

OKLAHOMA STATUTES
TITLE 76. TORTS

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§76-1. Rights of others must be respected.

Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

R.L. 1910, § 992.

§76-1.1. Parent or child not answerable for other's act.

Neither parent or child is answerable, as such, for the act of the other, except as otherwise specifically provided by law.

R.L.1910, § 4383. Amended by Laws 2000, c. 382, § 10, eff. July 1, 2000. Renumbered from § 20 of Title 10 by Laws 2009, c. 233, § 203, emerg. eff. May 21, 2009.

§76-2. Damages for deceit.

One who willfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

R.L. 1910, § 993.

§76-3. Deceits defined and classed.

A deceit, within the meaning of the last section is either:

1. The suggestion, as a fact, of that which is not true by one who does not believe it to be true.
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.
3. The suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
4. A promise, made without any intention of performing.

R.L. 1910, § 994.

§76-4. Deceit upon the public deemed deceit of any individual misled.

One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

R.L. 1910, § 995.

§76-5. Responsibility for negligence - "Good Samaritan Act".

(a) Everyone is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself, and except as hereinafter provided.

(1) Where no prior contractual relationship exists, any person licensed to practice any method of treatment of human ailments, disease, pain, injury, deformity, mental or physical condition, or licensed to render services ancillary thereto, including licensed registered and practical nurses, who, under emergency circumstances that suggest the giving of aid is the only alternative to probable death or serious bodily injury, in good faith, voluntarily and without compensation, renders or attempts to render emergency care to an injured person or any person who is in need of immediate medical aid, wherever required, shall not be liable for damages as a result

of any acts or omissions except for committing gross negligence or willful or wanton wrongs in rendering the emergency care.

(2) Where no prior contractual relationship exists, any person who in good faith renders or attempts to render emergency care consisting of artificial respiration, restoration of breathing, or preventing or retarding the loss of blood, or aiding or restoring heart action or circulation of blood to the victim or victims of an accident or emergency, wherever required, shall not be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care.

(3) Where no prior contractual relationship exists, any person licensed to perform surgery or dentistry in this state who in good faith renders emergency care requiring the performance of an operation or other form of surgery upon any individual who was the victim of an accidental act shall not be liable for any civil damages or subject to criminal prosecution as the result of nonconsent whereby such person renders or attempts to render the emergency surgery or operation voluntarily and without compensation, wherever required, except for gross negligence or willful or wanton wrongs committed in rendering the care; provided, however, that the exemption granted by this subsection shall not attach if the victim is an adult who is conscious and capable of giving or refusing his consent; or if the victim's spouse, or parent, or guardian in the case of a minor or incompetent person, can be reached in a reasonable time considering the condition of the victim and consistent with good medical practice, and unless concurrence is obtained for such emergency surgery or operation from one other person licensed to perform surgery in this state.

(4) Where no contractual relationship exists, any person, or any member of his immediate family or household, who has been approved by the local P.T.A. or other local sponsoring agency or organization, who has registered with the local municipal police chief or the county sheriff, and who has been granted appropriate authorization by either the police chief or the county sheriff to indicate by sign in the window of his home or in any other tangible or identifiable manner that he will extend aid and refuge to persons on the streets in apparent danger, or in need of aid, by inviting those persons into the person's home, or onto premises thereof, and in good faith provides such refuge or aid without objection of the endangered or needy person, whether child or adult, neither the person extending the aid and refuge nor the homeowner or head of household shall be liable for civil damages as a result of actions or omissions in rendering emergency physical care to the body of the aided person; nor shall they be liable for civil damages for any other injury in the home, or on premises thereof, to the person aided, nor for any failure to provide or arrange for his police protection or other protection or medical treatment, when the actions or omissions were

those of an ordinarily reasonably prudent person under the circumstances without want of ordinary care or skill.

(b) This act shall be known and may be cited as the "Good Samaritan Act."

R.L. 1910, § 998; Laws 1963, c. 87, § 1, emerg. eff. May 22, 1963; Laws 1965, c. 24, § 1, emerg. eff. Feb. 26, 1965; Laws 1969, c. 158, § 1, emerg. eff. April 14, 1969; Laws 1971, c. 146, § 1, emerg. eff. May 19, 1971; Laws 1974, c. 256, § 1, emerg. eff. May 29, 1974; Laws 1979, c. 18, § 1, emerg. eff. March 30, 1979.

§76-5.1. Indemnification of private citizens or their dependents for consequences of meritorious action.

A. The state may indemnify private citizens, or any persons dependent upon such citizens for their principal support for any injury, death or damage sustained by such citizens or any persons dependent upon such citizens for their principal support as a direct consequence of meritorious action, as provided in the Good Samaritan Act, to the extent that they are not compensated for the injury, death or damage from any other source.

B. As used in this act, private citizen means any natural person other than a peace officer, fire fighter, lifeguard or person whose employment includes the duty to protect the public safety acting within the course and scope of such employment.

Added by Laws 1980, c. 344, § 1, eff. Oct. 1, 1980.

§76-5.2. Filing of claim.

Should a private citizen incur personal injury, death or damage to property, as provided in the Good Samaritan Act, the private citizen or a person dependent upon such citizen for principal support may file a claim in the office of the Governor for indemnification to the extent that the claimant is not compensated from any other source for such injury, death or damage. The claim shall state:

1. The date, place and circumstances which gave rise to the claim;
2. A general description of the activities of the private citizen during the event;
3. The estimated extent of the injury, death or damage sustained for which the claimant is not compensated from any other source; and
4. Such other information as the office of the Governor may require.

The claim shall be accompanied by a corroborating statement.

Added by Laws 1980, c. 344, § 2, eff. Oct. 1, 1980.

§76-5.3. Hearing - Board and composition - Application of Administrative Procedures Act - Approval of claim.

A. Upon presentation of any claim, a hearing shall be had before a board composed of two (2) members of the Governor's staff, as the

Governor shall designate, one (1) member of the Attorney General's staff, as the Attorney General shall designate, and two (2) members of the Legislature, one of whom shall be appointed by the Speaker of the House of Representatives and one of whom shall be appointed by the President Pro Tempore of the Senate.

B. The terms and provisions of the Administrative Procedures Act shall apply to all proceedings before the board. If the board determines, on the basis of a preponderance of such evidence, that the state should indemnify the claimant for the injury, death or damage sustained, it shall approve the claim for payment. In no event shall a claim be approved by the board in excess of Five Thousand Dollars (\$5,000.00).

C. Claims approved under this act shall be paid from the Good Samaritan Fund.

Added by Laws 1980, c. 344, § 3, eff. Oct. 1, 1980.

§76-5.4. Good Samaritan Revolving Fund.

There is hereby created in the State Treasury a revolving fund for the purpose of paying claims approved under this act to be designated the Good Samaritan Revolving Fund. The fund shall be administered in accordance with standard revolving fund procedures.

