ENROLLED HOUSE
BILL NO. 1603

By: Sullivan, McCullough, Derby, Osborn, Faught, Ritze, Dank, McDaniel (Randy) and Wright (John) of the House

and

Coffee, Jolley, Sykes, Branan, Schulz, Brogdon, Lamb, Justice, Barrington, Mazzei, Bingman, Crain, Halligan, Ford, Johnson (Mike), Reynolds, Myers, Stanislawski and Marlatt of the Senate

An Act relating to civil procedure; creating the Comprehensive Lawsuit Reform Act of 2009; requiring filing of certain affidavit with petition in professional negligence actions; providing contents; providing for time extensions for filing of affidavit; requiring plaintiff to provide defendant with certain information; providing for dismissal of action without prejudice in certain circumstances; authorizing the court to decline to exercise jurisdiction under the doctrine of forum non conveniens; providing factors to be considered; authorizing a plaintiff to request an indigency exemption from requirement to file certain affidavit; providing procedure; requiring payment of application fee and establishing amount; authorizing deferral of all or part of fee in certain circumstances; providing for deposit of fees into the Court Clerk’s Revolving Fund; requiring quarterly reports; requiring promulgation of rules governing determination of indigency; providing procedure for determination of indigency; 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 dismissals; authorizing the court to order payment of costs; 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, Section 990.4, as last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp. 2008, Section 990.4), which relates to stays of enforcement of judgments; modifying grounds for obtaining stay of enforcement; limiting amount of appeal bond; authorizing the court to enter certain orders; providing that appeal bonds shall not be required for appeals of punitive damages after a certain date; amending 12 O.S. 2001, Section 993, which relates to appeals from certain orders; modifying grounds for interlocutory appeals; providing for recovery of certain payments; providing procedures; providing for computations; providing for determination of recovery amounts; granting certain authority to the Oklahoma Health Care Authority; amending 12 O.S. 2001, Sections 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 and 2023 (12 O.S. Supp. 2008, Sections 2004, 2011 and 2011.1), which relate to the Oklahoma Pleading Code; providing that action is dismissed without prejudice if service of process is not timely; modifying monetary threshold for which amount of damages is not specified; providing for motions to clarify damages for limited purpose; providing for amended pleading in certain circumstances; modifying definition; providing requirements for orders entered after certain date certifying class action; providing for review of orders; providing for trial court jurisdiction over class action cases; providing for notice for class action cases; modifying notice requirements; limiting class membership; requiring court approval for proposed settlement, voluntary dismissal or compromise in class actions; providing procedures and requirements for motions filed after certain date; providing procedure for appointment of class counsel; providing factors to be considered in appointment of class counsel; authorizing certain orders by the court regarding class counsel; providing for interim counsel; providing for award of attorney fees and nontaxable costs in class actions; providing procedure and requirements for claims for award of attorney fees and costs; providing factors

to be considered in motions filed after certain date; providing for appointment of counsel or referral of issue of referee; providing requirements for appointed attorney; providing factor to be considered in determining fair and reasonable fee; providing for noncash payments in certain circumstances; providing procedure for summary judgment; amending 12 O.S. 2001, Sections 2702 and 2703, as amended by Section 55, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2008, Section 2703), which relate to the Oklahoma Evidence Code; providing requirements for expert testimony; providing that certain facts or data shall not be disclosed to the jury, with exception; 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; authorizing certain initial disclosures; exempting certain categories of procedures from initial disclosure; providing times for disclosures; providing for objections; providing information to be used in making initial disclosures; amending Section 17, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2008, Section 1-304), which relates to the obligation of good faith; providing that a breach of the obligations of good faith shall not give rise to a separate tort cause of action; requiring the Supreme Court to establish qualification rules for determination of indigency by a certain date; amending Section 18, Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2008, Section 15), which relates to joint and several liability in civil actions based on fault and not arising out of contract; modifying exemption; modifying exclusion from application; providing for compensation in civil actions arising from claims of bodily injury; providing that economic damages shall not be subject to limitation; providing limit on amount of noneconomic damages, with exceptions; providing there shall be no limit on noneconomic damages in certain circumstances; requiring the jury to return a general verdict accompanied by specific answers to interrogatories; providing procedures for entering judgments; providing procedures regarding determination of noneconomic damages; providing exclusion for actions brought under The Governmental Tort Claims Act and for wrongful death actions;

defining terms; providing for Health Care Indemnity Fund awards; stating legislative intent; creating the Health Care Indemnity Fund Task Force; stating purpose; providing duties; providing for composition; providing for meetings; providing for travel reimbursement; authorizing hiring of actuarial and other professional services; requiring quorum for final action; requiring report by certain date; 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 unless plaintiff is under certain age; 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; modifying definition; modifying information that is not private, confidential and privileged; providing that certain information shall not be subject to discovery; modifying information that is subject to discovery; 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; 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 76 O.S. 2001, Section 31, which relates to civil immunity for volunteers; modifying definition; modifying circumstances under which immunity exists; 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; amending 76 O.S. 2001, Section 50.2, which relates to the Oklahoma Livestock Activities Liability Limitation Act; modifying definitions; adding definition; stating legislative findings; limiting liability of certain manufacturers; limiting liability of certain associations; clarifying applicability of certain provisions; providing that a manufacturer or seller shall not be liable for inherently unsafe products; providing that claim that product is inherently unsafe is affirmative defense; providing procedures and requirements for defense to apply; defining term; making evidence regarding measures taken after injury inadmissible; 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; prohibiting certain persons from being involved in due process hearings; creating the School Protection Act; stating purpose; defining terms; prohibiting certain acts and providing penalties therefor; providing for award of costs and reasonable attorney fees, with exception; authorizing expert witness fees; providing that insurance policies do not constitute waiver of any defense; prohibiting certain acts and making violations subject to out-of-school suspension; providing penalty is in addition to criminal liability; providing that certain education employees shall be entitled to leave of absence without loss of benefits; providing that the School Protection Act is in addition to and does not limit or amend The Governmental Tort Claims Act; amending 70 O.S. 2001, Section 24-101.3, as last amended by Section 2, Chapter 210, O.S.L. 2006 (70 O.S. Supp. 2008, Section 24-101.3), which relates to out-of-school suspensions; requiring out-of-school suspension for certain acts; 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 The Governmental Tort Claims Act; expanding grounds for which the state or a political subdivision shall not be liable; repealing Section 1, Chapter 368, O.S.L. 2004 (5 O.S. Supp. 2008, Section 7.1), which relates to attorney fees in class actions; repealing Sections 5 and 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2008, Sections 1-1708.1E and 1-1708.1G), which relate to the Affordable Access to Health Care Act; repealing Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp. 2008, Section 6602), which relates to licensing and appointment of health personnel during catastrophic health emergencies; providing for severability; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the “Comprehensive Lawsuit Reform Act of 2009”.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. 1. In any civil action for professional negligence, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit attesting that:

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

b. the plaintiff has obtained a written opinion from a qualified expert that clearly identifies the plaintiff and includes the determination of the expert that, based upon a review of the available material including, but not limited to, applicable medical records, facts or other relevant material, a reasonable interpretation of the facts supports a finding that the acts or omissions of the defendant against whom the action is brought constituted professional negligence, and

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

2. If the civil action for professional negligence is filed:

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

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

the court shall, upon motion of the defendant, dismiss the action without prejudice to its refiling.

3. The written opinion from the qualified expert shall state the acts or omissions of the defendant or defendants that the expert then believes constituted professional negligence and shall include reasons explaining why the acts or omissions constituted professional negligence. The written opinion from the qualified expert shall not be admissible at trial for any purpose nor shall any inquiry be permitted with regard to the written opinion for any purpose either in discovery or at trial.

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

2. If on the expiration of an extension period described in paragraph 1 of this subsection, the plaintiff has failed to file in the action an affidavit as described above, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling. If good cause is shown, the resulting extension shall in no event exceed sixty (60) days.

C. 1. Upon written request of any defendant in a civil action for professional negligence, the plaintiff shall, within ten (10) business days after receipt of such request, provide the defendant with:

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

b. an authorization from the plaintiff in a form that complies with applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996, for the release of any and all medical records related to the plaintiff for a period commencing five (5) years prior to the incident that is at issue in the civil action for professional negligence.

2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court shall, upon motion of the defendant, unless

good cause is shown for such failure, dismiss the action without prejudice to its refiling.

D. A plaintiff in a civil action for professional negligence may claim an exemption to the provisions of this section based on indigency pursuant to the qualification rules established as set forth in Section 4 of this act.

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

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

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

1. Whether an alternate forum exists in which the action may be tried;

2. Whether the alternate forum provides an adequate remedy;

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

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

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

6. Whether the stay, transfer or dismissal would prevent unreasonable duplication or proliferation of litigation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 192 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. When a plaintiff requests an indigency exemption from providing an affidavit of merit in a civil action for professional negligence pursuant to Section 2 of this act, such person shall submit an appropriate application to the court clerk, on a form created by the Administrative Director of the Courts, which shall state that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. A nonrefundable application fee of Forty Dollars ($40.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, defer all or part of the fee if the court determines that the person does not have the financial resources to pay the fee at time of application. Any fees collected pursuant to this subsection shall be retained by the court clerk, deposited in the Court Clerk's Revolving Fund, and reported quarterly to the Administrative Office of the Courts.

B. 1. The Supreme Court shall promulgate rules governing the determination of indigency pursuant to the provisions of Section 22 of this act. The initial determination of indigency shall be made by the Chief Judge of the Judicial District or a designee thereof, based on the plaintiff's application and the rules provided herein.

2. Upon promulgation of the rules required by law, the determination of indigency shall be subject to review by the Presiding Judge of the Judicial Administrative District.

SECTION 5. AMENDATORY 12 O.S. 2001, Section 683, as amended by Section 3, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008, Section 683), is amended to read as follows:

Section 683. Except as provided in Section ~~5~~ 684.1 of this ~~act~~ title, an action may be dismissed, without prejudice to a future action:

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

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

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

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

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

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

SECTION 6. AMENDATORY 12 O.S. 2001, Section 684, as amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008, Section 684), is amended to read as follows:

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

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

~~C. When an action is dismissed after a jury in the action is empanelled and the case is subsequently refiled, the court, at the conclusion of the subsequent action, may assess costs and attorney fees incurred in the previous action by the defendants subsequent to the jury being empanelled~~ pretrial. After the pretrial hearing, an action may only be dismissed by agreement of the parties or by the

court. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.

