a defense.

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

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

20 4. SERVICE ON THE SECRETARY OF STATE.

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

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

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

- 9 (1) the corporation's last-known address shown on the records of the
10 Franchise Tax Division of the Oklahoma Tax Commission, if any
11 is listed there; and
12 (2) the corporation's last-known address shown on the records of the
13 Secretary of State, if any is listed there; and
14 (3) the corporation's last address known to the plaintiff.

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

19 c. Service on the Secretary of State shall be made by filing two (2) copies
20 of the summons and petition with the Secretary of State, notifying the
21 Secretary of State that service is being made pursuant to the
22 provisions of this paragraph, and paying the Secretary of State the fee

1 prescribed in paragraph 7 of Section 1142 of Title 18 of the Oklahoma
2 Statutes, which fee shall be taxed as part of the costs of the action, suit
3 or proceeding if the plaintiff shall prevail therein. If a registered agent
4 for the corporation is listed in the records of the Secretary of State, the
5 plaintiff must also furnish a certified copy of the return showing that
6 service on the registered agent has been attempted either in person or
7 by mail, and that neither the registered agent nor an officer of the
8 corporation could be found at the registered office of the corporation.

9 d. Within three (3) working days after receiving the summons and
10 petition, the Secretary of State shall send notice by letter, certified
11 mail, return receipt requested, directed to the corporation at its
12 registered office or the last-known address found in the office of the
13 Secretary of State, or if no address is found there, to the corporation's
14 last-known address provided by the plaintiff. The notice shall enclose
15 a copy of the summons and petition and any other papers served upon
16 the Secretary of State. The corporation shall not be required to serve
17 its answer until forty (40) days after service of the summons and
18 petition on the Secretary of State.

19 e. Before entry of a default judgment or order against a corporation that
20 has been served by serving the Secretary of State as its agent under
21 this paragraph, the court shall determine whether the requirements of
22 this paragraph have been satisfied. A default judgment or order

1 against a corporation that has been served only by service on the
2 Secretary of State may be set aside upon motion of the corporation in
3 the manner prescribed in Section 1031.1 of this title, or upon petition
4 of the corporation in the manner prescribed in Section 1033 of this
5 title, if the corporation demonstrates to the court that it had no actual
6 notice of the action in time to appear and make its defense. A petition
7 shall be filed within one (1) year after the corporation has notice of the
8 default judgment or order but in no event more than two (2) years after
9 the filing of the default judgment or order.

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

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

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

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

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

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

19 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

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

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

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

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

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

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

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

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

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

18 G. RETURN.

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

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

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

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

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

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

17 Section 2008.

18 GENERAL RULES OF PLEADING

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

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

1 2. A demand for judgment for the relief to which he deems himself entitled. Every
2 pleading demanding relief for damages in money in excess of ~~Ten Thousand Dollars~~
3 ~~(\$10,000.00)~~ the amount required for diversity jurisdiction pursuant to Section 1332 of
4 Title 28 of the United States Code shall, without demanding any specific amount of
5 money, set forth only that the amount sought as damages is in excess of ~~Ten Thousand~~
6 ~~Dollars (\$10,000.00)~~ the amount required for diversity jurisdiction pursuant to Section
7 1332 of Title 28 of the United States Code, except in actions sounding in contract. Every
8 pleading demanding relief for damages in money in an amount of ~~Ten Thousand Dollars~~
9 ~~(\$10,000.00)~~ that is required for diversity jurisdiction pursuant to Section 1332 of Title
10 28 of the United States Code or less shall specify the amount of such damages sought to
11 be recovered. If the amount of damages sought to be recovered is the same as the
12 amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the
13 United States Code or less, the amount of damages that may be recovered shall not
14 exceed the amount set forth in the pleadings.

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

16 B. DEFENSES; FORM OF DENIALS. A party shall state in short and plain terms
17 his defenses to each claim asserted and shall admit or deny the averments upon which
18 the adverse party relies. If he is without knowledge or information sufficient to form a
19 belief as to the truth of an averment, he shall so state and this statement has the effect of
20 a denial. Denials shall fairly meet the substance of the averments denied. When a
21 pleader intends in good faith to deny only a part or a qualification of an averment, he
22 shall specify so much of it as is true and material and shall deny only the remainder.

1 Unless the pleader intends in good faith to controvert all the averments of the preceding
2 pleading, he may make his denials as specific denials of designated averments or
3 paragraphs or he may generally deny all the averments except such designated
4 averments or paragraphs as he expressly admits; but, when he does so intend to
5 controvert all its averments, he may do so by general denial subject to the obligations set
6 forth in Section 2011 of this title.

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

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

- 1 15. Release;
- 2 16. Res judicata;
- 3 17. Statute of frauds;
- 4 18. Statute of limitations;
- 5 19. Waiver; and
- 6 20. Any other matter constituting an avoidance or affirmative defense.

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

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

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

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

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

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1 on legal or equitable grounds. All statements shall be made subject to the obligations set
2 forth in Section 2011 of this title.

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

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

7 Section 2009.

8 PLEADING SPECIAL MATTERS

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

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

21 C. CONDITIONS PRECEDENT. In pleading the performance or occurrence of
22 conditions precedent, it is sufficient to aver generally that all conditions precedent have

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1 been performed or have occurred. A denial of performance or occurrence shall be made
2 specifically and with particularity.

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

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

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

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

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

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

6 Section 2011.

7 SIGNING OF PLEADINGS

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

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

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

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

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

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

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

14 1. HOW INITIATED.

15 a. By Motion. A motion for sanctions under this rule shall be made
16 separately from other motions or requests and shall describe the
17 specific conduct alleged to violate subsection B of this section. It shall
18 be served as provided in Section 2005 of this title, but shall not be filed
19 with or presented to the court unless, within twenty-one (21) days after
20 service of the motion or such other period as the court may prescribe,
21 the challenged paper, claim, defense, contention, allegation, or denial
22 is not withdrawn or appropriately corrected. If warranted, the court

1 may award to the party prevailing on the motion the reasonable
2 expenses and attorneys fees incurred in presenting or opposing the
3 motion. Absent exceptional circumstances, a law firm shall be held
4 jointly responsible for violations committed by its partners, associates,
5 and employees.

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

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

- 19 a. Monetary sanctions shall not be awarded against a represented party
20 for a violation of paragraph 2 of subsection B of this section.
21 b. Monetary sanctions shall not be awarded on the court's initiative
22 unless the court issues its order to show cause before a voluntary

1 dismissal or settlement of the claims made by or against the party
2 which is, or whose attorneys are, to be sanctioned.

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

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

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

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

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

4 Section 2011.1 In any action not arising out of contract, if requested the court shall,
5 upon ruling on a motion to dismiss an action or a motion for summary judgment or
6 subsequent to adjudication on the merits, determine whether a claim or defense asserted
7 in the action by a nonprevailing party was frivolous. As used in this section, “frivolous”
8 means the claim or defense was knowingly asserted in bad faith, ~~was unsupported by any~~
9 ~~credible evidence, was not grounded in fact, or was unwarranted by existing law or a~~
10 ~~good faith argument for the extension, modification, or reversal of existing law or the~~
11 ~~establishment of new law~~ or without any rational argument based in law or facts to
12 support the position of the litigant. Upon so finding, the court shall enter an order
13 requiring such nonprevailing party to reimburse the prevailing party for reasonable
14 costs, including attorney fees, incurred with respect to such claim or defense. In
15 addition, the court may impose any sanction authorized by Section 2011 of ~~Title 12 of the~~
16 ~~Oklahoma Statutes~~ this title.

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

20 PRETRIAL CONFERENCE

21 A. PRETRIAL ORDER. After any pretrial conference, a pretrial order shall be
22 entered reciting the action taken. This order shall control the subsequent course of

1 action unless modified by subsequent order. The order following a pretrial conference
2 shall be modified only to prevent manifest injustice.

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

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

10 Section 2023.

11 CLASS ACTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 was directed, and who have not requested ~~exclusion~~ inclusion, and whom the court finds
2 to be members of the class.

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

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

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

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

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

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

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

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

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

3 ~~5.~~ 6. Dealing with similar procedural matters.

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

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

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

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

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

22 a. time and labor required,

- 1 b. the novelty and difficulty of the case,
- 2 c. the skill required to perform the legal service properly,
- 3 d. the preclusion of other employment by the attorney due to acceptance
- 4 of the case,
- 5 e. the customary fee,
- 6 f. whether the fee is fixed or contingent,
- 7 g. time limitations imposed by the client or the circumstances,
- 8 h. the amount in controversy and the results obtained,
- 9 i. the experience, reputation and ability of the attorney,
- 10 j. whether or not the case is an undesirable case,
- 11 k. the nature and length of the professional relationship with the client,
- 12 and
- 13 l. awards in similar cases.

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

- 16 1. Residents of this state; or
- 17 2. Nonresidents of Oklahoma who:
 - 18 a. own property located in this state, and
 - 19 b. the property is relevant to the class action.

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

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

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

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

18 D. NOT FULLY ADJUDICATED ON MOTION. If, on motion under this section,
19 judgment is not rendered upon the whole case or for all the relief asked and a trial is
20 necessary, the court at the hearing of the motion, by examining the pleadings and the
21 evidence before it and by interrogating counsel, shall ascertain, if practicable, what
22 material facts exist without substantial controversy and what material facts are actually

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

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

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

21 F. WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the

22 affidavits of a party opposing the motion that the party cannot for reasons stated present

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 D. BARS TO EXPERT TESTIMONY.