Added by Laws 1980, c. 344, § 4, eff. Oct. 1, 1980.

§76-5.5. Limitation of actions.

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

Added by Laws 1980, c. 344, § 5, eff. Oct. 1, 1980.

§76-5.6. Food donations - Civil and criminal liability - Options for safe food donation - Regulation of use - Definitions.

A. Any donor who makes a good-faith donation of food which is at the time of donation fit for human consumption to a charitable organization or nonprofit corporation shall not be liable for damages in any civil suit or subject to criminal prosecution for any injury resulting from the nature, age, condition or packaging of the donated food, unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the donor.

B. Information shall be posted with the State Department of Health on its website under the existing heading "Protective Health" within a new section labeled "Options for Safe Food Donation" with hyperlinks to Section 5.6 of Title 76 of the Oklahoma Statutes, Oklahoma Administration Code Title 310: Chapter 257, 42 U.S.C.,

Section 1791, and to the website of Oklahoma State University's Robert S. Kerr Food and Agriculture Products Center.

C. This section shall apply to all good-faith donations of perishable or nonperishable food which is not readily marketable due to appearance, freshness, grade or other conditions.

D. This section shall not restrict the authority of any appropriate agency to regulate or ban the use of such food for human consumption.

E. For purposes of this section:

1. "Donor" means any person, profit or nonprofit food distributor, or person who harvests perishable foods who makes a good-faith donation of food;

2. "Good-faith donation" means a gift conferred without condition or consideration;

3. "Charitable organization" means any benevolent, philanthropic, patriotic, eleemosynary, educational, social, civic, recreational or religious group or association or any other person performing or purporting to perform acts beneficial to the public;

4. "Nonprofit 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; and

5. "Food" includes any packaged, prepared, perishable or nonperishable food item.

Added by Laws 1981, c. 9, § 1, eff. April 6, 1981. Amended by Laws 2013, c. 339, § 3, emerg. eff. May 29, 2013.

§76-5.7. Accident or disaster involving hazardous materials - Immunity from civil liability.

A. Any person who, in good faith and without prior compensation, renders emergency care, assistance, or advice at the scene of an accident or existing or impending disaster involving the use, handling, transportation, transmission, or storage of hazardous materials shall not be liable for damages resulting from the conduct of said person in rendering said care, assistance, or advice unless said damage was caused by the gross negligence of said person. The provisions of this section shall not affect the potential liability that any person may have which arises from the manufacture, generation, transportation, storage, or handling of any hazardous materials, or of any person who is engaged professionally and commercially in rendering said emergency care, assistance or advice.

B. The immunity from civil liability provided for by the provisions of this section shall extend only to the actions taken by persons in rendering care, assistance, or advice at the time of said accident or existing or impending disaster, and does not confer any

of said immunity to any person for actions taken prior to or after the rendering of emergency care, assistance, or advice.

C. For the purposes of this section, the term hazardous materials means petroleum or petroleum products, or any other substance or compound which is toxic to human, animal, or plant life. Added by Laws 1983, c. 157, § 1, eff. Nov. 1, 1983.

§76-5.8. Voluntary architectural or engineering services following declared national, state or local emergency - Immunity from liability.

A. A licensed architect or professional engineer who voluntarily, without compensation other than expense reimbursement, provides architectural, structural, electrical, mechanical or other design professional services related to a declared national, state or local emergency caused by a natural disaster or catastrophic event, at the request of or with the approval of a national, state or local public official, law enforcement official, public safety official or building inspection official believed by the licensed architect or professional engineer to be acting in an official capacity, shall not be liable for any personal injury, wrongful death, property damage or other loss of any nature related to the licensed architect's or professional engineer's acts or omissions in the performance of such professional services for any publicly or privately owned structure, building, facility, project utility, equipment, machine, process, piping or other system. Nothing in this section shall provide immunity for injury or damage resulting from gross negligence or willful or wanton misconduct in rendering the emergency professional services. The immunity provided in this section shall apply only to a voluntary architectural or engineering service that occurs during the emergency or within ninety (90) days following the end of the period for an emergency, disaster or catastrophic event, unless extended by an executive order issued by the Governor under the Governor's emergency executive powers.

B. In the event a natural disaster or catastrophic event described pursuant to subsection A of this section occurs, and the services of licensed architects or professional engineers who provide architectural, structural, electrical, mechanical or other design professional services are required, but the number of professional persons licensed or registered in this state is insufficient for such purpose, any person licensed or registered in another state to practice such profession and who is a member of a mobile support team or unit of the licensing state, may inspect and placard structures for safety and habitability in this state upon request by the Governor of this state and order of the Governor of the person's home state without being licensed or registered in this state. Out-of-state licensed architects or professional engineers who inspect and placard structures for safety and habitability under these conditions

shall not be liable for any personal injury, wrongful death, property damage or other loss related to the licensed architect's or professional engineer's acts or omissions in the performance of such emergency professional services for any publicly or privately owned structure, building, facility, project utility, equipment, machine, process, piping or other system. Nothing in this section shall provide immunity for injury or damage resulting from gross negligence or willful or wanton misconduct in rendering the emergency professional services. The immunity provided in this section shall apply only to a voluntary architectural or engineering service of inspecting and placarding structures for safety and habitability that occurs during the emergency or within ninety (90) days following the end of the period for an emergency, disaster or catastrophic event, unless extended by an executive order issued by the Governor of this state under the Governor's emergency executive powers.

C. For the purposes of this section:

1. "Building inspection official" means any appointed or elected federal, state or local official with executive responsibility to coordinate building inspection in the jurisdiction in which the emergency or event has occurred;

2. "Law enforcement official" means any appointed or elected federal, state or local official with executive responsibility to coordinate law enforcement in the jurisdiction in which the emergency or event has occurred;

3. "Licensed architect" means a person duly licensed pursuant to Section 46.1 et seq. of Title 59 of the Oklahoma Statutes;

4. "Professional engineer" means a person duly licensed and registered pursuant to Section 475.1 et seq. of Title 59 of the Oklahoma Statutes;

5. "Public official" means any elected federal, state or local official with executive responsibility in the jurisdiction in which the emergency or event has occurred; and

6. "Public safety official" means any appointed or elected federal, state or local official with executive responsibility to coordinate public safety in the jurisdiction in which the emergency or event has occurred.

Added by Laws 2005, c. 144, § 1, eff. Nov. 1, 2005. Amended by Laws 2013, c. 276, § 1, eff. Nov. 1, 2013.

§76-5.9. Immunity from liability for emergency assistance provided during natural disasters or catastrophic events.

Any individual, business, church or school that renders emergency care, aid, shelter or other assistance during a natural disaster or catastrophic event shall not be liable for damages resulting from the rendering of emergency care, aid, shelter or assistance unless the damage was caused by the gross negligence or willful or wanton

misconduct of the individual or entity rendering the emergency care, aid, shelter or assistance.