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

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

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

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

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

Section 727.1

POSTJUDGMENT INTEREST

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

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

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

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

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

PREJUDGMENT INTEREST

E. Except as provided by subsection F of this section ~~or Section 1-1708.1G of Title 63 of the Oklahoma Statutes~~, beginning November 1, 2009, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering judgment shall add interest on the verdict at a rate prescribed pursuant to subsection I of this section from the date which is twenty-four (24) months after the suit resulting in the judgment was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. No prejudgment interest shall begin to accrue until twenty-four (24) months after the suit resulting in the judgment was commenced. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year ~~in~~ which is twenty-four (24) months after the suit resulting in the judgment ~~is~~ was commenced. This rate shall be in effect until the end of the calendar year in which ~~the suit resulting in judgment was filed~~ interest begins to accrue or until the date judgment is filed, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

F. If a verdict of the type described by subsection E of this section is rendered against this state or its political

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

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

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

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

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

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

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

SECTION 8. AMENDATORY 12 O.S. 2001, Section 990.4, as last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp. 2008, Section 990.4), is amended to read as follows:

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

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

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

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

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

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

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

3. If an appeal is no longer pending.

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

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

a. Subject to the limitations hereinafter provided, the bond shall be double the amount of the judgment, decree or final order, unless the bond is executed or guaranteed by a surety as hereinafter provided. The bond shall be for the amount of the judgment, decree or order including costs and interest on appeal where it is executed or guaranteed by an entity with suretyship powers as provided by the laws of Oklahoma.

b. ~~On~~ Upon a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post bond in the amount required by this paragraph, the court shall balance the likely substantial economic harm to the judgment debtor with the ability of the judgment creditor to collect the judgment in the event the judgment is affirmed on appeal and may lower the bond accordingly. "Substantial economic harm" means insolvency or

creating a significant risk of insolvency. The court shall not lower a bond as provided in this paragraph to the extent there is in effect an insurance policy, or agreement under which a third party is liable to satisfy part or all of the judgment entered and such party is required to post all or part of the bond.

c. Subject to the limitations contained in this paragraph, the bond shall not exceed Twenty-five Million Dollars ($25,000,000.00).

d. Upon ~~lowering~~ limiting the bond ~~as provided in~~ pursuant to subparagraphs b or c of this paragraph, the court shall enter an order enjoining a judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the court shall not make any order that interferes with the judgment debtor's use of assets in the normal course of business~~; and~~. If it is proven by a preponderance of the evidence that the appellant for whom the bond would be or has been limited pursuant to subparagraph b or c of this paragraph likely will be or is intentionally dissipating or diverting assets or engaging in other conduct outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent such conduct including, but not limited to, requiring that a bond be posted equal to the full amount of security required pursuant to this section, without the reduction or limitations allowed by subparagraph b or c of this paragraph.

~~b. instead~~

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

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

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

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

5. In order to protect any monies payable to the Tobacco Settlement Fund as set forth in Section 50 of Title 62 of the Oklahoma Statutes, the bond in any action or litigation brought under any legal theory involving a signatory, successor of a signatory or an affiliate of a signatory to the Master Settlement Agreement dated November 23, 1998, or a signatory, successor of a signatory or an affiliate of a signatory to the Smokeless Tobacco Master Settlement Agreement, also dated November 23, 1998, shall be in an amount not to exceed one hundred percent (100%) of the judgment, exclusive of interest and costs, ten percent (10%) of the net worth of the judgment debtor, or Twenty-five Million Dollars ($25,000,000.00), whichever is less. However, if it is proved by a preponderance of the evidence that the appellant for whom the bond has been limited pursuant to this paragraph is intentionally dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding payment of the judgment, the court shall enter such orders as are necessary to prevent dissipation or diversion, including, but not limited to, requiring

that a bond be posted equal to the full amount of security required pursuant to this section. For purposes of this paragraph, "Master Settlement Agreement" shall have the same meaning as that term is defined in paragraph 5 of Section 600.22 of Title 37 of the Oklahoma Statutes, and "Smokeless Tobacco Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by this state and leading United States smokeless tobacco product manufacturers.

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

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

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

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

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

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

I. For judgments entered after November 1, 2009, appeal bonds shall not be required for appeals of punitive damages.

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

Section 993. A. When an order:

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

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

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

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

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

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

7. Denies a motion in a class action asserting lack of jurisdiction because an agency of this state has exclusive or primary jurisdiction of the action or a part of the action, or asserting that a party has failed to exhaust administrative remedies, but only if the class is subsequently certified and only as part of the appeal of the order certifying the class action; or

8. Grants a new trial or opens or vacates a judgment or order,

the party aggrieved thereby may appeal the order to the Supreme Court without awaiting the final determination in said cause, by filing the petition in error and the record on appeal with the Supreme Court within thirty (30) days after the order prepared in conformance with Section 696.3 of this title, is filed with the court clerk. If the appellant did not prepare the order, and Section 696.2 of this title required a copy of the order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the order, the petition in error may be filed within thirty (30) days after the earliest date on which the court records show that a copy of the order was mailed to the appellant. The Supreme Court may extend the time for filing the record upon good cause shown.

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

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 994.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Recovery against the party that received payment.

1. General rule. Medicaid reduces its recovery to take account of the cost of procuring the judgment or settlement, as provided in this section, if:

a. procurement costs are incurred because the claim is disputed, and

b. those costs are borne by the party against which the Oklahoma Health Care Authority seeks to recover.

2. Special rule. If the Oklahoma Health Care Authority must file suit because the party that received payment opposes the Authority's recovery, the recovery amount is as set forth in subsection E of this section.

B. Recovery against the third-party payer. If the Oklahoma Health Care Authority seeks recovery from the third-party payer, the recovery amount will be no greater than the amount determined under subsection C, D or E of this section.

C. Medicaid payments are less than the judgment or settlement amount. If Medicaid payments are less than the judgment or settlement amount, the recovery is computed as follows:

1. Determine the ratio of the procurement costs to the total judgment or settlement payment;

2. Apply the ratio to the Medicaid payment. The product is the Medicaid share of procurement costs;

3. Subtract the Medicaid share of procurement costs from the Medicaid payments. The remainder is the Medicaid recovery amount.

D. Medicaid payments equal or exceed the judgment or settlement amount. If Medicaid payments equal or exceed the judgment or settlement amount, the recovery amount is the total judgment or settlement payment minus the total procurement costs.

E. The Oklahoma Health Care Authority incurs procurement costs because of opposition to its recovery. If the Oklahoma Health Care Authority must bring suit against the party that received payment because that party opposes the Authority's recovery, the recovery amount is the lower of the following:

1. Medicaid payment; or

2. The total judgment or settlement amount, minus the party's total procurement cost.

F. Medicaid recovery worksheet. The amount to be recovered from the beneficiary is the amount Medicaid paid, less a proportionate share of the costs of procuring the judgment or settlement. The amount to be refunded is determined as follows:

If the Medicaid payment is less than the amount of judgment or settlement:

a. determine the ratio of the Medicaid payments to the total amount of the judgment or settlement,

b. apply this ratio to the costs of procuring the judgment or settlement, including attorney fees, and

c. subtract the Medicaid share of procurement costs from Medicaid payments. The remainder is the amount of reimbursement to be refunded to the Medicaid Program.

Step 1:

$_____	/	$_____	=	_____
Medicaid Payment		Judgment/Settlement		Ratio Carry out 6 digits

Step 2:

_____	X	$_____	=	_____
Ratio from Step 1 Carry out 6 digits		Procurement Costs		Medicaid Share of Procurement Costs

Step 3:

$_____	-	$_____	=	_____
Medicaid Payment		Medicaid Share of Procurement Costs		Refund to Medicare

G. If the Medicaid payments equal or exceed the amount of the judgment or settlement, subtract the total procurement costs from the judgment or settlement. The remainder is the amount of reimbursement to be refunded to the Medicaid Program. The individual will not be required to refund more than the liability insurance payment minus the procurement costs.

$_____ - $_____ = $_____

Judgment/Settlement Procurement Costs Refund

H. The Oklahoma Health Care Authority is authorized to seek from the Centers for Medicare and Medicaid Services any waivers or amendments to existing waivers or to amend the state Medicaid plan in order to accomplish the purposes outlined in this section.

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

Section 2004.

PROCESS

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

B. SUMMONS: FORM.

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

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

C. BY WHOM SERVED: PERSON TO BE SERVED.

1. SERVICE BY PERSONAL DELIVERY.

a. At the election of the plaintiff, process, other than a subpoena, shall be served by a sheriff or deputy

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

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

c. Service shall be made as follows:

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

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

of the infant or with whom the infant lives; and upon an incompetent person by serving the summons and petition personally and upon the incompetent person's guardian~~;~~,

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

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

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

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

2. SERVICE BY MAIL.

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

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

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

addressed. In the case of an entity described in division (3) of subparagraph c of paragraph 1 of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph c of paragraph 1 of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any default or judgment by default shall be set aside upon motion of the defendant in the manner prescribed in Section 1031.1 of this title, or upon petition of the defendant in the manner prescribed in Section 1033 of this title if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an unauthorized person. A petition shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the filing of the judgment.

3. SERVICE BY PUBLICATION.

a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or the plaintiff’s attorney, or in a separate affidavit by the plaintiff or the

plaintiff’s attorney filed with the court, that with due diligence service cannot be made upon the defendant by any other method.

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or the plaintiff's attorney, or in a separate affidavit by the plaintiff or the plaintiff's attorney filed with the court, that the person who verified the petition or the affidavit does not know and with due diligence cannot ascertain the following:

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

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

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

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

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

c. Service pursuant to this paragraph shall be made by publication of a notice, signed by the court clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county.

All named parties and their unknown successors who may be served by publication may be included in one notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the court is based on property, any real property subject to the jurisdiction of the court and any property or debts to be attached or garnished must be described in the notice.

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

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

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

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

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

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

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

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

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

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

4. SERVICE ON THE SECRETARY OF STATE.

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

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

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

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

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

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

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

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

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

d. Within three (3) working days after receiving the summons and petition, the Secretary of State shall send notice by letter, certified mail, return receipt requested, directed to the corporation at its registered office or the last-known address found in

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

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

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

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

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

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

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

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

E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

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

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

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

b. in the manner prescribed by the law of the place in which the service is made for service in that place in

an action in any of its courts of general jurisdiction,

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

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

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

f. as directed by the court.

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

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

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

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

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

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

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

G. RETURN.

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

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

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

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

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

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

Section 2008.

GENERAL RULES OF PLEADING

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

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

2. A demand for judgment for the relief to which he deems himself entitled. Every pleading demanding relief for damages in money in excess of ~~Ten Thousand Dollars ($10,000.00)~~ the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code shall, without demanding any specific amount of money, set forth only that the amount sought as damages is in excess of ~~Ten Thousand Dollars ($10,000.00)~~ the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code, except in actions sounding in contract. Every pleading demanding relief for damages in money in an amount ~~of Ten Thousand Dollars ($10,000.00)~~ that is required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the

United States Code or less shall specify the amount of such damages sought to be recovered. Relief in the alternative or of several different types may be demanded.

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

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

1. Accord and satisfaction;

2. Arbitration and award;

3. Assumption of risk;

4. Contributory negligence;

5. Discharge in bankruptcy;

6. Duress;

7. Estoppel;

8. Failure of consideration;

9. Fraud;

10. Illegality;

11. Injury by fellow servant;

12. Laches;

13. License;

14. Payment;

15. Release;

16. Res judicata;

17. Statute of frauds;

18. Statute of limitations;

19. Waiver; and

20. Any other matter constituting an avoidance or affirmative defense.

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

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

E. PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

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

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

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

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

SECTION 13. AMENDATORY 12 O.S. 2001, Section 2009, is amended to read as follows:

Section 2009.

PLEADING SPECIAL MATTERS

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

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

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

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

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

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

G. SPECIAL DAMAGE. When items of special damage are claimed, their nature shall be specifically stated. In actions where exemplary or punitive damages are sought, the petition shall not state a dollar amount for damages sought to be recovered but shall state whether the amount of damages sought to be recovered is in excess of or not in excess of ~~Ten Thousand Dollars ($10,000.00)~~ the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code.

H. MOTION TO CLARIFY DAMAGES. If the amount of damages sought to be recovered by the plaintiff is less than the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code, the defendant may file, for purposes of establishing diversity jurisdiction only, a Motion to Clarify Damages prior to the pretrial order to require the plaintiff to show by a preponderance of the evidence that the amount of damages, if awarded, will not exceed the amount required for diversity. If the court finds that any damages awarded are more likely than not to exceed the amount of damages required for diversity jurisdiction, the plaintiff shall amend his or her pleadings in conformance with paragraph 2 of subsection A of Section 2008 of this title.

SECTION 14. AMENDATORY 12 O.S. 2001, Section 2011, as amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2008, Section 2011), is amended to read as follows:

Section 2011.