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

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

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

11 F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

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

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

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

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

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

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

1 H. INTERLOCUTORY APPEAL. Interlocutory appeal of a ruling on the
2 admissibility of expert evidence shall be available at the discretion of the appellate court.

3 In deciding whether to grant the interlocutory appeal, the court shall consider whether:

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

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

6 3. The ruling will help establish civil liability at or above Seventy-five Thousand
7 Dollars (\$75,000.00), where the testimony could be outcome-determinative for

8 establishing liability or determining damages. Neither a party's failure to seek

9 interlocutory appeal or an appellate court's decision to deny a motion for interlocutory

10 appeal shall waive a party's right to appeal a ruling on the admissibility of expert

11 evidence after an entry of judgment in the case.

12 I. STANDARD OF REVIEW.

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

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

21 J. SEVERABILITY CLAUSE. The provisions of this section are severable. If any
22 portion of this section is declared unconstitutional or the application of any part of this

1 section to any person or circumstance is held invalid, the remaining portions of the
2 section and their applicability to any person or circumstance shall remain valid and
3 enforceable.

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

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

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

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

20 1. IN GENERAL. Parties may obtain discovery regarding any matter, not
21 privileged, which is relevant to the subject matter involved in the pending action,
22 whether it relates to the claim or defense of the party seeking discovery or to the claim or

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

13 2. INITIAL DISCLOSURES.

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

- 1 b. The following categories of proceedings are exempt from initial
2 disclosure under subparagraph a of this paragraph:
- 3 (1) an action for review on an administrative record,
4 (2) a petition for habeas corpus or other proceeding to challenge a
5 criminal conviction or sentence,
6 (3) an action brought without counsel by a person in custody of the
7 United States, a state, or a state subdivision,
8 (4) an action to enforce or quash an administrative summons or
9 subpoena,
10 (5) an action by the United States to recover benefit payments,
11 (6) an action by the United States to collect on a student loan
12 guaranteed by the United States,
13 (7) a proceeding ancillary to proceedings in other courts, and
14 (8) an action to enforce an arbitration award.

15 3. TIME FOR DISCLOSURES. These disclosures must be made at or within
16 fourteen (14) days after the discovery conference provided for in subsection F of this
17 section unless a different time is set by stipulation or court order, or unless a party
18 objects during the conference that initial disclosures are not appropriate in the
19 circumstances of the action and states the objection in the discovery plan. In ruling on
20 the objection, the court must determine what disclosures, if any, are to be made and set
21 the time for disclosure. Any party first served or otherwise joined after the discovery
22 conference must make these disclosures within thirty (30) days after being served or

1 joined unless a different time is set by stipulation or court order. A party must make its
2 initial disclosures based on the information then reasonably available to it and is not
3 excused from making its disclosures because it has not fully completed its investigation
4 of the case or because it challenges the sufficiency of another party's disclosures or
5 because another party has not made its disclosures.

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

17 A party may obtain, without the required showing provided for in this paragraph, a
18 statement concerning the action or its subject matter previously made by that party.
19 Upon request, a person not a party may obtain without the required showing a statement
20 concerning the action or its subject matter previously made by that person. If the
21 request is refused, the person may move for a court order. The provisions of paragraph 4

1 of subsection A of Section 3237 of this title apply to the award of expenses incurred in
2 relation to the motion. For purposes of this paragraph, a statement previously made is:

- 3 a. A written statement signed or otherwise adopted or approved by the
4 person making it, or
- 5 b. A stenographic, mechanical, electrical, or other recording, or a
6 transcription thereof, which substantially recites an oral statement by
7 the person making it and contemporaneously recorded.

8 ~~3.~~ 5. TRIAL PREPARATION: EXPERTS.

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

- 13 (1) A party may, through interrogatories, require any other party to
14 identify each person whom that other party expects to call as an
15 expert witness at trial and give the address at which that expert
16 witness may be located.
- 17 (2) After disclosure of the names and addresses of the expert
18 witnesses, the other party expects to call as witnesses, the party,
19 who has requested disclosure, may depose any such expert
20 witnesses subject to scope of this section. Prior to taking the
21 deposition the party must give notice as required in subsections
22 A and C of Section 3230 of this title. If any documents are

1 provided to such disclosed expert witnesses, the documents shall
2 not be protected from disclosure by privilege or work product
3 protection and they may be obtained through discovery.

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

20 b. A party may discover facts known or opinions held by an expert who
21 has been retained or specially employed by another party in
22 anticipation of litigation or preparation for trial and who is not

1 expected to be called as a witness at trial, only upon motion, when the
2 court may order discovery as provided in Section 3235 of this title or
3 upon a showing of exceptional circumstances under which it is
4 impracticable for the party seeking discovery to obtain facts or
5 opinions on the same subject by any other means.

6 c. Unless manifest injustice would result:

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

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

16 ~~4. 6.~~ CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
17 MATERIALS. When a party withholds information otherwise discoverable under the
18 Oklahoma Discovery Code by claiming that it is privileged or subject to protection as
19 trial preparation material, the party shall make the claim expressly and shall describe
20 the nature of the documents, communications, or things not produced or disclosed in a
21 manner that, without revealing information itself privileged or protected, will enable
22 other parties to assess the applicability of the privilege or protection.

1 C. PROTECTIVE ORDERS.

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

- 10 a. that the discovery not be had,
11 b. that the discovery may be had only on specified terms and conditions,
12 including a designation of the time or place,
13 c. that the discovery may be had only by a method of discovery other than
14 that selected by the party seeking discovery,
15 d. that certain matters not be inquired into, or that the scope of the
16 disclosure or discovery be limited to certain matters,
17 e. that discovery be conducted with no one present except persons
18 designated by the court,
19 f. that a deposition after being sealed be opened only by order of the
20 court,

- 1 g. that a trade secret or other confidential research, development or
2 commercial information not be disclosed or be disclosed only in a
3 designated way, and
- 4 h. that the parties simultaneously file specified documents or information
5 enclosed in sealed envelopes to be opened as directed by the court;
- 6 2. If the motion for a protective order is denied in whole or in part, the court may,
7 on such terms and conditions as are just, order that any party or person provide or
8 permit discovery. The provisions of paragraph 4 of subsection A of Section 3237 of this
9 title apply to the award of expenses incurred in relation to the motion. Any protective
10 order of the court which has the effect of removing any material obtained by discovery
11 from the public record shall contain the following:
- 12 a. a statement that the court has determined it is necessary in the
13 interests of justice to remove the material from the public record,
14 b. specific identification of the material which is to be removed or
15 withdrawn from the public record, or which is to be filed but not placed
16 in the public record, and
17 c. a requirement that any party obtaining a protective order place the
18 protected material in a sealed manila envelope clearly marked with the
19 caption and case number and is clearly marked with the word
20 "CONFIDENTIAL", and stating the date the order was entered and
21 the name of the judge entering the order;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Following the discovery conference, the court shall enter an order tentatively
20 identifying the issues for discovery purposes, establishing a plan and schedule for
21 discovery, setting limitations on discovery, if any; and determining such other matters,
22 including the allocation of expenses, as are necessary for the proper management of

1 discovery in the action. In preparing the plan for discovery the court shall protect the
2 parties from excessive or abusive use of discovery. An order shall be altered or amended
3 whenever justice so requires.

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

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

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

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

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

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

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

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

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

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

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

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

21 2. Actions or transactions otherwise permitted or regulated under laws
22 ~~administered~~ by the Federal Trade Commission, the Corporation Commission, or any

1 other regulatory body or officer acting under statutory authority of this state or the
2 United States, or to acts done by retailers or other persons acting in good faith on the
3 basis of information or matter supplied by others and without knowledge of the deceptive
4 character of such information or matter; or

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

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

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

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

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

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

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

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

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

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

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

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

1 by the Attorney General or a district attorney shall be used for the furtherance of their
2 duties and activities under the Oklahoma Consumer Protection Act.

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

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

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

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

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

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

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

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

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

11 7. The financial condition of the defendant.

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

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

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

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

19 b. the amount of the actual damages awarded.

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

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

- 1 1. The defendant has acted intentionally and with malice towards others; or
- 2 2. An insurer has intentionally and with malice breached its duty to deal fairly and
- 3 act in good faith with its insured;
- 4 the jury, in a separate proceeding conducted after the jury has made such finding and
- 5 awarded actual damages, may award punitive damages in an amount not to exceed the
- 6 greatest of:
- 7 a. Five Hundred Thousand Dollars (\$500,000.00),
- 8 b. twice the amount of actual damages awarded, or
- 9 c. the increased financial benefit derived by the defendant or insurer as a
- 10 direct result of the conduct causing the injury to the plaintiff and other
- 11 persons or entities.

12 The trial court shall reduce any award for punitive damages awarded pursuant to the

13 provisions of subparagraph c of this paragraph by the amount it finds the defendant or

14 insurer has previously paid as a result of all punitive damage verdicts entered in any

15 court of this state for the same conduct by the defendant or insurer. Any award of

16 punitive damages under this subsection awarded in any manner other than as required

17 in this subsection shall be void and reversible error.