Added by Laws 2014, c. 304, § 1, eff. Nov. 1, 2014.

§76-5A. Emergency use of automated defibrillator - Immunity from civil liability.

A. 1. Any person who, in good faith and without expectation of compensation, renders emergency care or treatment outside of a medical facility by the use of an automated external defibrillator shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct in the use of such device.

2. Course directors and trainers who have completed the training required by the State Department of Health for teaching courses in the use of automated external defibrillators and cardiopulmonary resuscitation shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct in the teaching of such training courses.

B. A prescribing physician who, in good faith and without expectation of compensation, writes a prescription for the use of an automated external defibrillator to render emergency care or treatment shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct in the prescribing of the device.

C. An entity or individual who owns, leases, possesses, or otherwise controls an automated external defibrillator shall be immune from civil liability for personal injury which results from the use of the device, except for acts of gross negligence or willful or wanton misconduct.

D. An entity or individual who owns, leases, possesses or otherwise controls an automated external defibrillator shall communicate to the proper first responder the locations and placements of the automated external defibrillator owned, leased, possessed or otherwise controlled by the entity or individual.

E. For purposes of this section:

1. "Automated external defibrillator" means a medical device consisting of a heart monitor and defibrillator which:

- a. has received approval of its premarket notification, filed pursuant to 21 U.S.C., Section 360(k), from the United States Food and Drug Administration,
- b. is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, and is capable of determining, without intervention by an operator, whether defibrillation should be performed, and

c. upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart;

2. "Entity" means public and private organizations including, but not limited to, the State of Oklahoma and its agencies and political subdivisions, a proprietorship, partnership, limited liability company, corporation, or other legal entity, whether or not operated for profit;

3. "First responder" means an individual certified by the State Department of Health to perform emergency medical services in accordance with the Oklahoma Emergency Response Systems Development Act and in accordance with the rules and standards promulgated by the State Board of Health; and

4. "Prescribing physician" means a person licensed to practice medicine in the state pursuant to Chapters 11 and 14 of Title 59 of the Oklahoma Statutes.

Added by Laws 1999, c. 111, § 1, eff. Nov. 1, 1999. Amended by Laws 2004, c. 127, § 1, eff. Nov. 1, 2004; Laws 2009, c. 70, § 1, eff. Nov. 1, 2009.

§76-6. General rights of persons.

Besides the personal rights mentioned or recognized under law, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

R.L. 1910, § 2955.

§76-7. Defamation.

Defamation is effected by:

First. Libel; or,

Second. Slander.

R.L. 1910, § 2956.

§76-8. Wrongs against personal relations.

The rights of personal relation forbid:

1. The abduction of a husband from his wife, a wife from her husband or of a parent from his child.

2. The abduction or enticement of a child from a parent, or from a guardian entitled to its custody, or of a servant from his master.

3. An injury to a servant.

R.L. 1910, § 2957; Laws 1976, c. 164, § 1, eff. Oct. 1, 1976.

§76-8.1. Alienation of affections or seduction - Civil action - Abolition.

From and after the effective date of this act, the alienation of the affections of a spouse of sound mind and legal age or seduction

of any person of sound mind and legal age is hereby abolished as a civil cause of action in this state.

Added by Laws 1976, c. 164, § 2, eff. Oct. 1, 1976.

§76-9. Right to use force.

Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent or other relative, or member of one's family, or of a ward, servant, master or guest.

R.L. 1910, § 2958.

§76-10. Renumbered as § 16-71.1 of Title 2 by Laws 2004, c. 368, § 67, eff. Nov. 1, 2004.

§76-10.1. Landowners encouraged to make land available to public for recreational purposes - Limitation on liability - Definitions - Applicability of section to land and attached roads, water and structures used primarily for farming or ranching activities.

A. 1. The purpose of this section is to encourage landowners to make land available to the public for outdoor recreational purposes by limiting their liability to persons entering upon and using such land and to third persons who may be damaged by the acts or omissions of persons going upon these lands.

2. As used in this section:

- a. "land" means real property, roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty,
- b. "outdoor recreational purposes" includes any of the following, or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, jogging, cycling, other sporting events and activities, nature study, water skiing, jet skiing, winter sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, and aviation at non-public-use airports,
- c. "owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the land,
- d. "charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land. The term "charge" shall not include:
 - (1) a license or permit fee imposed by a governmental entity for the purpose of regulating the use of land, a water or park area, or lake reservation,
 - (2) hunting, fishing, boating, and other license and permit fees,
 - (3) hunting or fishing leases, or

(4) donations made at fly-ins at non-public-use airports, and

- e. "non-public-use airport" means an airport that is primarily used by the owner with access to the public as permitted by the owner.

B. An owner who provides the public with land for outdoor recreational purposes owes no duty of care to keep the land safe for entry or use by others, or to give warning to persons entering or using the land of any hazardous conditions, structures, or activities.

C. 1. Except as otherwise provided by this section, an owner who provides the public with land for outdoor recreational purposes shall not:

- a. be presumed to extend any assurance that the land is safe for any purpose,
- b. incur any duty of care toward a person who enters or uses the land, or
- c. assume any liability or responsibility for any injury to persons or property caused by the act or omission of a person who enters or uses the land.

2. This subsection applies whether the person entering or using the land is an invitee, licensee, trespasser, or otherwise.

D. This section shall not apply if:

1. Any charge is made or is usually made for entering or using any part of the land; or
2. Any commercial or other activity for profit directly related to the use is conducted on any part of the land.

E. 1. An owner of land leased to the state or to other public entity for outdoor recreational purposes owes no duty of care to keep the land safe for entry or use by others, or to give warning to persons entering or using the land of any hazardous conditions, structures, or activities. Any owner who leases or subleases land to the state or other public entity for outdoor recreational purposes shall not:

- a. be presumed to extend any assurance that the land is safe for any purpose,
- b. incur any duty of care toward a person who enters or uses the leased land, or
- c. become liable or responsible for any injury to persons or property caused by the act or omission of a person who enters or uses the leased land.

2. This subsection applies whether the person entering or using the leased land is an invitee, licensee, trespasser, or otherwise, notwithstanding any other section of law.

F. 1. Except as provided in this section, no person is relieved of liability which would exist for want of ordinary care or for

deliberate, willful, or malicious injury to persons or property. The provisions shall not create or increase the liability of any person.

2. This section shall not relieve any owner of any liability for the operation and maintenance of structures affixed to real property by the owner for use by the general public.

G. By entering or using land, no person shall be deemed to be acting as an employee or agent of the owner whether the entry or use is with or without the knowledge or consent of the owner.

H. The provisions of this section shall not apply to any land that is used primarily for farming or ranching activities or to roads, water, watercourses, private ways, buildings, structures, and machinery or equipment when attached to realty which is used primarily for farming or ranching activities.