SIGNING OF PLEADINGS

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

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

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

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

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

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

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

1. HOW INITIATED.

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

withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorneys fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

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

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

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

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

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

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

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

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

SECTION 15. AMENDATORY Section 1, Chapter 370, O.S.L. 2004, as amended by Section 10, Chapter 12, O.S.L. 2007 (12 O.S. Supp. 2008, Section 2011.1), is amended to read as follows:

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

SECTION 16. AMENDATORY 12 O.S. 2001, Section 2023, is amended to read as follows:

Section 2023.

CLASS ACTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order entered on or after November 1, 2009, that certifies a class action shall define the class and the class claims, issues or defenses, and shall appoint class counsel under subsection F of this section. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

2. The order described in paragraph 1 of this subsection shall be subject to a de novo standard of review by any appellate court reviewing the order. While the appeal of the order on class certification is pending, the trial court shall retain sufficient jurisdiction over the case to consider and implement a settlement of the action should one be reached between the parties and discovery as to the class claims shall be stayed pending resolution of the appeal.

3. For any class certified under paragraph 1 or 2 of subsection B of this section, the court may direct appropriate notice to the class.

4. In any class action maintained under paragraph 3 of subsection B of this section, the court shall direct to the members of the class the best notice practicable under the circumstances,

including individual notice to all members who can be identified through reasonable effort. The notice shall ~~advise each member that~~ clearly and concisely state in plain, easily understood language:

a. the nature of the action,

b. the definition of the class certified,

c. the class claims, issues or defenses,

d. that a class member may enter an appearance through an attorney if the member so desires,

e. that the court will exclude him from the class if he so requests by a specified date,

~~b.~~ f. that the judgment, whether favorable or not, will include all members who do not request exclusion, and

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

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

~~3.~~ 5. The judgment in an action maintained as a class action under ~~paragraphs~~ paragraph 1 or 2 of subsection B of this section, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under paragraph 3 of subsection B of this section, whether or not favorable to the class,

shall include and specify or describe those to whom the notice provided in paragraph ~~2~~ 4 of this subsection ~~C of this section~~ was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

~~4.~~ 6. When appropriate:

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

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

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

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

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

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

3. For actions filed after November 1, 2009, class membership shall be limited, unless otherwise agreed to by the defendant, only to individuals or entities who are:

a. residents of this state, or

b. nonresidents of this state who:

(1) own an interest in property located in this state where the property is relevant to the class action, or

(2) have a significant portion of the nonresident's cause of action arising from conduct occurring within the state;

4. Requiring, for the sole purpose of class notice upon certification of a class, that parties to the action provide such names and addresses of potential members of the class as they possess, subject to an appropriate protective order;

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

~~4.~~ 6. Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; and

~~5.~~ 7. Dealing with similar procedural matters.

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

E. DISMISSAL OR COMPROMISE. ~~A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.~~ The claims, issues or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. For motions filed after November 1, 2009, the following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

1. The court shall direct notice in a reasonable manner to all class members who would be bound by the proposal;

2. If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable and adequate;

3. The parties seeking approval shall file a statement identifying any agreement made in connection with the proposal;

4. If the class action was previously certified under paragraph 3 of subsection B of this section, the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion

to individual class members who had an earlier opportunity to request exclusion but did not do so; and

5. Any class member may object to the proposal if it requires court approval under this subsection.

F. CLASS COUNSEL. 1. Unless a statute provides otherwise, a court that certifies a class shall appoint class counsel. In appointing class counsel after November 1, 2009, the court:

a. shall consider:

(1) the work counsel has done in identifying or investigating potential claims in the action,

(2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action,

(3) counsel's knowledge of the applicable law, and

(4) the resources that counsel will commit to representing the class,

b. may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class,

c. may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees or nontaxable costs,

d. may include in the appointing order provisions about the award of attorney fees or nontaxable costs, and

e. may make further orders in connection with the appointment;

2. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under paragraphs 1 and 4 of this subsection. If more than one adequate applicant seeks appointment, the court shall appoint the applicant best able to represent the interests of the class.

3. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

4. Class counsel shall fairly and adequately represent the interests of the class.

G. ATTORNEY FEES AND NONTAXABLE COSTS. 1. In a certified class action, the court may award reasonable attorney fees and nontaxable costs that are authorized by law or by the parties' agreement.

2. A claim for an award shall be made by motion, subject to the provisions of this subsection, at a time set by the court. Notice of the motion shall be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

3. A class member, or a party from whom payment is sought, may object to the motion.

4. In considering a motion for attorney fees filed after November 1, 2009:

a. the court shall conduct an evidentiary hearing to determine a fair and reasonable fee for class counsel,

b. the court shall act in a fiduciary capacity on behalf of the class in making such determination,

c. the court may appoint an attorney to represent the class upon the request by any members of the class in a hearing on the issue of the amount of attorney fees or the court may refer the matter to a referee pursuant to Section 613 et seq. of this title,

d. if the court appoints an attorney to represent the class for the fee hearing pursuant to subparagraph c of this paragraph or refers the matter to a referee, the attorney or referee shall be independent of the attorney or attorneys seeking attorney fees in the class action, and said independent attorney or referee shall be awarded reasonable fees by the court on an hourly basis out of the proceeds awarded to the class,

e. in arriving at a fair and reasonable fee for class counsel, the court shall consider the following factors:

(1) time and labor required,

(2) the novelty and difficulty of the questions presented by the litigation,

(3) the skill required to perform the legal service properly,

(4) the preclusion of other employment by the attorney due to acceptance of the case,

(5) the customary fee,

(6) whether the fee is fixed or contingent,

(7) time limitations imposed by the client or the circumstances,

(8) the amount in controversy and the results obtained,

(9) the experience, reputation and ability of the attorney,

(10) whether or not the case is an undesirable case,

(11) the nature and length of the professional relationship with the client,

(12) awards in similar causes, and

(13) the risk of recovery in the litigation, and

f. if any portion of the benefits recovered for the class in an action maintained pursuant to paragraph 3 of subsection B of this section are in the form of coupons, discounts on future goods or services or other similar types of noncash common benefits, the attorney fees awarded in the class action shall be in cash and noncash amounts in the same proportion as the recovery for the class.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2056 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. BY A CLAIMING PARTY. A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim. The motion may be filed at any time after twenty (20) days have passed from commencement of the action or the opposing party serves a motion for summary judgment.

B. BY A DEFENDING PARTY. A party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.

C. SERVING THE MOTION AND PROCEEDINGS. The motion must be served at least ten (10) days before the day set for the hearing. An opposing party may serve opposing affidavits before the hearing day. The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

D. CASE NOT FULLY ADJUDICATED ON THE MOTION. If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts, including items of damages or other relief, are not genuinely at issue. The facts so specified must be treated as established in the action. An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

E. AFFIDAVITS AND FURTHER TESTIMONY. A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits. When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must, by affidavits or as otherwise provided in

this rule, set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

F. WHEN AFFIDAVITS ARE UNAVAILABLE. If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may deny the motion, order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken or issue any other just order.

G. AFFIDAVITS SUBMITTED IN BAD FAITH. If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt.

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

Section 2702. If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise, if:

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

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

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

SECTION 19. AMENDATORY 12 O.S. 2001, Section 2703, as amended by Section 55, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2008, Section 2703), is amended to read as follows:

Section 2703. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or

inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

SECTION 20. AMENDATORY 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), is amended to read as follows:

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

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

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

2. INITIAL DISCLOSURES.

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

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

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

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

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

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

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

(6) an action by the United States to collect on a student loan guaranteed by the United States,

(7) a proceeding ancillary to proceedings in other courts, and

(8) an action to enforce an arbitration award.

3. TIME FOR DISCLOSURES. These disclosures shall be made at or within sixty (60) days after service unless a different time is set by stipulation or court order, or unless a party objects that initial disclosures are not appropriate in the circumstances of the action and states the objection in a motion filed with the court. In ruling on the objection, the court shall determine what

disclosures, if any, are to be made and set the time for disclosure. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

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

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

a. a written statement signed or otherwise adopted or approved by the person making it, or

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

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

a. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of

paragraph 1 of this subsection and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

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

(2) After disclosure of the names and addresses of the expert witnesses, the other party expects to call as witnesses, the party, who has requested disclosure, may depose any such expert witnesses subject to scope of this section. Prior to taking the deposition the party must give notice as required in subsections A and C of Section 3230 of this title. If any documents are provided to such disclosed expert witnesses, the documents shall not be protected from disclosure by privilege or work product protection and they may be obtained through discovery.

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

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

c. Unless manifest injustice would result:

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

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

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

C. PROTECTIVE ORDERS.

1. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or on matters relating to a deposition, the district court in the county where the deposition is to be taken

may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense, including one or more of the following:

a. that the discovery not be had,

b. that the discovery may be had only on specified terms and conditions, including a designation of the time or place,

c. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery,

d. that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters,

e. that discovery be conducted with no one present except persons designated by the court,

f. that a deposition after being sealed be opened only by order of the court,

g. that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way, and

h. that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

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

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

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

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

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

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

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

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

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

D. SEQUENCE AND TIMING OF DISCOVERY. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence. The fact that a party is conducting

discovery, whether by deposition or otherwise, shall not operate to delay discovery by any other party.

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

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

a. the identity and location of persons having knowledge of discoverable matters, and

b. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the testimony of the person~~.~~;

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

a. ~~(i)~~ (1) the party knows that the response was incorrect in some material respect when made, or

~~(ii)~~ (2) the party knows that the response, which was correct when made, is no longer true in some material respect~~:~~, and

b. the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing~~.~~; and

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

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

1. A statement of the issues as they then appear;

2. A proposed plan and schedule of discovery;

3. Any limitations proposed to be placed on discovery;

4. Any other proposed orders with respect to discovery; and

5. A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

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

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

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

G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS. Every request for discovery, response or objection thereto made by a party represented by an attorney shall be signed by at least one of his attorneys of record in his individual name whose address shall be stated. A party who is not represented by an attorney shall sign the request, response or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response or objection, and that it is:

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

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

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

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

SECTION 21. AMENDATORY Section 17, Chapter 139, O.S.L. 2005 (12A O.S. Supp. 2008, Section 1-304), is amended to read as follows:

Section 1-304. Obligation of Good Faith.

Every contract of duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement. Breach of the obligation of good faith imposed by this section shall not give rise to a separate tort cause of action.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 56 of Title 20, unless there is created a duplication in numbering, reads as follows:

No later than December 1, 2009, the Supreme Court of this state shall establish qualification rules for determination of indigency for a plaintiff claiming an exemption from providing an affidavit of merit in a civil action for professional negligence pursuant to Section 2 of this act.

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

Section 15. A. Except as provided in ~~subsections~~ subsection B ~~and C~~ of this section, in any civil action based on fault and not

arising out of contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor.

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

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

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

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

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61.2 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. In any civil action arising from a claimed bodily injury, the amount of compensation which the trier of fact may award a plaintiff for economic loss shall not be subject to any limitation.

B. Except as provided in subsections C and D of this section, in any civil action arising from a claimed bodily injury, the amount of compensation which a trier of fact may award a plaintiff for noneconomic loss shall not exceed Four Hundred Thousand Dollars ($400,000.00), regardless of the number of parties against whom the action is brought or the number of actions brought.

C. Notwithstanding subsection B of this section, there shall be no limit on the amount of noneconomic damages which the trier of fact may award the plaintiff in a civil action arising from a claimed bodily injury resulting from professional negligence against

a physician if the judge and jury finds, by clear and convincing evidence, that:

1. The plaintiff or injured person has suffered permanent and substantial physical abnormality or disfigurement, loss of use of a limb, or loss of, or substantial impairment to, a major body organ or system; or

2. The plaintiff or injured person has suffered permanent physical functional injury which prevents them from being able to independently care for themselves and perform life sustaining activities; or

3. The defendant’s acts or failures to act were:

a. in reckless disregard for the rights of others,

b. grossly negligent,

c. fraudulent, or

d. intentional or with malice.