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

- 19 1. The defendant has acted intentionally and with malice towards others; or
- 20 2. An insurer has intentionally and with malice breached its duty to deal fairly and
- 21 act in good faith with its insured; and the court finds, on the record and out of the
- 22 presence of the jury, that there is evidence beyond a reasonable doubt that the defendant

1 or insurer acted intentionally and with malice and engaged in conduct life-threatening to
2 humans,
3 the jury, in a separate proceeding conducted after the jury has made such finding and
4 awarded actual damages, may award punitive damages in any amount the jury deems
5 appropriate, without regard to the limitations set forth in subsections B and C of this
6 section. Any award of punitive damages under this subsection awarded in any manner
7 other than as required in this subsection shall be void and reversible error.

8 E. In any civil action in which an entitlement to punitive damages shall have been
9 established, no award of punitive damages shall exceed Two Million Dollars
10 (\$2,000,000.00).

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

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

21 ~~F.~~ H. 1. In a case involving injury or harm allegedly caused by a product, the
22 manufacturer, distributor or seller of the product shall not be subject to exemplary or

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 punitive damages if, at the time the product left the control of the manufacturer,
2 distributor or seller, the product or the aspect, component, warning or absence of
3 warning contained in or accompanying the product that allegedly caused the injury or
4 harm either:

- 5 a. was in material compliance with statute or with the standards, rules,
6 regulations, requirements or specifications of a federal or state agency
7 responsible for regulating, evaluating or approving the project, or
8 b. was approved by a federal or state agency responsible for regulating,
9 evaluating or approving the product.

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

- 12 a. intentionally withheld or intentionally misrepresented information
13 which it was required at any time to submit to the agency and the
14 withholding or misrepresentation of such information was causally
15 related to the injury or harm alleged, or
16 b. made an illegal payment to an official or employee of the federal or
17 state government for the purpose of securing or maintaining approval
18 of the product.

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

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

4 ~~G. This~~ J. The provisions of this section, except subsections E, F and H of this
5 section, shall apply to all civil actions filed after ~~the effective date of this act~~ August 25,
6 1995.

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

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

12 A. As used in this section:

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

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

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

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

3 b. loss of inheritance; and

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

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

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

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

- 19 1. Recipient of the payments;
- 20 2. Dollar amount of the payments;
- 21 3. Interval between payments; and
- 22 4. Number of payments or the period of time over which payments must be made.

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

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

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

10 2. An obligation of the United States;

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

12 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 noneconomic damages under this subsection awarded in any manner other than as
2 required in this section shall be void and reversible.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 5. The transportation of a child who weighs more than forty (40) pounds and who is
20 being transported in the back seat of a vehicle while wearing only a lap safety belt when
21 the back seat of the vehicle is not equipped with combination lap and shoulder safety
22 belts, or when the combination lap and shoulder safety belts in the back seat are being

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1 used by other children who weigh more than forty (40) pounds. Provided, however, for
2 purposes of this paragraph, back seat shall include all seats located behind the front seat
3 of a vehicle operated by a licensed child care facility or church. Provided further, there
4 shall be a rebuttable presumption that a child has met the weight requirements of this
5 paragraph if at the request of any law enforcement officer, the licensed child care facility
6 or church provides the officer with a written statement verified by the parent or legal
7 guardian that the child weighs more than forty (40) pounds.

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

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

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

19 ~~G.~~ F. Any person convicted of violating subsection A or B of this section shall be
20 punished by a fine of Fifty Dollars (\$50.00) and shall pay all court costs thereof. Revenue
21 from such fine shall be apportioned to the Department of Public Safety Revolving Fund
22 and used by the Oklahoma Highway Safety Office to promote the use of child passenger

1 restraint systems as provided in Section 11-1113 of this title. This fine shall be
2 suspended and the court costs limited to a maximum of Fifteen Dollars (\$15.00) in the
3 case of the first offense upon proof of purchase or acquisition by loan of a child passenger
4 restraint system. Provided, the Department of Public Safety shall not assess points to
5 the driving record of any person convicted of a violation of this section.

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

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

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

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

- 17 1. Legislative functions;
- 18 2. Judicial, quasi-judicial, or prosecutorial functions, other than claims for wrongful
19 criminal felony conviction resulting in imprisonment provided for in Section 154 of this
20 title;
- 21 3. Execution or enforcement of the lawful orders of any court;

- 1 4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or
2 invalid, including, but not limited to, any statute, charter provision, ordinance,
3 resolution, rule, regulation or written policy;
- 4 5. Performance of or the failure to exercise or perform any act or service which is in
5 the discretion of the state or political subdivision or its employees;
- 6 6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the
7 method of providing, police, law enforcement or fire protection;
- 8 7. Any claim based on the theory of attractive nuisance;
- 9 8. Snow or ice conditions or temporary or natural conditions on any public way or
10 other public place due to weather conditions, unless the condition is affirmatively caused
11 by the negligent act of the state or a political subdivision;
- 12 9. Entry upon any property where that entry is expressly or implied authorized by
13 law;
- 14 10. Natural conditions of property of the state or political subdivision;
- 15 11. Assessment or collection of taxes or special assessments, license or registration
16 fees, or other fees or charges imposed by law;
- 17 12. Licensing powers or functions including, but not limited to, the issuance, denial,
18 suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any
19 permit, license, certificate, approval, order or similar authority;
- 20 13. Inspection powers or functions, including failure to make an inspection, review
21 or approval, or making an inadequate or negligent inspection, review or approval of any
22 property, real or personal, to determine whether the property complies with or violates

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

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

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

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

18 17. Misrepresentation, if unintentional;

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

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

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

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

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

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

15 a. in an effort to quell a riot,

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

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

18 24. Provision, equipping, operation or maintenance of any prison, jail or
19 correctional facility, or injuries resulting from the parole or escape of a prisoner or
20 injuries by a prisoner to any other prisoner; provided, however, this provision shall not
21 apply to claims from individuals not in the custody of the Department of Corrections

1 based on accidents involving motor vehicles owned or operated by the Department of
2 Corrections;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 1. "Credentialing or recredentialing data" means:

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

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

15 3. “Health care facility” means:

- 16 a. any hospital or related institution offering or providing health care
17 services under a license issued pursuant to Section 1-706 of this title,
18 b. any ambulatory surgical center offering or providing health care
19 services under a license issued pursuant to Section 2660 of this title,
20 and
21 c. the clinical practices of accredited allopathic and osteopathic state
22 medical schools;

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

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

- 10 a. the medical records of a patient whose health care in a health care
11 facility is being reviewed,
12 b. incident reports and other like documents regarding health care
13 services being reviewed, regardless of how the reports or documents
14 are titled or captioned,
15 c. the identity of any individuals who have personal knowledge regarding
16 the facts and circumstances surrounding the patient’s health care in
17 the health care facility,
18 d. factual statements regarding the patient’s health care in the health
19 care facility from any individuals who have personal knowledge
20 regarding the facts and circumstances surrounding the patient’s health
21 care, which factual statements were generated outside the peer review
22 process,

- 1 e. the identity of all documents and raw data previously created
- 2 elsewhere and considered during the peer review process, or
- 3 f. copies of all documents and raw data previously created elsewhere and
- 4 considered during the peer review process, whether available
- 5 elsewhere or not, ~~or~~
- 6 ~~g. credentialing or recredentialing data regarding the health care~~
- 7 ~~professional who provided the health care services being reviewed or~~
- 8 ~~who is the subject of a credentialing or recredentialing process; and~~

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

- 13 B. 1. Peer review information shall be private, confidential and privileged;
- 14 ~~a.~~ except that a health care facility or county medical society shall be
- 15 permitted to provide relevant peer review information to the state
- 16 agency or board which licensed the health care professional who
- 17 provided the health care services being reviewed in a peer review
- 18 process or who is the subject of a credentialing or recredentialing
- 19 process, with notice to the health care professional, ~~and~~
- 20 ~~b. except as provided in subsections C and D of this section.~~

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

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

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

12 D. ~~±~~ In any civil action in which a patient or patient’s legal representative has
13 alleged:

14 a. ~~that~~

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

17 b. ~~that~~

18 2. That the health care facility was independently negligent as a result of
19 permitting the health care professional to provide health care services to the patient in
20 the health care facility,
21 the recommendations made and action taken as a result of any peer review process
22 utilized by such health care facility regarding the health care professional prior to the

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1 date of the alleged negligence shall not be subject to discovery pursuant to the Oklahoma
2 Discovery Code or admissible at trial.

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

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

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

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

13 SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma
14 Statutes as Section 684.14 of Title 63, unless there is created a duplication in numbering,
15 reads as follows:

16 Sections 42 through 52 of this act shall be known and may be cited as the “Uniform
17 Emergency Volunteer Health Practitioners Act”.

18 SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma
19 Statutes as Section 684.15 of Title 63, unless there is created a duplication in numbering,
20 reads as follows:

21 As used in the Uniform Emergency Volunteer Health Practitioners Act:

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

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

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

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

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

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

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

13 9. “Host entity” means an entity operating in this state which uses volunteer health
14 practitioners to respond to an emergency;

15 10. “License” means authorization by a state to engage in health or veterinary
16 services that are unlawful without the authorization and includes authorization under
17 the laws of this state to an individual to provide health or veterinary services based upon
18 a national certification issued by a public or private entity;

19 11. “Person” means an individual, corporation, business trust, trust, partnership,
20 limited liability company, association, joint venture, public corporation, government or
21 governmental subdivision, agency, or instrumentality, or any other legal or commercial
22 entity;

1 12. “Scope of practice” means the extent of the authorization to provide health or
2 veterinary services granted to a health practitioner by a license issued to the practitioner
3 in the state in which the principal part of the practitioner’s services are rendered,
4 including any conditions imposed by the licensing authority;

5 13. “State” means a state of the United States, the District of Columbia, Puerto
6 Rico, the United States Virgin Islands, or any territory or insular possession subject to
7 the jurisdiction of the United States;

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

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

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

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

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

6 This Uniform Emergency Volunteer Health Practitioners Act applies to volunteer
7 health practitioners registered with a registration system that complies with Section 46
8 of this act and who provide health or veterinary services in this state for a host entity
9 while an emergency declaration is in effect.