The Oklahoma Limitation of Liability for Farming and Ranching Land Act shall govern such land.

Added by Laws 1971, c. 349, § 315, emerg. eff. June 24, 1971.

Amended by Laws 2000, c. 141, § 1, eff. Nov. 1, 2000; Laws 2001, c. 113, § 51, emerg. eff. April 18, 2001. Renumbered from § 1301-315 of Title 2 by Laws 2001, c. 113, § 56, emerg. eff. April 18, 2001.

Amended by Laws 2004, c. 368, § 25, eff. Nov. 1, 2004. Renumbered from § 16-71 of Title 2 by Laws 2004, c. 368, § 68, eff. Nov. 1, 2004. Amended by Laws 2013, c. 225, § 1, eff. Nov. 1, 2013.

§76-11. Renumbered as § 16-71.2 of Title 2 by Laws 2004, c. 368, § 67, eff. Nov. 1, 2004.

§76-12. Renumbered as § 16-71.3 of Title 2 by Laws 2004, c. 368, § 67, eff. Nov. 1, 2004.

§76-13. Renumbered as § 16-71.4 of Title 2 by Laws 2004, c. 368, § 67, eff. Nov. 1, 2004.

§76-14. Renumbered as § 16-71.5 of Title 2 by Laws 2004, c. 368, § 67, eff. Nov. 1, 2004.

§76-15. Renumbered as § 16-71.6 of Title 2 by Laws 2004, c. 368, § 67, eff. Nov. 1, 2004.

§76-15.1. Renumbered as § 16-71.7 of Title 2 by Laws 2004, c. 368, § 67, eff. Nov. 1, 2004.

§76-16. Repealed by Laws 1987, c. 78, § 11, eff. Nov. 1, 1987.

§76-16.1. Unauthorized use of or entry upon real property or improvements thereto - Immunity from liability.

A. An owner, lessee or occupant of real property or any structures or improvements thereto owes no duty of care to keep the

premises safe for entry or use by others or to give any warning of a dangerous condition, use, structure or activity if the entry or use by another person is unauthorized or is for the purpose of committing a criminal act.

B. The provisions of subsection A of this section provide immunity from civil liability for simple negligence but do not provide immunity for willful, wanton or malicious acts of negligence or for gross negligence.

Added by Laws 2004, c. 368, § 33, eff. Nov. 1, 2004.

§76-17. Medical malpractice - Reporting of the claim to licensing board.

Whenever a claim of personal injury is made against any practitioner of the healing arts or a licensed hospital, a report shall be made to the appropriate licensing board or agency by the liability insurer of such practitioner or hospital within sixty (60) days after receipt of information that a claim is being made. In the event that such claim is made against a party not insured, the report shall be made by the party. The report shall be in writing on a form containing the following information:

1. The name and address of the practitioner or hospital;
2. The name, age and address of the claimant;
3. A brief statement of the nature of the injury, illness or condition complained of and the act or omission complained of; and
4. Whether a suit is pending and, if so, the court, style and docket number of the action.

And whenever such claim or suit is concluded, the disposition shall be reported to the appropriate board or agency promptly.

This report shall be privileged except as hereinafter provided.

The licensing board or agency shall take any remedial, disciplinary or corrective action as it may deem warranted by the facts contained in the report.

Any person or liability insurer failing to furnish a report on a claim as required in this section shall be guilty of a misdemeanor.

Further, the board or agency shall annually furnish the President Pro Tempore of the Senate and the Speaker of the House of Representatives a full report of all such claims except that names and addresses of all parties shall be omitted. Such report shall include disposition of the claim as well as a report of all action taken by the board or agency and the reason therefor.

Added by Laws 1976, c. 44, § 1, emerg. eff. April 8, 1976. Amended by Laws 1979, c. 75, § 1, eff. Oct. 1, 1979.

§76-18. Limitation of action.

An action for damages for injury or death against any physician, health care provider or hospital licensed under the laws of this state, whether based in tort, breach of contract or otherwise,

arising out of patient care, shall be brought within two (2) years of the date the plaintiff knew or should have known, through the exercise of reasonable diligence, of the existence of the death, injury or condition complained of; provided, however, the minority or incompetency when the cause of action arises will extend said period of limitation.

Added by Laws 1976, c. 44, § 2, emerg. eff. April 8, 1976. Amended by Laws 2002, c. 462, § 4, eff. July 1, 2002.

§76-19. Access to medical records - Copies - Waiver of privilege - Exception for inmates when threat to safety or security of self or institution.

A. 1. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be entitled, upon request, to obtain access to the information contained in the patient's medical records, including any x-ray or other photograph or image or pathology slide. Disclosure regarding a deceased patient shall require either a court order or a written release of an executor, administrator or personal representative appointed by the court, or if there is no such appointment, by the spouse of the patient or, if none, by any responsible member of the family of the patient. As used in this paragraph, "responsible family member" shall mean the parent, adult child, adult sibling or other adult relative who was actively involved in providing care to or monitoring the care of the patient as verified by the doctor, hospital or other medical institution responsible for the care and treatment of such person.

2. Any person who is or has been a patient of a doctor, hospital, or other medical institution shall be furnished copies of all records, including any x-ray, other photograph or image or pathology slide, pertaining to that person's case upon request and upon the tender of the expenses enumerated in this paragraph. The cost of each copy to such person or to the personal representative, spouse or responsible family member of such person, not including any x-ray or other photograph or image or pathology slide, shall be fifty cents (\$0.50) for each page. Requests for medical records from attorneys, insurance companies and by way of subpoena shall be charged a base fee of Ten Dollars (\$10.00) in addition to the per page charges required pursuant to this section, plus postage or delivery fee. The physician, hospital or other medical professionals and institutions, or their business associates as the term is defined in Section 160.103 of Title 45 of the United States Code of Federal Regulations shall produce the records in digital form at the rate of thirty cents (\$0.30) per page if:

- a. the entire request can be reproduced from an electronic health record system,

b. the medical record is specifically requested to be delivered in electronic format, and

c. the medical record can be delivered electronically.

If a provider or business associate transmits the records electronically, no postage shall be charged but a delivery charge shall apply. In no event shall a charge for the reproduction of electronically stored and delivered medical records pursuant to this paragraph exceed Two Hundred Dollars (\$200.00) plus postage or delivery fee. The cost of each x-ray, other photograph or image, or pathology slide to such person or to the legal representative of such person shall be Five Dollars (\$5.00). The physician, hospital, or other medical professionals and institutions, or their business associates as the term is defined in Section 160.103 of Title 45 of the United States Code of Federal Regulations, shall not charge a person who requests their own record a fee for searching, retrieving, reviewing, and preparing medical records of the person. No mailing fee shall be charged for copies provided by facsimile. All requests for medical records made pursuant to this subsection shall be subject to the fees described in this section regardless of where the copies or electronic versions of such records are actually produced.