D. Notwithstanding subsection B of this section, there shall be no limit on the amount of noneconomic damages which the trier of fact may award the plaintiff in a civil action arising from claimed bodily injury not resulting from professional negligence against a physician if the trier of fact finds, by a preponderance of the evidence, that:

1. The plaintiff or injured person has suffered permanent and substantial physical abnormality or disfigurement, loss of use of a limb, or loss of, or substantial impairment to, a major body organ or system; or

2. The plaintiff or injured person has suffered permanent physical functional injury which prevents them from being able to independently care for themselves and perform life sustaining activities; or

3. The defendant’s acts or failures to act were:

a. in reckless disregard for the rights of others,

b. grossly negligent,

c. fraudulent, or

d. intentional or with malice.

E. In the trial of a civil action arising from claimed bodily injury, if the verdict is for the plaintiff, the court, in a nonjury trial, shall make findings of fact, and the jury, in a trial by jury, shall return a general verdict accompanied by answers to interrogatories, which shall specify all of the following:

1. The total compensatory damages recoverable by the plaintiff;

2. That portion of the total compensatory damages representing the plaintiff’s economic loss;

3. That portion of the total compensatory damages representing the plaintiff’s noneconomic loss;

4. Whether the injuries for which the plaintiff has been awarded compensation include damages for:

a. permanent and substantial physical abnormality or disfigurement, loss of use of a limb, or loss of, or substantial impairment to, a major body organ or system, or

b. permanent physical functional injury that prevents the injured person from being able to independently care for himself or herself and perform life sustaining activities; and

5. If alleged, whether the conduct of the defendant was or amounted to:

a. reckless disregard for the rights of others,

b. gross negligence,

c. fraud, or

d. intentional or malicious conduct.

F. In any civil action to recover damages arising from claimed bodily injury, after the trier of fact makes the findings required

by subsection E of this section, the court shall enter judgment in favor of the plaintiff for economic damages in the amount determined pursuant to paragraph 2 of subsection E of this section, and subject to paragraphs 4 and 5 of subsection E of this section, the court shall enter a judgment in favor of the plaintiff for noneconomic damages. Except as provided in subsections C and D of this section, in no event shall a judgment for noneconomic damages exceed the maximum recoverable amounts set forth in subsection B of this section. Subsection B of this section shall be applied in a jury trial only after the trier of fact has made its factual findings and determinations as to the amount of the plaintiff's damages.

G. In any civil action arising from claimed bodily injury which is tried to a jury, the jury shall not be instructed with respect to the limit on noneconomic damages set forth in subsection B of this section, nor shall counsel for any party nor any witness inform the jury or potential jurors of such limitations.

H. This section shall not apply to actions brought under The Governmental Tort Claims Act or actions for wrongful death.

I. As used in this section:

1. "Bodily injury" means actual physical injury to the body of a person and sickness or disease resulting therefrom;

2. "Economic damages" means any type of pecuniary harm including, but not limited to:

a. all wages, salaries or other compensation lost as a result of a bodily injury that is the subject of a civil action,

b. all costs incurred for medical care or treatment, rehabilitation services, or other care, treatment, services, products or accommodations as a result of a bodily injury that is the subject of a civil action, or

c. any other costs incurred as a result of a bodily injury that is the subject of a civil action;

3. "Fraudulent" or "fraud" means "actual fraud" as defined pursuant to Section 58 of Title 15 of the Oklahoma Statutes;

4. “Gross negligence” means the want of slight care and diligence;

5. “Malice” involves hatred, spite or ill will, or the doing of a wrongful act intentionally without just cause or excuse;

6. “Noneconomic damages” means nonpecuniary harm that arises from a bodily injury that is the subject of a civil action, including damages for pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, education, disfigurement, mental anguish and any other intangible loss;

7. “Physician” means a doctor of medicine and surgery, doctor of osteopathic medicine and a doctor of allopathic medicine, each duly licensed by this state; and

8. “Reckless disregard of another’s rights” shall have the same meaning as willful and wanton conduct and shall mean that the defendant was either aware, or did not care, that there was a substantial and unnecessary risk that his, her or its conduct would cause serious injury to others. In order for the conduct to be in reckless disregard of another’s rights, it must have been unreasonable under the circumstances and there must have been a high probability that the conduct would cause serious harm to another person.

J. Upon establishment of a Health Care Indemnity Fund, any damages awarded pursuant to subsection C of this section that exceed the limitation established by subsection B of this section shall be paid by such fund. The provisions of this section shall not apply to any action that accrues before the date of enactment of the Health Care Indemnity Fund established pursuant to the recommendations of the Task Force created in Section 25 of this act; provided, such fund shall include professional liability insurance coverage requirements in an amount of not less than One Million Dollars ($1,000,000.00) for physicians, and shall maintain availability of Twenty Million Dollars ($20,000,000.00) annually. It is the intent of the Legislature that the state purchase reinsurance of up to Twenty Million Dollars ($20,000,000.00) to cover judgments through such fund.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2211 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the “Health Care Indemnity Fund Task Force”.

B. The task force shall study a mechanism for creating a health care indemnity fund for purposes of paying a portion of damages awarded by the court or settled and approved by the court in professional negligence cases against physicians as defined in subsection I of Section 24 of this act. The task force shall study the following issues:

1. Funding, expenses and investments;

2. Capping the fund at a rate of Twenty Million Dollars ($20,000,000.00) annually;

3. Limiting damage award payments from the fund to:

   a. professional negligence cases against physicians where the noneconomic damage cap has been removed, and

   b. only that amount of damages that exceed the noneconomic damage cap of Four Hundred Thousand Dollars ($400,000.00) per occurrence;

4. Purchase of reinsurance;

5. Professional liability insurance coverage requirements, in an amount of no less than One Million Dollars ($1,000,000.00) for physicians;

6. Qualifications for coverage under the fund;

7. Applicant, compliance, payment and rating procedures; and

8. Any other issues necessary for creating a health care indemnity fund.

C. The task force shall be composed of eight (8) members as follows:

1. The Oklahoma Insurance Commissioner or designee;

2. Three members appointed by the Governor;

3. Two members appointed by the President Pro Tempore of the Senate, one of whom shall be a physician; and

4. Two members appointed by the Speaker of the House of Representatives, one of whom shall be a physician.

D. The task force may meet as often as necessary to perform the duties imposed upon it. Members of the task force shall receive no compensation for their services, but shall receive travel reimbursement as follows:

1. Legislative members of the task force shall be reimbursed for necessary travel expenses incurred in the performance of their duties in accordance with the provisions of Section 456 of Title 74 of the Oklahoma Statutes; and

2. Nonlegislative members of the task force shall be reimbursed for necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

E. The task force shall be authorized to hire actuarial or any other professional services necessary to perform the duties imposed on it.

F. A quorum of the task force shall be required for any final action, and shall report its findings and recommendations to the President Pro Tempore of the Senate and the Speaker of the House of Representatives not later than May 1, 2011.

SECTION 26. AMENDATORY 47 O.S. 2001, Section 11-1112, as last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp. 2008, Section 11-1112), is amended to read as follows:

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

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

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

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

2. The driver of an ambulance or emergency vehicle;

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

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

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

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

E. A violation of the provisions of this section shall ~~not~~ be admissible as evidence in any civil action or proceeding for damages unless the plaintiff in such action or proceeding is a child under sixteen (16) years of age.

~~F.~~ In any action brought by or on behalf of an infant for personal injuries or wrongful death sustained in a motor vehicle

collision, the failure of any person to have the infant properly restrained in accordance with the provisions of this section shall not be used in aggravation or mitigation of damages.

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

SECTION 27. AMENDATORY 47 O.S. 2001, Section 12-420, as amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2008, Section 12-420), is amended to read as follows:

Section 12-420. ~~Nothing in~~ Sections 12-416 through 12-420 of this title ~~shall~~ may be used in any civil proceeding in this state and the use or nonuse of seat belts shall ~~not~~ be submitted into evidence in any civil suit in Oklahoma unless the plaintiff in such suit is a child under sixteen (16) years of age.

SECTION 28. AMENDATORY 63 O.S. 2001, Section 1-1709.1, as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2008, Section 1-1709.1), is amended to read as follows:

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

1. “Credentialing or recredentialing data” means:

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

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

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

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

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

3. "Health care facility" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the credentialing and recredentialing data, and the recommendations made and action taken as a result of any peer review process utilized by such health care facility regarding the health care professional prior to the date of the alleged negligence shall be subject to discovery pursuant to the Oklahoma Discovery Code.

2. Any information discovered pursuant to this subsection:

a. shall not be admissible as evidence until a judge or jury has first found the health care professional to

have been negligent in providing health care services to the patient in such health care facility, and

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

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

SECTION 29. AMENDATORY 63 O.S. 2001, Section 683.9, as amended by Section 9, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008, Section 683.9), is amended to read as follows:

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

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

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

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

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

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

SECTION 30. AMENDATORY 63 O.S. 2001, Section 683.13, as amended by Section 12, Chapter 329, O.S.L. 2003 (63 O.S. Supp. 2008, Section 683.13), is amended to read as follows:

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

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

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

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

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 31 through 41 of this act shall be known and may be cited as the “Uniform Emergency Volunteer Health Practitioners Act”.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Uniform Emergency Volunteer Health Practitioners Act:

1. “Disaster relief organization” means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

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

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

2. “Emergency” means an event or condition that is an emergency pursuant to the Oklahoma Emergency Management Act of 2003 or the Catastrophic Health Emergency Powers Act;

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

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

5. “Entity” means a person other than an individual;

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

7. “Health practitioner” means an individual licensed under the laws of this or another state to provide health or veterinary services;

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

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

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

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

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

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

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

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

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

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

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

14. “Veterinary services” means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of an animal or to animal populations, to the

extent necessary to respond to an emergency, including, but not limited to:

a. diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccine, medicine, surgery, or therapy,

b. use of a procedure for reproductive management, and

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

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

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

This Uniform Emergency Volunteer Health Practitioners Act applies to volunteer health practitioners registered with a registration system that complies with Section 35 of this act and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.17 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

1. The duration of practice by volunteer health practitioners;

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

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

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

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

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

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

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

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.18 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

4. Meet one of the following conditions:

a. be an emergency system for advance registration of volunteer health practitioners established by a state

and funded through the Health Resources Services Administration under Section 319I of the Public Health Services Act, 42 U.S.C., Section 247d-7b,

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

c. be operated by a:

(1) disaster relief organization,

(2) licensing board,

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

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

(5) governmental entity, or

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

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

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

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

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.19 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with Section 35 of this act and licensed and in good standing in the state upon which the registration of the practitioner is based, may practice in this state to the extent authorized by the Uniform Emergency Volunteer Health Practitioners Act as if the practitioner were licensed in this state.

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

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.20 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this section:

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

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

B. The Uniform Emergency Volunteer Health Practitioners Act does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or

modifying those standards while an emergency declaration is in effect.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.21 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

2. From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would

conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

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

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

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

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

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

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.22 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

B. The State Department of Health, pursuant to the Emergency Management Assistance Compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not

officers or employees of this state, a political subdivision of this state, or a municipality or other local government within this state.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.23 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.24 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

SECTION 42. AMENDATORY 76 O.S. 2001, Section 31, is amended to read as follows:

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

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

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

B. In any civil action against a charitable organization or not-for-profit corporation for damages based upon the conduct of a volunteer, the doctrine of respondeat superior shall apply,

notwithstanding the immunity granted to the volunteer in subsection A of this section.