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

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

- 15 1. The duration of practice by volunteer health practitioners;
16 2. The geographical areas in which volunteer health practitioners may practice;
17 3. The types of volunteer health practitioners who may practice; and
18 4. Any other matters necessary to coordinate effectively the provision of health or
19 veterinary services during the emergency.

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

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

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

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

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

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

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

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

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

20 and

21 4. Meet one of the following conditions:

- 1 a. be an emergency system for advance registration of volunteer health
2 practitioners established by a state and funded through the Health
3 Resources Services Administration under Section 319I of the Public
4 Health Services Act, 42 U.S.C., Section 247d-7b,
- 5 b. be a local unit consisting of trained and equipped emergency response,
6 public health, and medical personnel formed pursuant to Section 2801
7 of the Public Health Services Act, 42 U.S.C., Section 300hh,
- 8 c. be operated by a:
- 9 (1) disaster relief organization,
10 (2) licensing board,
11 (3) national or regional association of licensing boards or health
12 practitioners,
13 (4) health facility that provides comprehensive inpatient and
14 outpatient health-care services, including a tertiary care and
15 teaching hospital, or
16 (5) governmental entity, or
- 17 d. be designated by the State Department of Health as a registration
18 system for purposes of the Uniform Emergency Volunteer Health
19 Practitioners Act.

20 B. While an emergency declaration is in effect, the State Department of Health, a
21 person authorized to act on behalf of the Department, or a host entity may confirm
22 whether volunteer health practitioners utilized in this state are registered with a

1 registration system that complies with subsection A of this section. Confirmation is
2 limited to obtaining identities of the practitioners from the system and determining
3 whether the system indicates that the practitioners are licensed and in good standing.

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

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

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

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

19 B. A volunteer health practitioner qualified under subsection A of this section is not
20 entitled to the protections of the Uniform Emergency Volunteer Health Practitioners Act
21 if the practitioner is licensed in more than one state and any license of the practitioner is

1 suspended, revoked, or subject to an agency order limiting or restricting practice
2 privileges, or has been voluntarily terminated under threat of sanction.

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

6 A. For purposes of this section:

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

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

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

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

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

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

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

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

14 E. A volunteer health practitioner does not engage in unauthorized practice unless
15 the practitioner has reason to know of any limitation, modification, or restriction under
16 this section or that a similarly licensed practitioner in this state would not be permitted
17 to provide the services. A volunteer health practitioner has reason to know of a
18 limitation, modification, or restriction or that a similarly licensed practitioner in this
19 state would not be permitted to provide a service if:

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

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

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

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

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

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

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

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

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

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

11 SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma
12 Statutes as Section 684.23 of Title 63, unless there is created a duplication in numbering,
13 reads as follows:

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

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

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

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

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

20 1. To activate the Emergency Operations Plan, and to assume regulatory control
21 over all essential resources of this state, directly or through the boards, agencies, offices
22 and officers established by ~~said~~ the Emergency Operations Plan, to determine priorities

1 of such resources and allocate such resources as the Governor may deem necessary in
2 cooperation with the political subdivisions of this state, the federal government, or other
3 states. "Resources" shall mean all economic resources within this state including but not
4 limited to food, manpower, health ~~and health manpower~~, water, transportation, economic
5 stabilization, electric power, petroleum, gas, and solid fuel, industrial production,
6 construction and housing.;

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

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

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

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

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

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

18 B. Any requirement for a license to practice any professional, mechanical, or other
19 skill shall not apply to any authorized emergency management worker from any state
20 rendering mutual aid and who holds a comparable license in that state, who shall
21 practice such professional, mechanical, or other skill during an emergency declared

1 under the provisions of this act, when such professional, mechanical or other skill is
2 exercised in accordance with the provisions of this act.

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

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

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

1 The Legislature finds that:

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

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

14 3. The threat of liability for private money damages or civil money penalties under
15 federal and state law unreasonably discourages skilled nursing facilities, nursing
16 facilities, health care professionals and other health care providers from conducting or
17 participating in effective quality assessment and assurance activities and medical error
18 review activities;

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

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

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

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

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

16 2. “Quality assessment and assurance committee” means any committee of a skilled
17 nursing facility or a nursing facility which conducts quality assessment and assurance
18 activities;

19 3. “Quality assessment and assurance committee records” means documents and
20 other information in whatever form:

21 a. submitted to, reviewed or generated by, or produced at the request of a
22 quality assessment and assurance committee for purposes of quality

1 assessment, assurance or improvement, including without limitation
2 proceedings, records, reports, statements, notes, incident reports,
3 memoranda, minutes, conclusions, deliberations, findings, and internal
4 working papers, or

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

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

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

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

21 A. Quality assessment and assurance committee records shall be confidential and
22 privileged. Such records shall not be disclosed to any person or entity and are privileged

1 for purposes of state judicial proceedings in civil matters and for purposes of state
2 administrative proceedings, including with respect to discovery and subpoenas.

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

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

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

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

21 B. Notwithstanding any other provision of law, no member of a quality assessment
22 and assurance committee or person providing information to a quality assessment and

1 assurance body shall be held, by reason of participation in quality assessment and
2 assurance activities, liable in damages under any law of the state or political subdivision
3 thereof unless such individual provided false information with the knowledge that such
4 information was false.

5 SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma
6 Statutes as Section 1-1924.6 of Title 63, unless there is created a duplication in
7 numbering, reads as follows:

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

- 12 1. The deficiency determination is final, adjudicated and has been appealed;
- 13 2. The deficiency determination or Minimum-Data-Set-related documentation is
14 otherwise admissible under the State Rules of Civil Procedure, as applicable; and
- 15 3. The statements of deficiencies, plans of correction or Minimum-Data-Set-related
16 documentation is directly related to the harm allegedly caused to the patient that is the
17 subject of the proceeding.

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

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

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

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

13 SECTION 61. AMENDATORY 76 O.S. 2001, Section 25, is amended to read as
14 follows:

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

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

1 credentialing or recredentialing process. Notice that the information is being provided to
2 a state agency or board shall be given to the professional.

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

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

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

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

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

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

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

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

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

16 D. Definitions.

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

1 being legally entitled to receive compensation for the service or undertaking performed
2 shall not preclude a person from being considered a volunteer.

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

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

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

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

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

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

4 Sections 63 through 66 of this act shall be known and may be cited as the “Common
5 Sense Consumption Act”.

6 SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 34 of Title 76, unless there is created a duplication in numbering,
8 reads as follows:

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

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

16 As used in the Common Sense Consumption Act:

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

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

5 3. “Knowing and willful violation” means that:

- 6 a. the conduct constituting the violation was committed with the intent to
7 deceive or injure consumers or with actual knowledge that such
8 conduct was injurious to consumers, and
- 9 b. the conduct constituting the violation was not required by regulations,
10 orders, rules or other pronouncement of, or any statute administered
11 by, a federal, state, or local government agency.

12 SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma
13 Statutes as Section 36 of Title 76, unless there is created a duplication in numbering,
14 reads as follows:

15 A. Except as provided in subsection B of this section, a manufacturer, packer,
16 distributor, carrier, holder, seller, marketer or advertiser of a food, as defined in Section
17 201(f) of the Federal Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an
18 association of one or more such entities, shall not be subject to civil liability arising under
19 any law of this state, including all statutes, regulations, rules, common law, public
20 policies, court or administrative decisions or decrees, or other state action having the
21 effect of law, for any claim arising out of weight gain, obesity, a health condition

1 associated with weight gain or obesity, or other generally known condition allegedly
2 caused by or allegedly likely to result from long-term consumption of food.

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

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

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

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

1 that such violation was injurious to consumers. For purposes of applying the Common
2 Sense Consumption Act, the foregoing pleading requirements are hereby deemed part of
3 the substantive law of this state and not merely in the nature of procedural provisions.

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

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

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

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

4 SECTION 68. NEW LAW A new section of law to be codified in the Oklahoma
5 Statutes as Section 52 of Title 76, unless there is created a duplication in numbering,
6 reads as follows:

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

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

14 No association of persons who hold licenses under Section 923 of Chapter 44 of Title
15 18, United States Code, as in effect on January 1, 1999, is liable to any person or entity,
16 or to the estate, successors or survivors of either, for any injury suffered, including
17 wrongful death and property damage, because of the use of a firearm sold or
18 manufactured by any licensee who is a member of such association.

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 The provisions of Sections 67 through 69 of this act do not apply to actions for
2 deceit, breach of contract, or expressed or implied warranties, or for injuries resulting
3 from failure of firearms to operate in a normal or usual manner due to defects or
4 negligence in design or manufacture. The provisions of Sections 67 through 69 of this act
5 do not apply to actions arising from the unlawful sale or transfer of firearms, or to
6 instances in which the transferor knew, or should have known, that the recipient would
7 engage in the unlawful sale or transfer of the firearm, or would use, or purposely allow
8 the use of, the firearm in an unlawful, negligent, or improper fashion. For purposes of
9 this section, the potential of a firearm to cause serious injury, damage, or death as a
10 result of normal function does not constitute a defective condition of the product. A
11 firearm may not be deemed defective on the basis of its potential to cause serious injury,
12 damage, or death when discharged.