3. The provisions of paragraphs 1 and 2 of this subsection shall not apply to psychological, psychiatric, mental health or substance abuse treatment records. In the case of psychological, psychiatric, mental health or substance abuse treatment records, access to information contained in the records shall be obtained pursuant to Section 1-109 of Title 43A of the Oklahoma Statutes.

B. 1. In cases involving a claim for personal injury or death against any practitioner of the healing arts or a licensed hospital, or a nursing facility or nursing home licensed pursuant to Section 1-1903 of Title 63 of the Oklahoma Statutes arising out of patient care, where any person has placed the physical or mental condition of that person in issue by the commencement of any action, proceeding, or suit for damages, or where any person has placed in issue the physical or mental condition of any other person or deceased person by or through whom the person rightfully claims, that person shall be deemed to waive any privilege granted by law concerning any communication made to a physician or health care provider with reference to any physical or mental condition or any knowledge obtained by the physician or health care provider by personal examination of the patient; provided that, before any communication, medical or hospital record, or testimony is admitted in evidence in any proceeding, it must be material and relevant to an issue therein, according to existing rules of evidence. Psychological, psychiatric, mental health and substance abuse treatment records and information from psychological, psychiatric, mental health and substance abuse treatment practitioners may only be obtained provided the

requirements of Section 1-109 of Title 43A of the Oklahoma Statutes are met.

2. Any person who obtains any document pursuant to the provisions of this section shall provide copies of the document to any opposing party in the proceeding upon payment of the expense of copying the document pursuant to the provisions of this section.

C. This section shall not apply to the records of an inmate in a correctional institution when the correctional institution believes the release of such information to be a threat to the safety or security of the inmate or the institution.

Added by Laws 1976, c. 44, § 3, emerg. eff. April 8, 1976. Amended by Laws 1977, c. 59, § 1, eff. Oct. 1, 1977; Laws 1979, c. 75, § 2, eff. Oct. 1, 1979; Laws 1985, c. 184, § 1, eff. Nov. 1, 1985; Laws 1987, c. 168, § 2, eff. Nov. 1, 1987; Laws 1994, c. 90, § 1, eff. Sept. 1, 1994; Laws 1995, c. 251, § 14, eff. Nov. 1, 1995; Laws 1999, c. 293, § 27, eff. Nov. 1, 1999; Laws 2003, c. 21, § 1, emerg. eff. March 31, 2003; Laws 2003, c. 390, § 23, eff. July 1, 2003; Laws 2004, c. 168, § 17, emerg. eff. April 27, 2004; Laws 2005, c. 88, § 1, emerg. eff. April 21, 2005; Laws 2011, c. 222, § 1, eff. Nov. 1, 2011; Laws 2013, c. 273, § 1, eff. Nov. 1, 2013; Laws 2015, c. 100, § 1, eff. Nov. 1, 2015.

§76-20. Refusing to furnish records - Penalty.

Any person refusing to furnish records or information required in Section 3 of this act shall be guilty of a misdemeanor.

Added by Laws 1976, c. 44, § 4, emerg. eff. April 8, 1976.

§76-20.1. Healing arts - Standard of care.

The standard of care required of those engaging in the practice of the healing arts within the State of Oklahoma shall be measured by national standards.

Added by Laws 1983, c. 231, § 1.

§76-20.2. Chelation or other authorized therapy not prohibited.

Nothing in the above act shall be construed to prohibit the use of chelation therapy or any other therapy or treatment authorized by law.

Added by Laws 1983, c. 231, § 2.

§76-21. Presumption of negligence.

In any action arising from negligence in the rendering of medical care, a presumption of negligence shall arise if the following foundation facts are first established:

1. The plaintiff sustained any injury;
2. Said injury was proximately caused by an instrumentality solely within the control of the defendant or defendants; and

3. Such injury does not ordinarily occur under the circumstances absent negligence on the part of the defendant.

If any such fact, in the discretion of the court, requires a degree of knowledge or skill not possessed by the average person, then in that event such fact must be established by expert testimony. Added by Laws 1976, c. 44, § 5, emerg. eff. April 8, 1976.

§76-22. Repealed by Laws 2013, c. 254, § 51.

§76-23. Public utilities - Definitions - Fraud - Penalties - Civil liability - Exemptions.

A. As used in this section:

1. "Utility" means any person, firm, corporation, district or association, whether private, municipal, body politic or cooperative, which is engaged in the sale, generation, distribution or delivery of electricity, water or gas;

2. "Person" means any individual, firm, partnership, corporation or association; and

3. "Utility service" means the furnishing, sale, generation, distribution or delivery of electricity, water or gas by a utility as defined herein.

B. It shall be unlawful for any person, with intent to defraud a utility, to:

1. Alter, tamper with, injure or knowingly allow the altering, tampering with or injuring of any pipeline, line, wire, conduit, conductor, meter, meter seal, transformer or other equipment used by a utility to deliver or register service;

2. Prevent any installed metering device from registering correctly the quantity of service passing through such metering device;

3. Make or cause to be made any connection between any pipeline, lines, wires, conduits, conductors, meters, transformers or other equipment in such manner as to prevent the correct registration of service by any metering device, or to otherwise use electricity without the consent of the utility; or

4. Supply or cause to be supplied any utility service to any person without such service first passing through the metering device provided by the utility for measuring and registering the quantity of service.

C. Any person who is convicted of violating the provisions of subsection B of this section shall be guilty of a misdemeanor punishable by payment of a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for a period not to exceed six (6) months, or by such fine and imprisonment.

D. If a civil action is brought by a utility against a person, said person may post a bond, cash or other security with the utility in an amount equal to the value of the service alleged to be

unlawfully used or diverted. Upon posting of said bond or cash, and until final disposition of the case, the utility shall restore to said person any service which it may have terminated.

E. Nothing in this section shall be construed to apply to licensed and certified contractors while performing usual and ordinary service in accordance with recognized standards.

F. This section shall not be construed as repealing any laws of the state relating to the powers, duties or jurisdiction of the Oklahoma Corporation Commission, but shall be held as auxiliary and supplementary thereto.

Added by Laws 1978, c. 89, § 1, emerg. eff. March 28, 1978.

§76-24. Definitions.

In Sections 5 through 10 of this act, the following definitions shall apply:

1. "Professional review body" means a public or private body organized in whole or in part for the purpose of maintaining standards of conduct and competence for accountants, architects, chiropodists, chiropractors, dentists, professional engineers, nurses, pharmacists, physicians, psychologists or veterinarians;

2. "Professional review action" means an action or recommendation taken or made by a professional review body which adversely affects a person's ability to perform his profession but shall not include actions taken or recommendations made by a private professional review body against a person who does not have a reasonable connection to the body's sponsoring organization; and

3. "Sponsoring organization" means a professional association or an institution through which persons practice their professions in whole or in part.