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

D. Definitions.

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

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

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

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

F. The immunity from civil liability provided for by this section shall extend only to the actions taken by a person rendering the service, care, assistance, advice, or other benefit as a volunteer, ~~and does not~~ where such actions are agreed upon in advance by all involved persons to be provided on a volunteer basis.

This section shall not be construed to confer any immunity to any person for actions taken by the volunteer prior to or after the rendering of the service, care, assistance, advice, or other benefit as a volunteer.

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

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 33 of Title 76, unless there is created a duplication in numbering, reads as follows:

Sections 43 through 46 of this act shall be known and may be cited as the "Common Sense Consumption Act".

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 34 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 35 of Title 76, unless there is created a duplication in numbering, reads as follows:

As used in the Common Sense Consumption Act:

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

2. "Knowing and willful violation" means that:

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

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

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 36 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

B. Subsection A of this section shall not preclude civil liability if the claim of weight gain, obesity, or a health condition associated with weight gain or obesity, is based on:

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

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

C. In any action exempted under paragraph 1 of subsection B of this section, the complaint initiating such action shall state with particularity the following: the statute, regulation or other law of this state or of the United States that was allegedly violated; the facts that are alleged to constitute a material violation of such statute or regulation; and the facts alleged to demonstrate that such violation proximately caused actual injury to the plaintiff. In any action exempted under paragraph 2 of subsection B of this section, in addition to the foregoing pleading requirements,

the complaint initiating such action shall state with particularity facts sufficient to support a reasonable inference that the violation was with intent to deceive or injure consumers or with the actual knowledge that such violation was injurious to consumers. For purposes of applying the Common Sense Consumption Act, the foregoing pleading requirements are hereby deemed part of the substantive law of this state and not merely in the nature of procedural provisions.

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

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

SECTION 47. AMENDATORY 76 O.S. 2001, Section 50.2, is amended to read as follows:

Section 50.2 As used in the Oklahoma Livestock Activities Liability Limitation Act:

1. “Engages in a livestock activity” includes training, racing, showing, riding, or assisting in medical treatment of, or driving livestock, <u>or engaging in any agritourism activity involving livestock or on a location where livestock are displayed or raised,</u> and any person assisting a participant, livestock activity sponsor or livestock professional. The term “engages in a livestock activity” does not include being a spectator at a livestock activity, except in cases where the spectator places himself or herself in immediate proximity to livestock activity;

2. “Agritourism activity” includes, but is not limited to, any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant pays to participate in the activity;

3. “Livestock” means any cattle, bison, hog, sheep, goat, equine livestock, including but not limited to animals of the families bovidae, cervidae and antilocapridae or birds of the ratite group;

~~3.~~ 4. “Livestock activity” includes but is not limited to:

a. livestock shows, fairs, livestock sales, competitions, performances, or parades that involve any or all breeds of livestock and any of the livestock disciplines, including, but not limited to, rodeos, auctions, driving, pulling, judging, cutting and showing,

b. livestock training or teaching activities or both such training and teaching activities,

c. boarding or pasturing livestock,

d. inspecting or evaluating livestock belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the livestock or is permitting a prospective purchaser of the livestock to inspect or evaluate the livestock,

e. drives, rides, trips, hunts or other livestock activities of any type however informal or impromptu that are sponsored by a livestock activity sponsor, ~~and~~

f. placing or replacing horseshoes on an equine, or otherwise preparing livestock for show, and

g. agritourism activities involving the viewing of, handling of, riding of, showing of, or other interactive activities with livestock;

~~4.~~ 5. "Livestock activity sponsor" means an individual, group, club, partnership or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for, a livestock activity, including but not limited to: livestock clubs, 4-H clubs, FFA chapters, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of livestock facilities, including, but not limited to, barns, stables, clubhouses, ponyride strings, fairs and arenas at which the activity is held;

~~5.~~ 6. "Livestock professional" means a person engaged for compensation in:

a. instructing a participant or renting to a participant livestock for the purpose of engaging in livestock activity, or

b. renting equipment or tack to a participant;

~~6.~~ 7. "Inherent risks of livestock activities" means those dangers or conditions which are an integral part of livestock activities, including but not limited to:

a. the propensity of livestock to behave in ways that may result in injury to persons on or around them,

b. the unpredictability of livestock's reaction to such things as sounds, sudden movement and unfamiliar objects, persons or other animals,

c. certain hazards such as surface and subsurface conditions unknown to the livestock activity sponsor,

d. collisions with other livestock or objects, and

e. the potential of tack to become dislodged or move in ways that may result in injury to persons on or around livestock activities; and

~~7.~~ 8. "Participant" means any person, whether amateur or professional, who engages in a livestock activity, whether or not a fee is paid to participate in the livestock activity.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 52 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 54 of Title 76, unless there is created a duplication in numbering, reads as follows:

The provisions of Sections 49 through 51 of this act do not apply to actions for deceit, breach of contract, or expressed or implied warranties, or for injuries resulting from failure of firearms to operate in a normal or usual manner due to defects or negligence in design or manufacture. The provisions of Sections 49 through 51 of this act do not apply to actions arising from the unlawful sale or transfer of firearms, or to instances in which the

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

SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 57 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. In a product liability action, a manufacturer or seller shall not be liable if the product is inherently unsafe and known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community.

B. The claim that a product is inherently unsafe shall be an affirmative defense and shall be pled in accordance with the requirements of the Oklahoma Pleading Code. In order for the defense to apply, all of the following shall be shown:

1. The product was a common consumer product intended for personal consumption;

2. The product’s utility outweighs the risk created by its use;

3. The risk posed by the product was one known by the ordinary consumer who consumes the product with the ordinary knowledge common to the community;

4. The product was properly prepared and reached the consumer without substantial change in its condition; and

5. Adequate warning of the risk posed by the product was given by the manufacturer or seller.

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

SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 58 of Title 76, unless there is created a duplication in numbering, reads as follows:

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

SECTION 54. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60 of Title 76, unless there is created a duplication in numbering, reads as follows:

Sections 54 through 65 of this act shall be known and may be cited as the “Asbestos and Silica Claims Priorities Act”.

SECTION 55. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 61 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. FINDINGS. The Legislature finds that:

1. Asbestos is a mineral that was widely used prior to the 1980s for insulation, fire-proofing, and other purposes;

2. Millions of American workers and others were exposed to asbestos, especially during and after World War II, prior to the advent of regulation by the United States Occupational Safety and Health Administration in the early 1970s;

3. Exposure to asbestos is associated with various types of cancer, including mesothelioma, as well as nonmalignant conditions such as asbestosis and diffuse pleural thickening;

4. Diseases caused by asbestos exposure often have long latency periods;

5. While the cases currently filed in Oklahoma are manageable by the courts and the litigants, it is proper for the Legislature to

support and protect the courts of this state from the potential of massive litigation expense and the crowding of trial dockets;

6. Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks;

7. Silica-related illnesses, including silicosis, can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago;

8. Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits to protect their ability to recover for their potentially progressive occupational disease; and

9. Several states, including Texas, Georgia, Ohio, and Florida have enacted legislation setting medical criteria governing asbestos and silica cases and tolling statutes of limitations and requiring persons alleging nonmalignant disease claims to demonstrate physical impairment as a prerequisite to setting such cases for trial.

B. The purpose of this chapter is to:

1. Provide a procedural remedy allowing efficient judicial supervision and control of asbestos and silica litigation by giving priority for the purposes of trial and resolution to asbestos and silica claimants with demonstrable physical impairment caused by exposure to asbestos or silica; and

2. Preserve the legal rights of claimants who were exposed to asbestos or silica, but have no physical impairment from asbestos or silica exposure, until such time as the claimant can demonstrate physical impairment.

SECTION 56. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 62 of Title 76, unless there is created a duplication in numbering, reads as follows:

DEFINITIONS. As used in the Asbestos and Silica Claims Priorities Act:

1. "Asbestos" means all minerals defined as "asbestos" in 29 CFR 1910, as and if amended;

2. "Asbestos claim" means any claim for damages or other civil or equitable relief presented in a civil action, arising out of, based on, or related to the health effects of exposure to asbestos, including loss of consortium and any other derivative claim made by or on behalf of any exposed person or any representative, spouse, parent, child, or other relative of any exposed person;

3. "Asbestos-related injury" means personal injury or death allegedly caused, in whole or in part, by inhalation or ingestion of asbestos;

4. "Asbestosis" means bilateral interstitial fibrosis of the lungs caused by inhalation of asbestos fibers;

5. "Certified B-reader" means a person who has successfully completed the x-ray interpretation course sponsored by the National Institute for Occupational Safety and Health (NIOSH) and passed the B-reader certification examination for x-ray interpretation and whose NIOSH certification is current at the time of any readings required by this chapter;

6. "Chest x-ray" means chest films that are taken in accordance with accepted medical standards in effect at the time the x-ray was taken;

7. "Claimant" means an exposed person and any person who is seeking recovery of damages for or arising from the injury or death of an exposed person;

8. "Defendant" means a person against whom a claim arising from an asbestos-related injury or a silica-related injury is made;

9. "Exposed person" means a person who is alleged to have suffered an asbestos-related injury or a silica-related injury;

10. "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests;

11. "FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration;

12. "ILO system of classification" means the radiological rating system of the International Labor Office in "Guidelines for

the Use of ILO International Classification of Radiographs of Pneumoconioses", 2000 edition, as amended from time to time by the International Labor Office;

13. "Mesothelioma" means a rare form of cancer allegedly caused in some instances by exposure to asbestos in which the cancer invades cells in the membrane lining of the:

a. lungs and chest cavity (the pleural region),

b. abdominal cavity (the peritoneal region), or

c. heart (the pericardial region);

14. "Nonmalignant asbestos-related injury" means an asbestos-related injury other than mesothelioma or other asbestos-related malignancy;

15. "Physician board-certified in internal medicine" means a physician who is certified by the American Board of Internal Medicine or corresponding board for doctors of osteopathy;

16. "Physician board-certified in occupational medicine" means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or corresponding board for doctors of osteopathy;

17. "Physician board-certified in oncology" means a physician who is certified in the subspecialty of medical oncology by the American Board of Internal Medicine or corresponding board for doctors of osteopathy;

18. "Physician board-certified in pathology" means a physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or corresponding board for doctors of osteopathy and whose professional practice:

a. is principally in the field of pathology, and

b. involves regular evaluation of pathology materials obtained from surgical or postmortem specimens;

19. "Physician board-certified in pulmonary medicine" means a physician who is certified in the subspecialty of pulmonary medicine

by the American Board of Internal Medicine or corresponding board for doctors of osteopathy;

20. "Physician board-certified in radiology" means a physician who is certified by the American Board of Radiology or corresponding board for doctors of osteopathy;

21. "Plethysmography" means the test for determining lung volume, also known as "body plethysmography", in which the subject of the test is enclosed in a chamber that is equipped to measure pressure, flow, or volume change;

22. "Predicted lower limit of normal" for any test means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the AMA Guides to the Evaluation of Permanent Impairment (5th Edition) (dated November 2000);

23. "Pulmonary function testing" means spirometry and lung volume testing performed in accordance with Section 57 of this act using equipment, methods of calibration, and techniques that materially comply with:

a. the criteria incorporated in the American Medical Association Guides to the Evaluation of Permanent Impairment and reported in 20 C.F.R. Part 404, Subpart P, Appendix 1, Part (A), Sections 3.00(E) and (F)(2003), as amended from time to time by the American Medical Association, and

b. the interpretative standards in the Official Statement of the American Thoracic Society entitled "Lung Function Testing: Selection of Reference Values and Interpretative Strategies", as published in 144 American Review of Respiratory Disease 1202-1218 (1991), as amended from time to time by the American Thoracic Society;

24. "Radiological evidence" of asbestosis or pleural thickening means a chest x-ray evaluated by a certified B-reader, a radiologist, a physician board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology using the ILO System of classification. The chest x-ray shall be a quality 1 x-ray according to that ILO System, although if the certified B-reader, board-certified pulmonologist, or board-certified radiologist confirms that a quality 2 x-ray film is of

sufficient quality to render an accurate reading under the ILO System of classification and no quality 1 x-ray films are available, then the necessary radiologic findings may be made with the quality 2 x-ray film which is the subject of the confirmation above. Also, in a death case where no pathology is available, the necessary radiologic findings may be made with a quality 2 x-ray film if a quality 1 x-ray film is not available;

25. "Report" means a report required by Sections 58 or 59 of this act;

26. "Respirable" with respect to silica, means particles that are less than ten (10) microns in diameter;

27. "Serve" means to serve notice on a party in compliance with the Oklahoma Rules of Civil Procedure;

28. "Silica" means a naturally occurring, respirable form of crystalline silicon dioxide, including quartz, cristobalite, and tridymite;

29. "Silica claim" means any claim for damages or other civil or equitable relief presented in a civil action, arising out of, based on, or related to the health effects of exposure to silica, including loss of consortium and any other derivative claim made by or on behalf of any exposed person or any representative, spouse, parent, child, or other relative of any exposed person;

30. "Silica-related injury" means personal injury or death allegedly caused, in whole or in part, by inhalation of silica; and

31. "Silicosis" means fibrosis of the lungs caused by inhalation of silica, including:

a. acute silicosis, which may occur after exposure to very high levels of silica within a period of months to five (5) years after the initial exposure,

b. accelerated silicosis, and

c. chronic silicosis.