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

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

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

21 In the Product Liability Act:

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

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

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

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

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

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

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

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

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

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

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

- 8 1. There was a safer alternative design; and
9 2. The defect was a producing cause of the personal injury, property damage, or
10 death for which the claimant seeks recovery.

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

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

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

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

1 D. This section does not apply to:

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

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

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

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

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

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

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

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

20 4. That:

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

- 1 b. the warning or instruction was inadequate, and
- 2 c. the claimant’s harm resulted from the inadequacy of the warning or
- 3 instruction;
- 4 5. That:
- 5 a. the seller made an express factual representation about an aspect of
- 6 the product,
- 7 b. the representation was incorrect,
- 8 c. the claimant relied on the representation in obtaining or using the
- 9 product, and
- 10 d. if the aspect of the product had been as represented, the claimant
- 11 would not have been harmed by the product or would not have suffered
- 12 the same degree of harm;
- 13 6. That:
- 14 a. the seller actually knew of a defect to the product at the time the seller
- 15 supplied the product, and
- 16 b. the claimant’s harm resulted from the defect; or
- 17 7. That the manufacturer of the product is:
- 18 a. insolvent, or
- 19 b. not subject to the jurisdiction of the court.

20 SECTION 76. NEW LAW A new section of law to be codified in the Oklahoma

21 Statutes as Section 60 of Title 76, unless there is created a duplication in numbering,

22 reads as follows:

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

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

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

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

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

20 2. The pharmaceutical product as sold or prescribed in the United States by the
21 defendant after the effective date of an order of the United States Food and Drug

1 Administration to remove the product from the market or to withdraw its approval of the
2 product;

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

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

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

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

11 b. The product was used as prescribed, and

12 c. The claimant's injury was causally related to the prescribed use of the
13 product; or

14 5. The defendant, before or after premarket approval or licensing of the product,
15 engaged in conduct that would constitute a violation of 18 U.S.C., Section 201 and that
16 conduct caused the warnings or instructions approved for the product by the United
17 States Food and Drug Administration to be inadequate.

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

21 A. In a product liability action brought against a product manufacturer or seller,
22 there is a rebuttable presumption that the product manufacturer or seller is not liable for

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 any injury to a claimant caused by some aspect of the formulation, labeling, or design of a
2 product if the product manufacturer or seller establishes that the formula, labeling, or
3 design for the product complied with mandatory safety standards or regulations adopted
4 and promulgated by the federal government, or an agency of the federal government,
5 that were applicable to the product at the time of manufacture and that governed the
6 product risk that allegedly caused harm.

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

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

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

14 C. In a product liability action brought against a product manufacturer or seller,
15 there is a rebuttable presumption that the product manufacturer or seller is not liable for
16 any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or
17 design of a product if the product manufacturer or seller establishes that the product was
18 subject to premarket licensing or approval by the federal government, or an agency of the
19 federal government, that the manufacturer complied with all of the government's or
20 agency's procedures and requirements with respect to premarket licensing or approval,
21 and that after full consideration of the product's risks and benefits the product was

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~~Strike thru~~ language denotes deletion from present Statutes.

1 approved or licensed for sale by the government or agency. The claimant may rebut this
2 presumption by establishing that:

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

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

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

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

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

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

1 shall not require the exclusion of evidence of subsequent measures when offered for
2 another purpose such as proving ownership, control, or impeachment.

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

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

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

14 a. in any action based on strict tort liability, the product contained
15 specific identifiable defects having a potential for injury beyond that
16 which would be contemplated by the ordinary user of the product and
17 was unreasonably dangerous and in a defective condition when it left
18 the control of the manufacturer, or

19 b. in any other action, those acts or omissions would give rise to fault,
20 and

1 c. in any action based on any theory or doctrine, the defective condition of
2 the product or other fault was a proximate cause of the plaintiff's
3 injury; or

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

13 B. If the defective condition referred to in the written report required by paragraph
14 1 of subsection A of this section is based on a design defect, the plaintiff or attorney shall
15 further state that the qualified expert has identified in the written report either:

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

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

20 C. A "qualified expert", for the purposes of this section, means someone who
21 possesses scientific, technical, or other specialized knowledge regarding the product at

1 issue or similar products and who is qualified to prepare the report required by this
2 section.

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

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

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

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

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

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

16 A. FINDINGS. The Legislature finds that:

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

19 2. Many American workers were exposed to asbestos, especially during World War

20 II;

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

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

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

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

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

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

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

3 10. Silica is a naturally occurring mineral and is the second most common
4 constituent of the earth's crust. Crystalline silica in the form of quartz is present in
5 sand, gravel, soil, and rocks;

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

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

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

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

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

21 16. Trial consolidations, joinders, and similar trial procedures used by some courts
22 to handle asbestos and silica cases can undermine the appropriate functioning of the

1 court system, deny due process to plaintiffs and defendants, and further encourage the
2 filing of cases by persons who are not sick and likely will never develop an impairing
3 condition caused by exposure to asbestos or silica.

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

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

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

11 3. Enhance the ability of the courts to supervise and manage asbestos and silica
12 claims.

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

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

17 1. “AMA Guides to the Evaluation of Permanent Impairment” means the American
18 Medical Association’s Guides to the Evaluation of Permanent Impairment in effect at the
19 time of the performance of any examination or test on the exposed person required under
20 the Asbestos and Silica Claims Priorities Act;

21 2. “Asbestos” means chrysotile, amosite, crocidolite, tremolite asbestos,
22 anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite,

1 asbestiform amphibole minerals, and any of these minerals that have been chemically
2 treated or altered, including all minerals defined as asbestos in 29 C.F.R. 1910 at the
3 time an asbestos claim is made;

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

13 4. “Asbestosis” means bilateral diffuse interstitial fibrosis of the lungs caused by
14 inhalation of asbestos fibers;

15 5. “Board-certified in internal medicine” means a physician who is certified by the
16 American Board of Internal Medicine or the American Osteopathic Board of Internal
17 Medicine and whose certification was current at the time of the performance of any
18 examination and rendition of any report required by the Asbestos and Silica Claims
19 Priorities Act;

20 6. “Board-certified in occupational medicine” means a physician who is certified in
21 the subspecialty of occupational medicine by the American Board of Preventive Medicine
22 or the American Osteopathic Board of Preventive Medicine and whose certification was

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

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

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

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

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

1 11. “Certified industrial hygienist” means an industrial hygienist having attained
2 the status of diplomate of the American Academy of Industrial Hygiene subject to
3 compliance with requirements established by the American Board of Industrial Hygiene;

4 12. “Certified safety professional (CSP)” means a person who meets all
5 requirements established by the Board of Certified Safety Professionals and is
6 authorized to use the Certified Safety Professional title or the CSP designation;

7 13. “Chest X-rays” means chest films taken in accordance with all applicable state
8 and federal regulatory standards and taken in the posterior-anterior and lateral views;

9 14. “Claimant” means any plaintiff asserting an asbestos or silica claim; if a claim
10 is brought through or on behalf of an estate, the term includes the claimant’s decedent; if
11 a claim is brought through or on behalf of a minor or incompetent, the term includes the
12 claimant’s parent or guardian;

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

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

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

21 18. “FVC” means forced vital capacity, which is the maximal volume of air expired
22 with maximum effort from a position of full inspiration;

1 19. “ILO system and ILO scale” means the radiological ratings and system for the
2 classification of chest X-rays of the International Labor Office provided in Guidelines for
3 the Use of ILO International Classification of Radiographs of Pneumoconioses in effect
4 on the day any X-rays of the exposed person were reviewed by a certified B-reader;

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

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

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

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

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

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

17 26. “Plethysmography or body plethysmography” means the test for determining
18 lung volume in which the exposed person is enclosed in a chamber equipped to measure
19 pressure, flow, or volume change;

20 27. “Premises owner” means a person who owns, in whole or in part, leases, rents,
21 maintains, or controls privately owned lands, ways or waters, or any buildings and
22 structures on those lands, ways or waters, and all privately owned and state-owned

1 lands, ways, or waters leased to a private person, firm, or organization, including any
2 buildings and structures on those lands, ways or waters;

3 28. "Predicted lower limit of normal" for any test value means the calculated
4 standard convention lying at the fifth percentile, below the upper ninety-five percent
5 (95%) of the reference population, based on age, height, and gender, according to the
6 recommendations by the American Thoracic Society and as referenced in the applicable
7 AMA Guides to the Evaluation of Permanent Impairment;

8 29. "Pulmonary function test" means spirometry, lung volume testing, diffusion
9 capacity testing, and exercise testing, including appropriate measurements and graphs,
10 performed in accordance with the methods of calibration and techniques provided in the
11 applicable AMA Guides to the Evaluation of Permanent Impairment and all standards
12 provided in the Official Statements of the American Thoracic Society in effect on the day
13 pulmonary function testing of the exposed person was conducted;

14 30. "Qualified physician" means a board-certified internist, oncologist, pathologist,
15 pulmonary specialist, radiologist, or specialist in occupational and environmental
16 medicine, as may be appropriate to the actual diagnostic specialty in question, that
17 meets all of the following requirements:

18 a. the physician personally conducted a physical examination of the
19 exposed person and has taken or has directed to be taken at his
20 supervision, direction and control, a detailed occupational, exposure,
21 medical, smoking and social history from the exposed person, or if the

- 1 exposed person is deceased, from the person most knowledgeable about
2 the information forming the basis of the asbestos or silica claim,
- 3 b. the physician treated or is treating the exposed person, and has or had
4 a doctor-patient relationship with the exposed person at the time of the
5 physical examination, or in the case of a board-certified pathologist,
6 examined tissue samples or pathological slides of the exposed person at
7 the request of the treating physician,
- 8 c. the physician spends no more than ten percent (10%) of the physician's
9 professional practice time providing consulting or expert services in
10 actual or potential civil actions, and whose medical group, professional
11 corporation, clinic, or other affiliated group earns not more than
12 twenty percent (20%) of its revenue providing such services,
- 13 d. the physician is currently licensed to practice, or was licensed to
14 practice on the day any examination or pulmonary function testing
15 was conducted, and actively practices or practiced in the state where
16 the claimant resides, the claimant's civil action was filed, or the
17 claimant resided at the time of the examination,
- 18 e. the physician received or is receiving payment for the treatment of the
19 exposed person from the exposed person, a member of the exposed
20 person's family, or the exposed person's health care plan,
- 21 f. the physician prepared the report, or directly supervised the
22 preparation and final review of the report, and

1 g. the physician may not, as the basis for a diagnosis, rely, in whole or in
2 part, on any of the reports or opinions of any doctor, clinic, laboratory,
3 or testing company that performed an examination, test, or screening
4 of the exposed person in violation of any law, regulation, licensing
5 requirement, or medical code of practice of the state in which the
6 examination, test, or screening was conducted, or that was conducted
7 without clearly establishing a doctor-patient relationship with the
8 exposed person or medical personnel involved in the examination, test,
9 or screening process, or that required the exposed person to agree to
10 retain the legal service of a law firm;

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

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

20 33. “Radiological evidence of silicosis” means a quality 1 chest X-ray under the ILO
21 system, or a quality 2 chest X-ray in a death case when no pathology or quality 1 chest X-
22 ray is available, showing bilateral predominantly nodular or rounded opacities (p, q, or r)

1 occurring primarily in the upper lung fields by a certified B-reader as at least 1/1 on the
2 ILO scale or A-, B-, or C-sized opacities representing complicated silicosis or acute
3 silicosis with characteristic pulmonary edema, interstitial inflammation, and the
4 accumulation within the alveoli of proteinaceous fluid rich in surfactant;

5 34. "Silica" means a respirable crystalline form of silicon dioxide, including quartz,
6 cristobalite, and tridymite;

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

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

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

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

1 39. “Substantial contributing factor” means all of the following:

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

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

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

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

20 43. “Timed gas dilution” means a method for measuring total lung capacity in
21 which the subject breathes into a spirometer containing a known concentration of an
22 inert and insoluble gas for a specific time, and the concentration of that inert and

1 insoluble gas in the lung is compared to the concentration of that type of gas in the
2 spirometer;

3 44. "Total lung capacity" means the volume of gas contained in the lungs at the end
4 of a maximal inspiration;

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

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

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

1 A. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS. Preliminary
2 Proceedings.

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

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

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

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

19 B. NEW CLAIM REQUIRED INFORMATION.

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

- 1 a. the name, address, date of birth, social security number, marital
2 status, occupation, and employer of the claimant, the exposed person,
3 and any person through which the claimant alleges exposure,
4 b. the claimant's relationship to the exposed person or person through
5 which the claimant alleges exposure,
6 c. the specific location and manner of each alleged exposure, including for
7 persons alleging exposure through another person, the specific
8 premises at which such other person was exposed, the beginning and
9 ending dates of each alleged exposure, and the identity of the
10 manufacturer of the specific asbestos or silica product at issue,
11 d. the identity of the defendant or defendants against whom the claimant
12 asserts a claim,
13 e. the specific asbestos-related or silica-related disease claimed to exist,
14 f. information as to any lawsuits filed or claims made by or on behalf of
15 the claimant and exposed person, including any claims made against
16 bankruptcy trusts, and information as to the case caption, docket
17 number, identification of the court or bankruptcy trust in which the
18 claim is or was pending, and a description of the status of the case or
19 claim, and
20 g. any supporting documentation relating to subparagraphs c through f of
21 this paragraph.

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

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

11 1. Radiological or pathological evidence of asbestosis or radiological evidence of
12 diffuse bilateral pleural thickening or a computed tomography or high-resolution
13 computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;

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

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

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

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

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

- 17 a. forced vital capacity below the predicted lower limit of normal and
18 FEV1/FVC ratio, using actual values, at or above the predicted lower
19 limit of normal,
20 b. total lung capacity, by plethysmography or timed gas dilution, below
21 the predicted lower limit of normal, or

1 c. a chest X-ray showing bilateral small, irregular opacities (s, t, or u)
2 graded by a certified B-reader at least 2/1 on the ILO scale; and

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

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

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

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

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

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

12 5. Evidence demonstrating:

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

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

1 that the exposed person had substantial occupational exposure to
2 asbestos or exposure to asbestos at least equal to twenty-five fiber per
3 cc years as determined to a reasonable degree of scientific probability
4 by a scientifically valid retrospective exposure reconstruction
5 conducted by a certified industrial hygienist or certified safety
6 professional based upon all reasonably available quantitative air
7 monitoring data and all other reasonably available information
8 concerning occupational and exposure history; and

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

15 E. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED CANCER OF THE
16 COLON, RECTUM, LARYNX, PHARYNX, OR ESOPHAGUS (OTHER CANCER). No
17 person shall bring or maintain an asbestos claim related to an alleged asbestos-related
18 cancer of the colon, rectum, larynx, pharynx, or esophagus (other cancer) in the absence
19 of a prima facie showing of a primary cancer of the colon, rectum, larynx, pharynx, or
20 esophagus for which exposure to asbestos was a substantial contributing factor. The
21 prima facie showing shall be made as to each defendant and include a detailed narrative

1 medical report and diagnosis signed under oath by a qualified physician that includes all
2 of the following:

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

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

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

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

20 5. Radiological or pathological evidence of asbestosis or radiological evidence of
21 diffuse bilateral pleural thickening or a computed tomography or high-resolution
22 computed tomography scan showing evidence of asbestosis or diffuse bilateral pleural

1 thickening and evidence verifying substantial occupational exposure or exposure to
2 asbestos at least equal to twenty-five fiber per cc years as determined to a reasonable
3 degree of scientific probability by a scientifically valid retrospective exposure
4 reconstruction conducted by a certified industrial hygienist or certified safety
5 professional based upon all reasonably available quantitative air monitoring data and all
6 other reasonably available information concerning the occupational and exposure history
7 of the exposed person;

8 6. If a claimant alleges an asbestos claim based upon cancer of the colon, rectum,
9 larynx, pharynx, or esophagus and alleges that the exposure of the claimant to asbestos
10 was the result of living with an exposed person, the clamant shall have evidence
11 verifying that the exposed person had substantial occupational exposure to asbestos or
12 exposure to asbestos at least equal to twenty-five fiber per cc years as determined to a
13 reasonable degree of scientific probability by a scientifically valid retrospective exposure
14 reconstruction conducted by a certified industrial hygienist or certified safety
15 professional based upon all reasonably available quantitative air monitoring data and all
16 other reasonably available information concerning occupational and exposure history;
17 and

18 7. Evidence verifying that the qualified physician signing the detailed narrative
19 medical report and diagnosis has concluded that exposure to asbestos was a substantial
20 contributing factor to the cancer and not more probably the result of other causes. An
21 opinion stating that the medical findings and cancer are “consistent with” or “compatible

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 with” exposure to asbestos, or words to that effect do not satisfy the requirements of this
2 subsection.

3 F. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED MESOTHELIOMA. No
4 person shall bring or maintain an asbestos claim related to alleged mesothelioma in the
5 absence of a prima facie showing of an asbestos-related mesothelioma. The prima facie
6 showing shall be made as to each defendant and include all of the following:

7 1. A report by a qualified physician who is board-certified in pathology, pulmonary
8 medicine or oncology verifying a diagnosis of mesothelioma and that exposure to asbestos
9 was a substantial contributing factor, including pathological evidence of the presence of a
10 mesothelioma if the diagnosis is made by a qualified physician who is board-certified in
11 pulmonary medicine; and

12 2. Evidence of identifiable exposure to asbestos resulting from substantial
13 occupational exposure or exposure to asbestos fibers brought into the home of the
14 claimant by a person with substantial occupational exposure to asbestos.

15 G. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED CLAIMS OTHER
16 THAN NONMALIGNANT CONDITIONS, LUNG CANCER, CANCER OF THE COLON,
17 RECTUM, LARYNX, PHARYNX, OR ESOPHAGUS, OR MESOTHELIOMA. No person
18 shall bring or maintain an asbestos claim other than an asbestos-related nonmalignant
19 condition, asbestos-related lung cancer, asbestos-related cancer of the colon, rectum,
20 larynx, pharynx, or esophagus, or asbestos-related mesothelioma, in the absence of a
21 prima facie showing of a primary cancer for which exposure to asbestos was a substantial
22 contributing factor. The prima facie showing shall be made as to each defendant and

1 include a detailed narrative medical report and diagnosis signed under oath by a
2 qualified physician that includes all of the following:

3 1. A diagnosis of an asbestos-related disease based on findings by a qualified
4 physician and credible evidence of identifiable exposure to asbestos resulting from
5 substantial occupational exposure or exposure to asbestos fibers brought into the home of
6 the claimant by a person with substantial occupational exposure to asbestos;

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

13 3. The court holds an evidentiary hearing and finds that the claimant has
14 established a prima facie showing of physical impairment to which exposure to asbestos
15 was a substantial contributing factor.