Added by Laws 1987, c. 78, § 5, eff. Nov. 1, 1987. Amended by Laws 1995, c. 207, § 5, eff. Nov. 1, 1995.

§76-25. Professional review body, staff and personnel - Limitation of liability.

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

Added by Laws 1987, c. 78, § 6, eff. Nov. 1, 1987.

§76-26. Persons supplying information to professional review body - Protection from liability.

Any person who supplies information in good faith and with reasonable belief that such information is true to a professional review body shall not be liable in any way in damages with respect to giving such information to the professional review body.

Added by Laws 1987, c. 78, § 7, eff. Nov. 1, 1987.

§76-27. Limitations on liability - Extent.

Protection from liability in damages pursuant to Sections 6 and 7 of this act shall not extend to actions for violation of civil rights or for antitrust.

Added by Laws 1987, c. 78, § 8, eff. Nov. 1, 1987.

§76-28. Professional review body - Requirements for protection from liability.

Protection from liability pursuant to Section 6 of this act shall be available only on the condition that the professional review action is taken or recommendation is made under the following requirements:

A. The action is taken:

1. In reasonable belief that it will maintain or enhance the quality of professional standards of conduct or competence;
2. After reasonable effort to obtain facts pertinent to the matter;
3. After adequate notice and opportunity to be heard are afforded the professional involved; and
4. In reasonable belief that the facts warrant the action.

A professional review action shall be presumed to meet these standards unless the presumption is rebutted by a preponderance of the evidence.

B. The notice required in paragraph 3 of subsection A of this section must:

1. State that a professional review action has been proposed against the professional;
2. Inform the professional, in detail sufficient for him to prepare a defense, of the reasons for the proposed action;
3. State that the professional may request a hearing whether he has been previously contacted about the proposed action or complaint on which it is founded or not;
4. Inform the professional of the time limit of not less than twenty (20) days in which he must request a hearing or lose such right;
5. Explain the hearing procedure that will be used or the choice of procedures available for the professional's choice if a hearing is requested; and
6. State that if a choice of hearing procedures is available, the professional must choose at the time he requests the hearing.

C. If the affected professional requests a hearing on a timely basis, the professional review body must give the professional notice no less than ten (10) days before the hearing of the place, time and date of the hearing, of the witnesses expected to be called against him, and of the exhibits expected to be used against him.

D. At the option of the professional review body, the hearing may be held before:

1. An arbitrator mutually acceptable to the professional and professional review body;

2. A hearing officer appointed by the professional review body provided the hearing officer is not in direct economic competition with the affected professional;

3. A panel of individuals appointed by the professional review body provided the individuals are not in direct economic competition with the affected professional; or

4. The entire professional review body.

E. The professional shall:

1. Have the right to be represented by legal counsel at any stage of the proceedings;

2. Have the right to have a record made of the hearing proceedings, copies of which may be obtained by the professional upon payment of reasonable fees set by the professional review body;

3. Have the right to call, examine and cross-examine witnesses;

4. Have the right to present evidence on his behalf which the arbitrator, hearing officer or chairman of the hearing panel determines is relevant;

5. Have the right to submit a written statement at the conclusion of the hearing;

6. Forfeit his right to a hearing if he fails without good cause shown to attend a properly scheduled hearing for which proper notice has been mailed by certified United States mail, return receipt requested; and

7. Receive a written statement explaining the action or decision not to act of the professional review body.

Added by Laws 1987, c. 78, § 9, eff. Nov. 1, 1987.

§76-29. Emergency exception from notice and hearing requirement.

Where failure to act expeditiously may reasonably result in an imminent danger to the public or individual, a professional review body may immediately act to prevent the danger without conducting a prior hearing or giving notice provided that notice and opportunity for hearing must follow the action within three (3) days.

Added by Laws 1987, c. 78, § 10, eff. Nov. 1, 1987.

§76-31. Volunteers, charitable organizations, and not-for-profit corporations - Immunity from civil liability - Limitations

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; 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. Provided, however, the liability of any person with a current motor vehicle insurance policy at the required minimum limits who volunteers to provide transportation shall not exceed the limits of such insurance policy, except for gross negligence or willful or wanton conduct committed in providing such transportation. In no event shall the limitation on liability provided under this subsection apply to a person who does not possess a current motor vehicle policy when providing transportation.

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, 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 August 25, 1995.

Added by Laws 1995, c. 287, § 3. Amended by Laws 2013, 1st Ex.Sess., c. 18, § 2, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex.Sess., c. 18, § 3, emerg. eff. Sept. 10, 2013; Laws 2016, c. 173, § 1, eff. Nov 1, 2016.

NOTE: Laws 2009, c. 228, § 42 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex.Sess., c. 18, § 1, emerg. eff. Sept. 10, 2013.

§76-31.3. Oklahoma Health Care Access Act - Volunteer Health Care Provider Program.

A. This act shall be known and may be cited as the "Oklahoma Health Care Access Act".

B. The State Department of Health is hereby directed to develop a plan to increase access to health care for all Oklahomans through the use of volunteers including, but not limited to, expanding the number of health care volunteers. The plan shall be entitled the "Volunteer Health Care Provider Program".

C. The plan shall explore public-private partnerships as a method of increasing access to health care.

D. The Department shall report to the Legislature and to the Governor on the plan on or before December 1, 2002. The report shall include, but not be limited to, recommendations for necessary legislation.

Added by Laws 2002, c. 223, § 1, eff. July 1, 2002.

§76-32. Volunteer Professional Services Immunity Act.

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

B. As used in the Volunteer Professional Services Immunity Act, "charitable clinic" means a nonprofit entity organized for the purpose of providing health care services without charge or for a minimal fee.

C. Any volunteer professional or volunteer health practitioner and any organization that arranges for the care given by the volunteer professional shall be immune from liability in a civil action on the basis of any act or omission of the volunteer professional or volunteer health practitioner resulting in damage or injury if:

1. The volunteer professional or volunteer health practitioner services were provided at a charitable clinic where the professional or practitioner receives no compensation for any treatment provided at the clinic;

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

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

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

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

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

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

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

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

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 professional or volunteer health practitioner.

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

G. For the purpose of this section, the term "volunteer professional" and "referred volunteer professional" means a person

who voluntarily provides professional medically related services without compensation or expectation of compensation of any kind. A volunteer professional or a referred volunteer professional shall include the following licensed professionals, including those persons licensed in accordance with Section 493.5 of Title 59 of the Oklahoma Statutes:

1. Physician;
2. Physician assistant;
3. Registered nurse;
4. Advanced practice nurse or vocational nurse;
5. Pharmacist;
6. Podiatrist;
7. Dentist or dental hygienist; or
8. Optometrist.