SECTION 57. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 63 of Title 76, unless there is created a duplication in numbering, reads as follows:

Pulmonary function testing required by this section must be interpreted by a physician who is:

1. Licensed in this state or another state of the United States; and

2. Board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology at the time of issuing the relevant medical report.

SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 64 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. No person shall have an asbestos claim placed on any active trial roster in this state, or brought to trial in this state, or conduct discovery in an asbestos claim in this state, in the absence of a prima facie showing of asbestos-related malignancy or impairment as shown by service on each defendant of the information listed in either paragraph 1 or 2 of this subsection:

1. A report by a physician who is board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology at the time of issuing the relevant medical report concluding:

a. the exposed person has been diagnosed with mesothelioma or other asbestos-related malignancy,

b. to a reasonable degree of medical certainty, exposure to asbestos was a proximate cause of the diagnosed mesothelioma or other asbestos-related malignancy, accompanied by a conclusion that the exposed person’s medical findings were not more probably the result of other causes revealed by the exposed person’s employment and medical history. A conclusion that the exposed person’s physical impairment or impairments are "consistent with" or "compatible with" mesothelioma or other asbestos-related malignancy does not meet the requirements of this section, and

c. for malignant asbestos-related conditions other than mesothelioma, that the exposed person has an underlying nonmalignant asbestos-related condition and

that at least fifteen (15) years have elapsed between the date of first exposure to asbestos and the date of diagnosis of the malignancy; or

2. A report by a physician who is board-certified in pulmonary medicine, internal medicine, occupational medicine, or pathology that:

a. the exposed person has been diagnosed with a nonmalignant asbestos-related condition, and

b. confirms that a physician actually treating or who treated the exposed person, or who has or who had a doctor-patient relationship with the exposed person or a medical professional employed by and under the direct supervision and control of such physician:

(1) performed a physical examination of the exposed person, or if the exposed person is deceased, reviewed available records relating to the exposed person’s medical condition,

(2) took an occupational and exposure history from the exposed person or from a person knowledgeable about the alleged exposure or exposures that form the basis of the action, and

(3) took a medical and smoking history that includes a review of the exposed person’s significant past and present medical problems relevant to the exposed person’s impairment or disease,

c. sets out sufficient details of the exposed person’s occupational, exposure, medical, and smoking history to form the basis for a medical diagnosis of an asbestos-related condition and confirms that at least fifteen (15) years have elapsed between the exposed person’s first exposure to asbestos and the date of diagnosis,

d. confirms that the exposed person has a pathological diagnosis of asbestosis graded 1(B) or higher under the criteria published in "Asbestos-Associated Diseases", 106 Archives of Pathology and Laboratory

Medicine 11, Appendix 3 (October 8, 1982), as amended from time to time, or

e. confirms that the exposed person's chest x-ray shows bilateral small irregular opacities (s, t, or u) with a profusion grading of 2/2 or higher on the ILO system of classification, or

f. confirms that the exposed person has radiological evidence of asbestosis and/or pleural thickening showing:

(1) bilateral small irregular opacities (s, t, or u) with a profusion grading of 1/1 or higher, or

(2) bilateral diffuse pleural thickening graded extent b2 or higher, including blunting of the costophrenic angle, and

g. (1) confirms that in cases described in subparagraph d or f of this paragraph, the exposed person has or had physical impairment rated at least Class 2 pursuant to the AMA Guides to the Evaluation of Permanent Impairment (5th Edition) (dated November 2000) demonstrating:

(a) forced vital capacity below the lower limit of normal and FEV1/FVC ratio (using actual values) at or above the lower limit of normal, or

(b) total lung capacity, by plethysmography or timed gas dilution, below the lower limit of normal, or

(c) if the claimant's medical condition or process prevents the pulmonary function test from being performed or makes the results of such test an unreliable indicator of physical impairment, a board-certified physician in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology, independent from the physician providing the report required herein, must provide a report which states

to a reasonable degree of medical certainty that the claimant has a nonmalignant asbestos-related condition causing physical impairment equivalent to subdivision (a) or (b) of this division and states the reasons why the pulmonary function test would be an unreliable indicator of physical impairment.

(2) Alternatively and not to be used in conjunction with subdivision (c) of division (1) of this subparagraph, if an exposed person's medical conditions or processes prevent a physician from being able to diagnose or evaluate that exposed person sufficiently to make a determination as to whether that exposed person meets the requirements of subparagraph f of this paragraph, the claimant may serve on each defendant a report by a physician who is board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology at the time the report was made that:

(a) verifies that the physician has or had a doctor-patient relationship with the exposed person, and

(b) verifies that the exposed person has asbestos-related pulmonary impairment as demonstrated by pulmonary function testing showing:

(i) forced vital capacity below the lower limit of normal and total lung capacity, by plethysmography, below the lower limit of normal, or

(ii) forced vital capacity below the lower limit of normal and FEV1/FVC ratio (using actual values) at or above the lower limit of normal, and

(c) verifies that the exposed person has a chest x-ray and computed tomography scan or high-resolution computed tomography scan read by the physician or a physician who is board-

certified in pulmonary medicine, occupational medicine, internal medicine, oncology, pathology, or radiology showing either bilateral pleural disease or bilateral parenchymal disease diagnosed and reported as being a consequence of asbestos exposure,

h. confirms that the physician has concluded that the exposed person's medical findings and impairment were not more probably the result of causes other than asbestos exposure as revealed by the exposed person's occupational, exposure, medical, and smoking history, and

i. is accompanied by the relevant radiologist's reports, pulmonary function tests, including printouts of all data, flow volume loops, and other information to the extent such has been performed demonstrating compliance with the equipment, quality, interpretation, and reporting standards set out in the Asbestos and Silica Claims Priorities Act, lung volume tests, diagnostic imaging of the chest, pathology reports, or other testing reviewed by the physician in reaching the physician's conclusions. Upon request, the relevant computed tomography scans and/or chest x-rays will be made available for review.

B. The detailed occupational and exposure history required herein must describe:

1. The exposed person's principal employments where it was likely there was exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary injury; and

2. Identification of the general nature, duration, and frequency of the exposed person's exposure to airborne contaminants, including asbestos and other dusts that can cause pulmonary injury.

C. All evidence and reports used in presenting the prima facie showing required in this section, including pulmonary function testing and diffusing studies, if any:

1. Must comply with the technical recommendations for examinations, testing procedures, quality assurance, quality controls, and equipment in the AMA's Guidelines to the Evaluation of Permanent Impairment and the most current version of the Official Statements of the American Thoracic Society regarding lung function testing. Testing performed in a hospital or other medical facility that is fully licensed and accredited by all appropriate regulatory bodies in the state in which the facility is located is presumed to meet the requirements of this act. This presumption may be rebutted by evidence demonstrating that the accreditation or licensing of the hospital or other medical facility has lapsed, or providing specific facts demonstrating that the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment have not been followed;

2. Must not be obtained through testing or examinations that violate any applicable law, regulation, licensing requirement, or medical code of practice;

3. Must not be obtained under the condition that the exposed person retains legal services in exchange for the examination, testing, or screening;

4. Shall not result in any presumption at trial that the exposed person is impaired by an asbestos or silica-related condition; and

5. Shall not be conclusive as to the liability of any defendant.

D. The conclusion that a prima facie showing has been made is not admissible at trial.

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 65 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. No person shall have a silica claim placed on any active trial roster in this state, or brought to trial in this state, or conduct discovery in a silica claim in this state, in the absence of a prima facie showing of impairment as shown by service on each defendant of a report by a physician who is board-certified in pulmonary medicine, internal medicine, oncology, pathology, or occupational medicine at the time of issuing the relevant medical report.

B. In a case alleging silicosis, the medical report must be issued by a physician who is board-certified in pulmonary medicine, internal medicine, occupational medicine, or pathology that:

1. The exposed person has been diagnosed with a silica-related condition; and

2. Confirms that a physician actually treating or who treated the exposed person, or who has or who had a doctor-patient relationship with the exposed person or a medical professional employed by and under the direct supervision and control of such physician:

a. performed a physical examination of the exposed person, or if the exposed person is deceased, reviewed available records relating to the exposed person's medical condition,

b. took a detailed occupational and exposure history from the exposed person or, if the exposed person is deceased, from a person knowledgeable about the alleged exposure or exposures that form the basis of the action, and

c. took a detailed medical and smoking history that includes a thorough review of the exposed person's significant past and present medical problems and the most probable cause of any such problem that is relevant to the exposed person's impairment or disease.

C. The medical report must set out the details of the exposed person's occupational, exposure, medical, and smoking history, and set forth that there has been a sufficient latency period for the applicable type of silicosis.

D. The medical report must confirm, on the basis of medical examination, chest x-ray and pulmonary function testing, that the exposed person has permanent respiratory impairment:

1. Rated at least Class 2 pursuant to the AMA Guides to the Evaluation of Permanent Impairment; and

2. Accompanied by:

a. a chest x-ray that is an ILO quality 1 film, except that in the case of a deceased exposed individual where no pathology is available, the film can be ILO quality 2, showing bilateral nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or higher under the ILO system of classification, or

b. a chest x-ray that is an ILO quality 1 film, except that in the case of a deceased exposed individual where no pathology is available, the film can be ILO quality 2, showing large opacities (A, B, or C) in addition to the small opacities referred to in the preceding section, or

c. a chest x-ray that is an ILO quality 1 film showing acute silicosis as described in Occupational Lung Diseases, Third Edition, as amended from time to time, or

d. pathological demonstration of classic silicotic nodules exceeding one (1) centimeter in diameter as published in 112 Archive of Pathology and Laboratory Medicine 7 (July 1988), as amended from time to time, or

e. pathological demonstration of acute silicosis.