16 H. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICOSIS
17 CLAIMS. No person shall bring or maintain a silica claim related to alleged silicosis in
18 the absence of a prima facie showing of physical impairment as a result of silicosis. The
19 prima facie showing shall be made as to each defendant and include a detailed narrative
20 medical report and diagnosis signed under oath by a qualified physician that includes all
21 of the following:

- 1 1. Radiological or pathological evidence of silicosis or a computed tomography or
2 high-resolution computed tomography scan showing evidence of silicosis;
- 3 2. Evidence verifying that a qualified physician has taken a detailed occupational
4 and exposure history from the exposed person or, if the person is deceased, from the
5 person most knowledgeable about the exposures that form the basis of the claim,
6 including identification of all principal places of employment and exposures to airborne
7 contaminants and whether each place of employment involved exposures to airborne
8 contaminants, including silica or other disease-causing dusts or fumes, that may cause
9 pulmonary impairment and the nature, duration, and level of any exposure;
- 10 3. Evidence verifying that a qualified physician has taken a detailed medical,
11 social, and smoking history from the exposed person or, if the person is deceased, from
12 the person most knowledgeable, including a thorough review of the past and present
13 medical problems and their most probable cause;
- 14 4. Evidence demonstrating that a sufficient latency period elapsed between the
15 date of first exposure to silica and the day of diagnosis;
- 16 5. Evidence verifying that the qualified physician, on the basis of a personal
17 medical examination and pulmonary function testing of the exposed person (or, if the
18 exposed person is deceased, based upon the person's medical records) that the claimant
19 has (or deceased person had) a permanent respiratory impairment rating of at least
20 Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of
21 Permanent Impairment; and

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

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

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

20 2. Evidence verifying that a qualified physician has taken a detailed medical,
21 social, and smoking history from the exposed person or, if the person is deceased, from

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

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

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

10 5. Evidence demonstrating:

- 11 a. if the exposed person is a nonsmoker, radiological or pathological
12 evidence of silicosis or a computed tomography or high-resolution
13 computed tomography scan showing evidence of silicosis or evidence
14 verifying substantial occupational exposure to silica, and
15 b. if the exposed person is a smoker, radiological or pathological evidence
16 of silicosis or a computed tomography or high-resolution computed
17 tomography scan showing evidence of silicosis and evidence verifying
18 substantial occupational exposure to silica; and

19 6. Evidence verifying that the qualified physician signing the detailed narrative
20 medical report and diagnosis has concluded that exposure to silica was a substantial
21 contributing factor to the lung cancer of the exposed person and not more probably the
22 result of other causes. An opinion stating that the medical findings and lung cancer are

1 “consistent with” or “compatible with” exposure to silica, or words to that effect, do not
2 satisfy the requirements of this subsection.

3 J. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR OTHER
4 SILICA-RELATED CLAIMS. No person shall bring or maintain a silica claim related to
5 an alleged silica-related condition, other than silicosis or silica-related lung cancer, in the
6 absence of a prima facie showing of physical impairment as a result of a medical
7 condition for which exposure to silica was a substantial contributing factor. The prima
8 facie showing shall be made as to each defendant and include a detailed narrative
9 medical report and diagnosis signed under oath by a qualified physician that includes all
10 of the following:

11 1. A diagnosis of a silica-related disease based on findings by a qualified physician
12 and credible evidence of identifiable exposure, to silica resulting from substantial
13 occupational exposure, or exposure brought into the home of the claimant by a person
14 with substantial occupational exposure;

15 2. Evidence verifying that the qualified physician signing the detailed narrative
16 medical report and diagnosis has concluded that exposure was a substantial contributing
17 factor to the medical findings and impairment and not more probably the result of other
18 causes. An opinion stating that the medical findings and impairment are “consistent
19 with” or “compatible with” exposure to silica, or words to that effect, do not satisfy the
20 requirements of this subsection; and

1 3. The court holds an evidentiary hearing and finds that the claimant has
2 established a prima facie showing of physical impairment to which exposure was a
3 substantial contributing factor.

4 K. COMPLIANCE WITH TECHNICAL STANDARDS. Evidence relating to
5 physical impairment under the Asbestos and Silica Claims Priorities Act, including
6 pulmonary function testing and diffusing studies, shall:

7 1. Comply with the quality controls, equipment requirements, methods of
8 calibration and techniques set forth in the AMA's Guides to the Evaluation of Permanent
9 Impairment and all standards set forth in the Official Statements of the American
10 Thoracic Society which are in effect on the date of any examination or pulmonary
11 function testing of the exposed person required by the Asbestos and Silica Claims
12 Priorities act;

13 2. Not be obtained and may not be based on testing or examinations that violate
14 any law, regulation, licensing requirement, or medical code of practice of the state in
15 which the examination, test, or screening was conducted, or of this state; and

16 3. Not be obtained under the condition that the claimant retains the legal services
17 of the attorney or law firm sponsoring the examination, test, or screening.

18 L. PREMISES OWNERS. In any asbestos or silica claim, a premises owner, or any
19 entity performing any operations on a premises, is not liable to a plaintiff for asbestos or
20 silica claims unless that plaintiff's alleged exposure occurred while the exposed person
21 was at the premises.

1 SECTION 84. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 68 of Title 76, unless there is created a duplication in numbering,
3 reads as follows:

4 PROCEDURES. A. NO PRESUMPTION AT TRIAL. Evidence relating to the
5 prima facie showings required under the Asbestos and Silica Claims Priorities Act shall
6 not create any presumption that the claimant has an asbestos- or silica-related injury or
7 impairment, and shall not be conclusive as to the liability of any defendant.

8 B. ADMISSIBILITY OF EVIDENCE. No evidence shall be offered at trial, and the
9 jury shall not be informed of:

10 1. The grant or denial of a motion to dismiss an asbestos or silica claim under the
11 provisions of the Asbestos and Silica Claims Priorities Act; or

12 2. The provisions of the Asbestos and Silica Claims Priorities Act with respect to
13 what constitutes a prima facie showing of asbestos- or silica-related impairment.

14 C. DISCOVERY. Until such time as the trial court enters an order determining
15 that the claimant has established prima facie evidence of impairment, no asbestos or
16 silica claim shall be subject to discovery, except discovery related to establishing or
17 challenging the prima facie evidence or by order of the trial court upon motion of one of
18 the parties and for good cause shown.

19 D. CONSOLIDATION. 1. A court may consolidate for trial any number and type
20 of asbestos or silica claims with the consent of all the parties. In the absence of such
21 consent, the court may consolidate for trial only asbestos claims or silica claims relating
22 to the exposed person and members of his or her household.

1 2. No class action or any other form of mass-aggregation claim filing relating to
2 more than one exposed person, except claims relating to the exposed person and member
3 of his or her household, shall be permitted for asbestos or silica claims.

4 3. The provisions of this section do not preclude consolidation of cases by court
5 order for pretrial or discovery purposes.

6 SECTION 85. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 68 of Title 76, unless there is created a duplication in numbering,
8 reads as follows:

9 STATUTE OF LIMITATIONS; TWO-DISEASE RULE. A. STATUTE OF
10 LIMITATIONS. 1. With respect to an asbestos or silica claim not barred by limitations in
11 this state as of the effective date of the Asbestos and Silica Claims Priorities Act, a
12 claimant's cause of action shall not accrue, nor shall the running of limitations
13 commence, prior to the earlier of the date:

- 14 a. the exposed person received a medical diagnosis of an asbestos-related
15 impairment or silica-related impairment,
16 b. the exposed person discovered facts that would have led a reasonable
17 person to obtain a medical diagnosis with respect to the existence of an
18 asbestos-related impairment or silica-related impairment, or
19 c. the date of death of the exposed person having an asbestos-related or
20 silica-related impairment.

1 2. Nothing in the section shall be construed to revive or extend limitations with
2 respect to any claim for asbestos-related impairment or silica-related impairment that
3 was otherwise time-barred as a matter of applicable state law as of November 1, 2009.

4 3. Nothing in this section shall be construed so as to adversely affect, impair, limit,
5 modify or nullify any settlement or other agreements with respect to an asbestos or silica
6 claim entered into prior to November 1, 2009.

7 B. TWO-DISEASE RULE. An asbestos or silica claim arising out of a
8 nonmalignant condition shall be a distinct cause of action from a claim for an asbestos-
9 related or silica-related cancer. Where otherwise permitted under state law, no damages
10 shall be awarded for fear or increased risk of future disease in any civil action asserting
11 an asbestos or silica claim.

12 SECTION 86. NEW LAW A new section of law to be codified in the Oklahoma
13 Statutes as Section 69 of Title 76, unless there is created a duplication in numbering,
14 reads as follows:

15 EFFECTIVE DATE. The Asbestos and Silica Claims Priorities Act shall apply to
16 all asbestos or silica claims filed on or after November 1, 2009. The Asbestos and Silica
17 Claims Priorities Act shall also apply to any pending asbestos or silica claims in which
18 trial has not commenced by November 1, 2009, except that any provisions of these
19 sections which would be unconstitutional if applied retroactively shall be applied
20 prospectively.