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

H. For the purposes of this section, the term "volunteer health practitioner" and "referred volunteer health practitioner" means a person who voluntarily provides health-related services without compensation or expectation of compensation of any kind. A volunteer health practitioner or referred volunteer health practitioner shall include the following:

1. Certified nurse aide;
2. Chiropractor;
3. Dental assistant;
4. Dental technician;
5. Dietitian/nutritionist;
6. Emergency medical technician;
7. Licensed alcohol and drug counselor;
8. Licensed behavioral practitioner;
9. Licensed clinical social worker;
10. Licensed practical nurse;
11. Licensed professional counselor;
12. Marital/family therapist;
13. Medical assistant;
14. Medical laboratory technologist;
15. Medical technician;
16. Nuclear medicine technologist;
17. Occupational therapist;
18. Orthopedic technologist;
19. Paramedic;
20. Pharmacy technician;
21. Physical therapist;
22. Psychologist;
23. Radiology technician/technologist;

24. Respiratory therapist;
25. Sonographer;
26. Speech/language pathologist;
27. Veterinarian; and
28. Veterinary technician.

A volunteer health practitioner shall be engaged as an active health practitioner or retired from a health-related practice if still eligible to provide health-related services within this state.

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

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

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

J. This section shall apply to all civil actions filed on or after:

1. November 1, 2004, for those persons listed in subsection G of this section; and

2. November 1, 2009, for all other persons listed in subsection H of this section.

Added by Laws 2004, c. 368, § 34, eff. Nov. 1, 2004. Amended by Laws 2009, c. 106, § 1, eff. Nov. 1, 2009; Laws 2009, c. 255, § 2, eff. Nov. 1, 2009; Laws 2010, c. 2, § 103, emerg. eff. March 3, 2010; Laws 2012, c. 77, § 1, eff. Nov. 1, 2012.

NOTE: Laws 2009, c. 247, § 2 repealed by Laws 2010, c. 2, § 104, emerg. eff. March 3, 2010. Laws 2009, c. 313, § 2 repealed by Laws 2010, c. 2, § 105, emerg. eff. March 3, 2010.

§76-32.1. Liability for physician or health care provider acting in volunteer capacity.

A. As used in this section:

1. "Health care provider" means any person or other entity who is licensed, certified or otherwise authorized by the provisions of Title 59 or Title 63 of the Oklahoma Statutes to render health care services in the practice of a profession or in the ordinary course of business;

2. "Health care services" means any services provided by a physician or health care provider, or by an individual working under their supervision, that relate to the diagnosis, assessment,

prevention, treatment or care of any human illness, disease, injury or condition;

3. "Physician" means any person who is a physician licensed, certified or otherwise authorized to render health care services in this state; and

4. "Volunteer capacity" means health care services provided without remuneration regardless of whether or not the health care services are prearranged. Admission without cost to the secondary school event does not constitute remuneration.

B. Any physician or health care provider providing health care services in a volunteer capacity at a secondary school function in this state who renders or attempts to render care to an injured participant who is in need of immediate medical aid shall not be liable for damages as a result of any acts or omissions except for committing gross negligence or willful or wanton negligence in rendering the emergency care.

C. This section shall apply to all civil actions filed on or after January 1, 2011.

Added by Laws 2010, c. 294, § 1, eff. Jan 1, 2011.

§76-33. Immunity from liability - Application.

A. For the purposes of this section, "person" means an individual, association, for-profit or nonprofit artificial entity created under state law, religious organization, or charitable organization.

B. Any person, or any agent of that person, who voluntarily and without the expectation or receipt of compensation provides services, goods or shelter at any place in this state subject to the order or control of, or pursuant to a request of, the state or federal government or any political subdivision thereof:

1. In preparation for, anticipation of, or during a time of emergency;

2. In a place of emergency, as declared by the Governor; and

3. For the benefit of any person or to prevent, minimize, or repair injury or damage to the property of a person resulting from:

a. biological, chemical, or nuclear agents,

b. terrorism,

c. pandemic or epidemic of infectious disease,

d. catastrophic acts of nature, including but not limited to fire, flood, earthquake, tornado, wind, storm, or wave action, or

e. any other emergency situation as declared by the Governor by executive order under Oklahoma law,

shall not be liable to any person receiving assistance as a result of any act or omission in rendering the service if the person was acting in good faith and the damage or injury was not caused by the willful or wanton negligence or misconduct of the person.

C. The immunity from liability provided in subsection B of this section shall:

1. Not apply to any person, or any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent disaster or emergency, or whose act or omission necessitated emergency management measures; and

2. Only apply to a person for such person's act or omission that directly relates to preparation for, anticipation of, or responding to an emergency. For purposes of this paragraph, "directly relates to" means providing goods, services or shelter pursuant to a request of an official or employee of state or federal government, or any political subdivision thereof, who is authorized to make such a request.

D. This section shall apply to all civil actions filed on or after November 1, 2009.

E. Nothing contained in this section shall amend, repeal, alter, or affect any other immunity or limitation of liability provided for under Oklahoma law.

Added by Laws 2009, c. 255, § 3, eff. Nov. 1, 2009. Amended by Laws 2014, c. 5, § 1, eff. Nov. 1, 2014.

§76-34. Repealed by Laws 2013, 1st Ex.Sess., c. 19, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 43, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 38.

§76-35. Repealed by Laws 2013, 1st Ex.Sess., c. 19, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 44, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 39.

§76-36. Repealed by Laws 2013, 1st Ex.Sess., c. 19, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 45, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 40.

§76-37. Repealed by Laws 2013, 1st Ex.Sess., c. 19, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 46, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas

v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 41.

§76-38. Short title - Common Sense Consumption Act.

This act shall be known and may be cited as the "Common Sense Consumption Act".

Added by Laws 2013, 1st Ex.Sess., c. 19, § 2, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 34, which was derived from Laws 2009, c. 228, § 43, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-39. Intent of act.

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. Added by Laws 2013, 1st Ex.Sess., c. 19, § 3, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 35, which was derived from Laws 2009, c. 228, § 44, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-40. Definitions.

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.

Added by Laws 2013, 1st Ex.Sess., c. 19, § 4, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 36, which was derived from Laws 2009, c. 228, § 45, which was held unconstitutional

by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-41. Weight gain or obesity civil liability restricted - Exceptions.

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 the effective date of this act, and all claims filed thereafter, regardless of when the claim arose.

Added by Laws 2013, 1st Ex.Sess., c. 19, § 5, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 37, which was derived from Laws 2009, c. 228, § 46, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-50.1. Short title - Legislative intent - Construction.

A. This act shall be known and may be cited as the "Oklahoma Livestock Activities Liability Limitation Act".

B. 1. The Oklahoma Legislature recognizes that persons who engage in livestock activities may incur injuries as a result of the risks involved in such activities even in the absence of any fault or negligence on the part of persons or entities who sponsor, participate or organize those activities.

2. The Oklahoma Legislature finds that the state and its citizens derive numerous economic and personal benefits from livestock activities.