E. For all other silica-related claims, other than silicosis, the medical report must:

1. Be issued by a physician who is board-certified in pulmonary medicine, internal medicine, occupational medicine, or pathology that:

a. the exposed person has been diagnosed with a silica-related condition, and

b. confirms that a physician actually treating or who treated the exposed person, or who has or who had a doctor-patient relationship with the exposed person or a medical professional employed by and under the direct supervision and control of such physician:

(1) stating a diagnosis of silica-related lung cancer based on a sufficient latency period which is not less than fifteen (15) years and a statement that to a reasonable degree of medical certainty exposure to silica was a proximate cause of the exposed person’s physical impairment, accompanied by a conclusion that the exposed person’s silica-related lung cancer was not more probably the result of causes other than exposure to silica revealed by the exposed person’s occupational, exposure, medical, and smoking history, or

(2) stating a diagnosis of silicosis complicated by documented tuberculosis, or

(3) stating a diagnosis of any other silica-related disease, accompanied by a diagnosis of silicosis as defined herein, based on a sufficient latency period and a statement that to a reasonable degree of medical certainty exposure to silica was a proximate cause of the exposed person’s physical impairment, accompanied by a conclusion that the exposed person’s silica-related disease was not more probably the result of causes other than exposure to silica revealed by the exposed person’s occupational, exposure, medical, and smoking history; and

2. Be accompanied by:

a. a chest x-ray that is an ILO quality 1 film, except that in the case of a deceased exposed individual where no pathology is available, the film can be ILO quality 2, showing bilateral nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or higher under the ILO system of classification,

b. chest x-ray that is an ILO quality 1 film, except that in the case of a deceased exposed individual where no pathology is available, the film can be ILO quality 2, showing large opacities (A, B, or C) in addition to the small opacities referred to in subparagraph a of this paragraph,

c. chest x-ray that is an ILO quality 1 film showing acute silicosis as described in Occupational Lung Diseases, Third Edition, as amended from time to time,

d. pathological demonstration of classic silicotic nodules exceeding one (1) centimeter in diameter as published in 112 Archive of Pathology and Laboratory Medicine 7 (July 1988), as amended from time to time, or

e. pathological demonstration of acute silicosis.

F. All evidence and reports used in presenting the prima facie showing required in this section, including pulmonary function testing and diffusing studies, if any:

1. Must comply with the technical recommendations for examinations, testing procedures, quality assurance, quality controls, and equipment in the AMA's Guidelines to the Evaluation of Permanent Impairment and the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single breath determination of carbon monoxide uptake in the lung, and interpretive strategies of lung testing in effect at the time of the performance of any examination or test on the exposed person required by this act. Testing performed in a hospital or other medical facility that is fully licensed and accredited by all appropriate regulatory bodies in the state in which the facility is located, is presumed to meet the requirements of this subsection. This presumption may be rebutted by evidence demonstrating that the accreditation or licensing of the hospital or other medical facility has lapsed, or providing specific facts demonstrating that the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment have not been followed;

2. Must not be obtained through testing or examinations that violate any applicable law, regulation, licensing requirement, or medical code of practice;

3. Must not be obtained under the condition that the exposed person retains legal services in exchange for the examination, test, or screening;

4. Shall not result in any presumption at trial that the exposed person is impaired by an asbestos- or silica-related condition; and

5. Shall not be conclusive as to the liability of any defendant.

G. The conclusion that a prima facie showing has been made is not admissible at trial.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 66 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. In order to have an asbestos or silica claim placed on any active trial docket in this state, or brought to trial in this state, or conduct discovery in an asbestos or silica claim in this state, an individual must provide prima facie evidence of impairment by serving on each defendant who answers or otherwise appears, a report prescribed by this act.

B. In an action pending on the effective date of this act, the case shall not be allowed to be called for or proceed to trial until ninety (90) days after a report has been served on each defendant.

C. This act shall not be interpreted to create, alter, or eliminate a legal cause of action for any asbestos- and/or silica-related claimant who has been diagnosed with any asbestos- and/or silica-related disease. The act sets the procedure by which the courts in this state shall manage trial settings for all asbestos- and/or silica-related claims.

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 67 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. In any action covered by the provisions of this act, a claimant shall file together with the complaint or other initial pleading a written report and supporting test results constituting the prima facie showing required pursuant to this act. In an action where the claimant either fails to provide such prima facie evidence or provides inadequate prima facie evidence, the defendant may, without waiving any defenses otherwise available to him, file within the time allotted for his Answer, a Notice of Appearance rather than an Answer to the Complaint. The claimant shall, within ninety (90)

days of receipt of such Answer or Notice of Appearance, provide such prima facie evidence as is called for by the provisions of this act. The defendant in any case shall then be afforded a reasonable opportunity to challenge the adequacy of the proffered prima facie evidence of asbestos-related or silica-related impairment as referenced in this section and subsection A of Section 60 of this act. Upon a finding of failure to make the required prima facie showing, the claimant's action shall not be placed on any trial docket nor be the subject of any discovery other than discovery on the issue of prima facie evidence of impairment. Upon the finding of the required prima facie showing, no defendant shall be allowed to challenge such prima facie showing absent a showing of misrepresentation, fraud, and/or good cause.

B. In any action covered by the provisions of this act in which the exposed person has received a diagnosis of mesothelioma which meets the requirements of paragraph 1 of subsection A of Section 58 of this act, the claimant may petition the court requesting that a trial date be set on an expedited basis. The court may, in its discretion, provide for an expedited trial setting, if the claimant demonstrates good cause for such an expedited trial setting and the defendant(s) is/are not prejudiced by such an expedited trial setting. In no event shall a trial date be set less than one hundred twenty (120) days from the date of an order granting such a motion and in no event shall a case be called for trial unless six (6) months have passed between the date of the initial filing of the case and the date of trial.

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 68 of Title 76, unless there is created a duplication in numbering, reads as follows:

Nothing in this act is intended to, and nothing in this act shall be interpreted to:

1. Affect the rights of any party in bankruptcy proceedings; or

2. Affect the ability of any person who is able to make a showing that the person satisfies the claim criteria for compensable claims or demands under a trust established under a plan of reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Chapter 11, to make a claim or demand against that trust.

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 69 of Title 76, unless there is created a duplication in numbering, reads as follows:

An entity that offers a health benefit plan or an annuity or life insurance policy or contract, issued for delivery, or renewed on or after the effective date of this act, may not use the fact that a person has met the procedural requirements of this act to reject, deny, limit, cancel, refuse to renew, increase the premiums for, or otherwise adversely affect the person’s eligibility for or coverage under the policy or contract.

SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70 of Title 76, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provision of law, with respect to any asbestos or silica claim not barred as of the effective date of this act, the limitations period shall not begin to run until the exposed person or claimant discovers, or through the exercise of reasonable diligence should have discovered, that the exposed person or claimant is physically impaired as set forth in this chapter by an asbestos- or silica-related condition.

B. An asbestos or silica claim arising out of a nonmalignant condition shall be a distinct cause of action from an asbestos or silica claim relating to the same exposed person arising out of asbestos- or silica-related cancer, and resolution of an asbestos or silica claim arising out of a nonmalignant condition shall not affect the ability of the same exposed person to bring a separate asbestos or silica claim arising out of an asbestos- or silica-related cancer, that otherwise meets all the requirements of Sections 58 or 59 of this act.

SECTION 65. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 71 of Title 76, unless there is created a duplication in numbering, reads as follows:

EFFECTIVE DATE. The Asbestos and Silica Claims Priorities Act shall apply to all asbestos or silica claims filed on or after November 1, 2009. The Asbestos and Silica Claims Priorities Act shall also apply to any pending asbestos or silica claims in which trial has not commenced by November 1, 2009, except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.

SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 72 of Title 76, unless there is created a duplication in numbering, reads as follows:

SHORT TITLE. Sections 66 through 73 of this act shall be known and may be cited as the “Innocent Successor Asbestos-Related Liability Fairness Act”.

SECTION 67. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 73 of Title 76, unless there is created a duplication in numbering, reads as follows:

DEFINITIONS. As used in the Innocent Successor Asbestos-Related Liability Fairness Act:

1. “Asbestos claim” means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

a. the health effects of exposure to asbestos, including any claim for:

(1) personal injury or death,

(2) mental or emotional injury,

(3) risk of disease or other injury, or

(4) the costs of medical monitoring or surveillance,

b. any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person, and

c. any claim for damage or loss caused by the installation, presence, or removal of asbestos;

2. “Corporation” means a corporation for profit, including a domestic corporation organized under the laws of this state, or a foreign corporation organized under laws other than the laws of this state;

3. “Innocent successor” means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972, or is any of that successor corporation’s successors, and that after a merger or consolidation did not continue in the business of mining asbestos, in the business of selling or distributing asbestos fibers, or in the business of manufacturing, distributing, removing, or installing asbestos-containing products that were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor;

4. “Successor asbestos-related liabilities” means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined pursuant to Section 70 of this act, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction; and

5. “Transferor” means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

SECTION 68. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 74 of Title 76 unless there is created a duplication in numbering, reads as follows:

APPLICABILITY. A. The limitations in Section 69 of this act shall apply to any innocent successor corporation.

B. The limitations in Section 69 of this act shall not apply to:

1. Workers' compensation benefits paid by or on behalf of an employer to an employee under this state's Workers' Compensation Act or a comparable workers' compensation law of another jurisdiction;

2. Any claim against a corporation that does not constitute a successor asbestos-related liability; or

3. Any obligations under the National Labor Relations Act, 29 U.S.C., Section 151 et seq., as amended, or under any collective bargaining agreement.

SECTION 69. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 75 of Title 76, unless there is created a duplication in numbering, reads as follows:

LIMITATIONS ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. A. Except as further limited in subsection B of this section, the cumulative successor asbestos-related liabilities of an innocent successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The innocent successor corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

B. If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in subsection A of this section for purposes of determining the limitation of liability of an innocent successor corporation.

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

ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. A. An innocent successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under Section 69 of this act through any method reasonable under the circumstances, including:

1. By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

2. In the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

B. Total gross assets include intangible assets.

C. To the extent total gross assets include any liability insurance issued to the transferor whose assets are being valued for the purposes of this section, the applicability, terms, conditions, and limits of such insurance shall not be affected by this act, nor shall the Innocent Successor Asbestos-Related Liability Fairness Act otherwise affect the rights and obligations of a transferor, successor, or insurer under any insurance contract and/or any related agreements, including, without limitation, rights and obligations under preenactment settlements between a transferor or successor and its insurers resolving liability insurance coverage, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor with the insurers of the transferor before the effective date of the Innocent Successor Asbestos-Related Liability Fairness Act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

SECTION 71. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 77 of Title 76, unless there is created a duplication in numbering, reads as follows:

ADJUSTMENT. A. Except as provided in subsections B, C and D of this section, the fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

1. The prime rate as listed in the first edition of "The Wall Street Journal" published for each calendar year since the merger or consolidation, unless the prime rate is not published in that

edition of “The Wall Street Journal”, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

2. One percent (1%).

B. The rate provided for in subsection A of this section shall not be compounded.

C. The adjustment of fair market value of total gross assets continues as provided under subsection A of this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the innocent successor corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

D. No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the definition of total gross assets by subsection C of Section 70 of this act.

SECTION 72. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 78 of Title 76, unless there is created a duplication in numbering, reads as follows:

SCOPE OF ACT. The courts of this state shall construe the provisions of the Innocent Successor Asbestos-Related Liability Fairness Act liberally with regard to innocent successors. Nothing in this act shall be construed to limit the liability of the transferor, except to the extent the transferor is or becomes a successor.

SECTION 73. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 79 of Title 76, unless there is created a duplication in numbering, reads as follows:

EFFECTIVE DATE. The Innocent Successor Asbestos-Related Liability Fairness Act shall apply to all asbestos claims filed against an innocent successor on or after the effective date of the Innocent Successor Asbestos-Related Liability Fairness Act. The Innocent Successor Asbestos-Related Liability Fairness Act shall also apply to any pending asbestos claims against an innocent successor in which trial has not commenced as of the effective date

of the Innocent Successor Asbestos-Related Liability Fairness Act, except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.