1 SECTION 87. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 70 of Title 76, unless there is created a duplication in numbering,
3 reads as follows:

4 SHORT TITLE. Sections 87 through 94 of this act shall be known and may be cited
5 as the “Innocent Successor Asbestos-Related Liability Fairness Act”.

6 SECTION 88. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 71 of Title 76, unless there is created a duplication in numbering,
8 reads as follows:

9 DEFINITIONS. As used in the Innocent Successor Asbestos-Related Liability
10 Fairness Act:

11 1. “Asbestos claim” means any claim, wherever or whenever made, for damages,
12 losses, indemnification, contribution, or other relief arising out of, based on, or in any
13 way related to asbestos, including:

- 14 a. the health effects of exposure to asbestos, including any claim for:
- 15 (1) personal injury or death,
 - 16 (2) mental or emotional injury,
 - 17 (3) risk of disease or other injury, or
 - 18 (4) the costs of medical monitoring or surveillance,
- 19 b. any claim made by or on behalf of any person exposed to asbestos, or a
20 representative, spouse, parent, child, or other relative of the person,
21 and

1 c. any claim for damage or loss caused by the installation, presence, or
2 removal of asbestos;

3 2. "Corporation" means a corporation for profit, including a domestic corporation
4 organized under the laws of this state, or a foreign corporation organized under laws
5 other than the laws of this state;

6 3. "Innocent successor" means a corporation that assumes or incurs or has assumed
7 or incurred successor asbestos-related liabilities that is a successor and became a
8 successor before January 1, 1972, or is any of that successor corporation's successors, and
9 that after a merger or consolidation did not continue in the business of mining asbestos,
10 in the business of selling or distributing asbestos fibers, or in the business of
11 manufacturing, distributing, removing, or installing asbestos-containing products that
12 were the same or substantially the same as those products previously manufactured,
13 distributed, removed, or installed by the transferor;

14 4. "Successor asbestos-related liabilities" means any liabilities, whether known or
15 unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued,
16 liquidated or unliquidated, or due or to become due, which are related to asbestos claims
17 and were assumed or incurred by a corporation as a result of or in connection with a
18 merger or consolidation, or the plan of merger or consolidation related to the merger or
19 consolidation with or into another corporation, or that are related in any way to asbestos
20 claims based on the exercise of control or the ownership of stock of the corporation before
21 the merger or consolidation. The term includes liabilities that, after the time of the
22 merger or consolidation for which the fair market value of total gross assets is

1 determined pursuant to Section 91 of this act, were or are paid or otherwise discharged,
2 or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by
3 a successor of the corporation, or by or on behalf of a transferor, in connection with
4 settlements, judgments, or other discharges in this state or another jurisdiction; and

5 5. "Transferor" means a corporation from which successor asbestos-related
6 liabilities are or were assumed or incurred.

7 SECTION 89. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 72 of Title 76, unless there is created a duplication in numbering,
9 reads as follows:

10 APPLICABILITY. A. The limitations in Section 90 of this act shall apply to any
11 innocent successor corporation.

12 B. The limitations in Section 90 of this act shall not apply to:

13 1. Workers' compensation benefits paid by or on behalf of an employer to an
14 employee under this state's Workers' Compensation Act or a comparable workers'
15 compensation law of another jurisdiction;

16 2. Any claim against a corporation that does not constitute a successor asbestos-
17 related liability; or

18 3. Any obligations under the National Labor Relations Act, 29 U.S.C., Section 151
19 et seq., as amended, or under any collective bargaining agreement.

20 SECTION 90. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 73 of Title 76, unless there is created a duplication in numbering,
22 reads as follows:

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. A.

2 Except as further limited in subsection B of this section, the cumulative successor
3 asbestos-related liabilities of an innocent successor corporation are limited to the fair
4 market value of the total gross assets of the transferor determined as of the time of the
5 merger or consolidation. The innocent successor corporation does not have any
6 responsibility for successor asbestos-related liabilities in excess of this limitation.

7 B. If the transferor had assumed or incurred successor asbestos-related liabilities
8 in connection with a prior merger or consolidation with a prior transferor, then the fair
9 market value of the total assets of the prior transferor, determined as of the time of such
10 earlier merger or consolidation, shall be substituted for the limitation set forth in
11 subsection A of this section for purposes of determining the limitation of liability of an
12 innocent successor corporation.

13 SECTION 91. NEW LAW A new section of law to be codified in the Oklahoma
14 Statutes as Section 74 of Title 76, unless there is created a duplication in numbering,
15 reads as follows:

16 ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. A. An
17 innocent successor corporation may establish the fair market value of total gross assets
18 for the purpose of the limitations under Section 90 of this act through any method
19 reasonable under the circumstances, including:

20 1. By reference to the going concern value of the assets or to the purchase price
21 attributable to or paid for the assets in an arm's-length transaction; or

1 2. In the absence of other readily available information from which fair market
2 value can be determined, by reference to the value of the assets recorded on a balance
3 sheet.

4 B. Total gross assets include intangible assets.

5 C. To the extent total gross assets include any liability insurance issued to the
6 transferor whose assets are being valued for the purposes of this section, the
7 applicability, terms, conditions, and limits of such insurance shall not be affected by this
8 act, nor shall the Innocent Successor Asbestos-Related Liability Fairness Act otherwise
9 affect the rights and obligations of a transferor, successor, or insurer under any
10 insurance contract and/or any related agreements, including, without limitation, rights
11 and obligations under preenactment settlements between a transferor or successor and
12 its insurers resolving liability insurance coverage, and the rights of an insurer to seek
13 payment for applicable deductibles, retrospective premiums or self-insured retentions or
14 to seek contribution from a successor for uninsured or self-insured periods or periods
15 where insurance is uncollectible or otherwise unavailable. Without limiting the
16 foregoing, to the extent total gross assets include any such liability insurance, a
17 settlement of a dispute concerning any such liability insurance coverage entered into by a
18 transferor or successor with the insurers of the transferor before the effective date of the
19 Innocent Successor Asbestos-Related Liability Fairness Act shall be determinative of the
20 total coverage of such liability insurance to be included in the calculation of the
21 transferor's total gross assets.

1 SECTION 92. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 75 of Title 76, unless there is created a duplication in numbering,
3 reads as follows:

4 ADJUSTMENT. A. Except as provided in subsections B, C, and D of this section,
5 the fair market value of total gross assets at the time of a merger or consolidation
6 increases annually at a rate equal to the sum of:

7 1. The prime rate as listed in the first edition of "The Wall Street Journal"
8 published for each calendar year since the merger or consolidation, unless the prime rate
9 is not published in that edition of "The Wall Street Journal", in which case any
10 reasonable determination of the prime rate on the first day of the year may be used; and

11 2. One percent (1%).

12 B. The rate provided for in subsection A of this section shall not be compounded.

13 C. The adjustment of fair market value of total gross assets continues as provided
14 under subsection A of this section until the date the adjusted value is first exceeded by
15 the cumulative amounts of successor asbestos-related liabilities paid or committed to be
16 paid by or on behalf of the innocent successor corporation or a predecessor, or by or on
17 behalf of a transferor, after the time of the merger or consolidation for which the fair
18 market value of total gross assets is determined.

19 D. No adjustment of the fair market value of total gross assets shall be applied to
20 any liability insurance that may be included in the definition of total gross assets by
21 subsection C of Section 91 of this act.

1 SECTION 93. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 76 of Title 76, unless there is created a duplication in numbering,
3 reads as follows:

4 SCOPE OF ACT. The courts of this state shall construe the provisions of the
5 Innocent Successor Asbestos-Related Liability Fairness Act liberally with regard to
6 innocent successors.

7 SECTION 94. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 77 of Title 76, unless there is created a duplication in numbering,
9 reads as follows:

10 EFFECTIVE DATE. The Innocent Successor Asbestos-Related Liability Fairness
11 Act shall apply to all asbestos claims filed against an innocent successor on or after the
12 effective date of the Innocent Successor Asbestos-Related Liability Fairness Act. The
13 Innocent Successor Asbestos-Related Liability Fairness Act shall also apply to any
14 pending asbestos claims against an innocent successor in which trial has not commenced
15 as of the effective date of the Innocent Successor Asbestos-Related Liability Fairness Act,
16 except that any provisions of these sections which would be unconstitutional if applied
17 retroactively shall be applied prospectively.

18 SECTION 95. REPEALER Section 1, Chapter 368, O.S.L. 2004 (5 O.S. Supp.
19 2008, Section 7.1), is hereby repealed.

20 SECTION 96. REPEALER Section 4, Chapter 390, O.S.L. 2003, Section 6,
21 Chapter 390, O.S.L. 2003, as amended by Section 21, Chapter 368, O.S.L. 2004 and

1 Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2008, Sections 1-1708.1D, 1-1708.1F
2 and 1-1708.1F-1), are hereby repealed.

3 SECTION 97. REPEALER Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp.
4 2008, Section 6602), is hereby repealed.

5 SECTION 98. The provisions of this act are severable and if any part or provision
6 shall be held void the decision of the court so holding shall not affect or impair any of the
7 remaining parts or provisions of this act.

8 SECTION 99. This act shall become effective November 1, 2009.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-24-09 - DO PASS,
10 As Amended and Coauthored.