SECTION 74. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-101.7 of Title 70, unless there is created a duplication in numbering, reads as follows:

An attorney, representative, or other designee of the school district who has represented or represents a school district or the administration of a school district at a hearing held for the purpose of affording due process rights and requirements for an administrator as provided for in Section 6-101.13 of Title 70 of the Oklahoma Statutes, a teacher as provided for in Section 6-101.26 of Title 70 of the Oklahoma Statutes, or a support employee as provided for in Section 6-101.46 of Title 70 of the Oklahoma Statutes or who has been involved or participated in any prehearing actions of the school district with respect to a recommendation for the termination of employment or nonreemployment of an administrator, teacher, or support employee shall not:

1. Conduct or preside as the hearing officer or judge at a due process hearing or hearings; and

2. Attend, advise at, or in any way influence an executive session of the school district board of education that is held in conjunction with a due process hearing or hearings if the attorney, representative, or other designee of the school district conducted or presided over the due process hearing or hearings as the hearing officer or judge.

SECTION 75. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-140 of Title 70, unless there is created a duplication in numbering, reads as follows:

Sections 75 through 83 of this act shall be known and may be cited as the “School Protection Act”.

SECTION 76. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-141 of Title 70, unless there is created a duplication in numbering, reads as follows:

The purpose of the School Protection Act is to provide teachers, principals, and other school professionals the tools they need to

undertake reasonable actions to maintain order, discipline, and an appropriate educational environment.

SECTION 77. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-142 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in the School Protection Act:

1. "Education employee" means any individual who is an employee of a school; and

2. "School" means a public school district, governmental entity that employs teachers as defined in Section 1-116 of Title 70 of the Oklahoma Statutes, or private kindergarten, elementary, or secondary school.

SECTION 78. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-143 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

SECTION 79. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-144 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. In any civil action or proceeding against a school or an education employee, the court may award costs and reasonable attorney fees to the prevailing party. In any civil action or proceeding by or between any education employee and a school or other education employee, the provisions of this section shall not apply.

B. Expert witness fees may be included as part of the costs awarded under this section.

SECTION 80. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-145 of Title 70, unless there is created a duplication in numbering, reads as follows:

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

SECTION 81. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-146 of Title 70, unless there is created a duplication in numbering, reads as follows:

No student enrolled in a school shall assault, attempt to cause physical bodily injury, or act in a manner that could reasonably cause bodily injury to an education employee or a person who is volunteering for the school. Any student in grades six through twelve who violates the provisions of this section shall be subject to out-of-school suspension as provided for in Section 24-101.3 of Title 70 of the Oklahoma Statutes. This section shall be in addition to and does not limit the criminal liability of a person who causes or commits an assault, battery, or assault and battery upon a school employee as provided for in Section 650.7 of Title 21 of the Oklahoma Statutes.

SECTION 82. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-147 of Title 70, unless there is created a duplication in numbering, reads as follows:

An education employee who is injured as a result of an assault or battery upon the person of the employee while the employee is in the performance of any duties as an education employee shall be entitled to a leave of absence from employment with the school without a loss of leave benefits.

SECTION 83. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-148 of Title 70, unless there is created a duplication in numbering, reads as follows:

The School Protection Act shall be in addition to and shall not limit or amend The Governmental Tort Claims Act or any other applicable law.

SECTION 84. AMENDATORY 70 O.S. 2001, Section 24-101.3, as last amended by Section 2, Chapter 210, O.S.L. 2006 (70 O.S. Supp. 2008, Section 24-101.3), is amended to read as follows:

Section 24-101.3 A. Any student who is guilty of an act described in paragraph 1 of subsection C of this section may be suspended out-of-school in accordance with the provisions of this section. Each school district board of education shall adopt a policy with procedures which provides for out-of-school suspension of students. The policy shall address the term of the out-of-school suspension, provide an appeals process as described in subsection B of this section, and provide that before a student is suspended out-of-school, the school or district administration shall consider and apply, if appropriate, alternative in-school placement options that are not to be considered suspension, such as placement in an alternative school setting, reassignment to another classroom, or in-school detention. The policy shall address education for students subject to the provisions of subsection D of this section and whether participation in extracurricular activities shall be permitted.

B. 1. Students suspended out-of-school for ten (10) or fewer days shall have the right to appeal the decision of the administration as provided in the policy required in subsection A of this section. The policy shall specify whether appeals for short-term suspensions as provided in this subsection shall be to a local committee composed of district administrators or teachers or both,

or to the district board of education. Upon full investigation of the matter, the committee or board shall determine the guilt or innocence of the student and the reasonableness of the term of the out-of-school suspension. If the policy requires appeals for short-term suspensions to a committee, the policy adopted by the board may, but is not required to, provide for appeal of the committee's decision to the board.

2. Students suspended out-of-school for more than ten (10) days and students suspended pursuant to the provisions of paragraph 2 of subsection C of this section may request a review of the suspension with the administration of the district. If the administration does not withdraw the suspension, the student shall have the right to appeal the decision of the administration to the district board of education. Except as otherwise provided for in paragraph 2 of subsection C of this section, no out-of-school suspension shall extend beyond the current semester and the succeeding semester. Upon full investigation of the matter, the board shall determine the guilt or innocence of the student and the reasonableness of the term of the out-of-school suspension. A board of education may conduct the hearing and render the final decision or may appoint a hearing officer to conduct the hearing and render the final decision. The decision of the district board of education or the hearing officer, if applicable, shall be final.

C. 1. Students who are guilty of any of the following acts may be suspended out-of-school by the administration of the school or district:

a. violation of a school regulation,

b. immorality,

c. adjudication as a delinquent for an offense that is not a violent offense. For the purposes of this section, "violent offense" shall include those offenses listed as the exceptions to the term "nonviolent offense" as specified in Section 571 of Title 57 of the Oklahoma Statutes. "Violent offense" shall include the offense of assault with a dangerous weapon but shall not include the offense of assault,

d. possession of an intoxicating beverage, low-point beer, as defined by Section 163.2 of Title 37 of the Oklahoma Statutes, or missing or stolen property if

the property is reasonably suspected to have been taken from a student, a school employee, or the school during school activities, and

e. possession of a dangerous weapon or a controlled dangerous substance, as defined in the Uniform Controlled Dangerous Substances Act. Possession of a firearm shall result in out-of-school suspension as provided in paragraph 2 of this subsection.

2. Any student found in possession of a firearm while on any public school property or while in any school bus or other vehicle used by a public school for transportation of students or teachers shall be suspended out-of-school for a period of not less than one (1) year, to be determined by the district board of education pursuant to the provisions of this section. The term of the suspension may be modified by the district superintendent on a case-by-case basis. For purposes of this paragraph the term "firearm" shall mean and include all weapons as defined by 18 U.S.C., Section 921.

3. Any student in grades six through twelve found to have assaulted, attempted to cause physical bodily injury, or acted in a manner that could reasonably cause bodily injury to a school employee or a person volunteering for a school as prohibited pursuant to Section 81 of this act shall be suspended for the remainder of the current semester and the next consecutive semester, to be determined by the board of education pursuant to the provisions of this section. The term of the suspension may be modified by the district superintendent on a case-by-case basis.

D. At its discretion a school district may provide an education plan for students suspended out-of-school for five (5) or fewer days pursuant to the provisions of this subsection. The following provisions shall apply to students who are suspended out-of-school for more than five (5) days and who are guilty of acts listed in subparagraphs a, b, c and d of paragraph 1 of subsection C of this section. Upon the out-of-school suspension, the parent or guardian of a student suspended out-of-school pursuant to the provisions of this subsection shall be responsible for the provision of a supervised, structured environment in which the parent or guardian shall place the student and bear responsibility for monitoring the student's educational progress until the student is readmitted into school. The school administration shall provide the student with an education plan designed for the eventual reintegration of the

student into school which provides only for the core units in which the student is enrolled. A copy of the education plan shall also be provided to the student's parent or guardian. For the purposes of this section, the core units shall consist of the minimum English, mathematics, science, social studies and art units required by the State Board of Education for grade completion in grades kindergarten through eight and for high school graduation in grades nine through twelve. The plan shall set out the procedure for education and shall address academic credit for work satisfactorily completed.

E. A student who has been suspended out-of-school from a public or private school in the State of Oklahoma or another state for a violent act or an act showing deliberate or reckless disregard for the health or safety of faculty or other students shall not be entitled to enroll in a public school of this state, and no public school shall be required to enroll the student, until the terms of the suspension have been met or the time of suspension has expired.

F. No public school of this state shall be required to provide education services in the regular school setting to any student who has been adjudicated as a delinquent for an offense defined in Section 571 of Title 57 of the Oklahoma Statutes as an exception to a nonviolent offense or convicted as an adult of an offense defined in Section 571 of Title 57 of the Oklahoma Statutes as an exception to a nonviolent offense ~~or~~, who has been removed from a public or private school in the State of Oklahoma or another state by administrative or judicial process for a violent act or an act showing deliberate or reckless disregard for the health or safety of faculty or other students, or who has been suspended as provided for in paragraph 3 of subsection C of this section until the school in which the student is subsequently enrolled determines that the student no longer poses a threat to self, other students or school district faculty or employees. Until the school in which such student subsequently enrolls or re-enrolls determines that the student no longer poses a threat to self, other students or school district faculty or employees, the school may provide education services through an alternative school setting, home-based instruction, or other appropriate setting. If the school provides education services to such student at a district school facility, the school shall notify any student or school district faculty or employee victims of such student, when known, and shall ensure that the student will not be allowed in the general vicinity of or contact with a victim of the student, provided such victim notifies the school of the victim’s desire to refrain from contact with the offending student.

G. Students suspended out-of-school who are on an individualized education plan pursuant to the Individuals with Disabilities Education Act, P.L. No. 101-476, or who are subject to the provisions of subsection F of this section and who are on an individualized education plan shall be provided the education and related services in accordance with the student's individualized education plan.

H. A student who has been suspended for a violent offense which is directed towards a classroom teacher shall not be allowed to return to that teacher's classroom without the approval of that teacher.

I. No school board, administrator or teacher may be held civilly liable for any action taken in good faith which is authorized by this section.

SECTION 85. AMENDATORY 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), is amended to read as follows:

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

1. Legislative functions;

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

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

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

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

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

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

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

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

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

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

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

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

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

15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning device unless the absence, condition, location or malfunction is not corrected by the state or political subdivision responsible within a reasonable time after actual or constructive notice or the removal or destruction of such signs, signals or warning devices by third parties, action of weather elements or as a result of traffic collision except on failure of the state or political subdivision to correct the same within a reasonable time after actual or constructive notice. Nothing herein shall give rise to liability arising from the failure of the state or any political subdivision to initially place any of the above signs, signals or warning devices. The signs, signals and

warning devices referred to herein are those used in connection with hazards normally connected with the use of roadways or public ways and do not apply to the duty to warn of special defects such as excavations or roadway obstructions;

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

17. Misrepresentation, if unintentional;

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

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

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

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

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

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

a. in an effort to quell a riot,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 86. REPEALER Section 1, Chapter 368, O.S.L. 2004 (5 O.S. Supp. 2008, Section 7.1), is hereby repealed.

SECTION 87. REPEALER Sections 5 and 7, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2008, Sections 1-1708.1E and 1-1708.1G), are hereby repealed.

SECTION 88. REPEALER Section 19, Chapter 473, O.S.L. 2003 (63 O.S. Supp. 2008, Section 6602), is hereby repealed.

SECTION 89. The provisions of this act are severable and if any part or provision shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 90. This act shall become effective November 1, 2009.

Passed the House of Representatives the 14th day of May, 2009.

Presiding Officer of the House of Representatives

Passed the Senate the 14th day of May, 2009.

Presiding Officer of the Senate