3. It is, therefore, the intent of the Oklahoma Legislature to encourage livestock activities by limiting the civil liability of livestock activities sponsors, participants and livestock professionals involved in such activities.

C. The provisions of the Oklahoma Livestock Activities Liability Limitation Act shall not be construed to conflict or amend Sections 10 through 15.1 of Title 76 of the Oklahoma Statutes.

Added by Laws 1999, c. 326, § 1, eff. Nov. 1, 1999.

§76-50.2. Definitions.

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, or engaging in any agritourism activity involving

livestock or on a location where livestock are displayed or raised, 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;

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,
- 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;

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;

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;

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

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.

Added by Laws 1999, c. 326, § 2, eff. Nov. 1, 1999. Amended by Laws 2013, 1st Ex. Sess., c. 6, § 2, emerg. eff. Sept. 10, 2013; Laws 2013, 1st Ex. Sess., c. 6, § 3, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 47 was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013) and repealed by Laws 2013, 1st Ex. Sess., c. 6, § 1, emerg. eff. Sept. 10, 2013.

§76-50.3. Scope of liability.

A. Except as provided in subsection B of this section, a livestock activity sponsor, a participant or a livestock professional acting in good faith and pursuant to the standards of the livestock industry shall not be liable for injuries to any person engaged in livestock activities when such injuries result from the inherent risks of livestock activities.

B. 1. The provisions of the Oklahoma Livestock Activities Liability Limitation Act shall not apply to employees of the sponsor or livestock professional in the performance of their duties who are covered by or subject to the provisions of the workers' compensation laws of Title 85 of the Oklahoma Statutes.

2. Nothing in subsection A of this section shall prevent or limit the liability of a livestock activity sponsor, a participant or

a livestock professional, if the livestock activity sponsor, a participant or livestock professional:

- a. commits an act or omission that constitutes willful or wanton disregard for the safety of any person engaged in livestock activities, and that act or omission caused the injury,
- b. intentionally injures a person engaged in livestock activities,
- c. provided the equipment or tack, which was faulty, and such equipment or tack was faulty to the extent that it did cause the injury. The provisions of this subparagraph shall not apply to livestock activities sponsored by youth organizations when youth participants share equipment or tack between themselves,
- d. provided the livestock and failed to make a reasonable effort to determine the ability of the participant to manage the particular livestock based upon the participant's representations of such participant's ability. Provided, however, a participant in a livestock show, livestock sale, or rodeo shall be presumed to be competent in the handling of livestock if an entry form is required for the activity and signed by the participant, or
- e. owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to the livestock activity sponsor, livestock professional or person and not made known to the participant.

3. Nothing in subsection A of this section shall prevent or limit the liability of a livestock activity sponsor, a participant or a livestock professional:

- a. under liability provisions as set forth in the products liability laws, or
- b. for livestock activities which result in the death of any person engaged in livestock activities from the inherent risks of livestock activities.

C. A sponsor shall not be held vicariously liable for the acts or omission of a participant or a livestock professional.

Added by Laws 1999, c. 326, § 3, eff. Nov. 1, 1999.

§76-50.4. Waiver of liability.

Two or more persons may agree, in writing, to extend the waiver of liability pursuant to the provisions of the Oklahoma Livestock Activities Liability Limitation Act. Such waiver shall be valid and binding by its terms.

Added by Laws 1999, c. 326, § 4, eff. Nov. 1, 1999.

§76-50.6. Gun ranges and gun clubs - Liability.

A. Except as provided in subsection B of this section, an owner, employee, participant, member, guest or customer of a gun range, gun shop or gun club, who is acting in good faith and pursuant to the standards of the firearm industry and the duty of care under common law and gun club rules, if applicable, shall not be liable for injuries to any person engaged in firearm activities on the premises of such range, shop or club when such injuries result from the inherent risks of such activities.

B. 1. The provisions of this section shall not apply to employees in the performance of their duties who are covered by or subject to the provisions of the workers' compensation laws of Title 85 of the Oklahoma Statutes.

2. Nothing in subsection A of this section shall prevent or limit the liability of an owner, employee, participant, member or customer, if such person:

- a. commits an act or omission that constitutes willful or wanton disregard for the safety of any person engaged in firearm activities, and that act or omission caused the injury, or
- b. intentionally injures a person engaged in firearm activities.

Added by Laws 2012, c. 8, § 1, eff. Nov. 1, 2012.

§76-51. Repealed by Laws 2013, 1st Ex. Sess., c. 2, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 48, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). Now see Title 76, § 51.1.

§76-51.1. Legislative findings - Injuries from unlawful firearm use.

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.

Added by Laws 2013, 1st Ex. Sess., c. 2, § 2, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 51, which was derived from Laws 2009, c. 228, § 48, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-52. Repealed by Laws 2013, 1st Ex. Sess., c. 2, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 49, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). Now see Title 76, § 52.1.

§76-52.1. Firearm manufacturer, distributor, or seller liability limitation.

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.

Added by Laws 2013, 1st Ex. Sess., c. 2, § 3, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 52, which was derived from Laws 2009, c. 228, § 49, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-52.2. Association of licensed persons liability limitation.

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.

Added by Laws 2013, 1st Ex. Sess., c. 2, § 4, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 53, which was derived from Laws 2009, c. 228, § 50, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-53. Repealed by Laws 2013, 1st Ex. Sess., c. 2, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 50, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). Now see Title 76, § 52.2.

§76-53.1. Exceptions to liability limitations.

The provisions 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 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. Added by Laws 2013, 1st Ex. Sess., c. 2, § 5, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 54, which was derived from Laws 2009, c. 228, § 51, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-54. Repealed by Laws 2013, 1st Ex. Sess., c. 2, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 51, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). Now see Title 76, § 53.1.

§76-57. Repealed by Laws 2013, 1st Ex.Sess., c. 20, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 52, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 57.1.

§76-57.1. Product liability for inherently unsafe products -
Affirmative defense.

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.

Added by Laws 2013, 1st Ex.Sess., c. 20, § 2, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 57, which was derived from Laws 2009, c. 228, § 52, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-57.2. Rebuttable presumptions - Grounds for rebutting - Liability of product sellers.

A. In a product liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the formula, labeling, or design for the product complied with or exceeded mandatory safety standards or regulations adopted, promulgated, and required by the federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused harm.

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

1. The mandatory federal safety standards or regulations applicable to the product and asserted by the defendant as its basis for rebuttable presumption were inadequate to protect the public from unreasonable risks of injury or damage; or

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

C. In a product liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes by a preponderance of the evidence that the product was subject to premarket licensing or approval by the federal government, or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to premarket licensing or

approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. The claimant may rebut this presumption by establishing that:

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

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

D. This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the federal government or an agency of the federal government, or if the product becomes the subject of a recall, or is no longer marketed, pursuant to any order, consent decree, or agreement between the manufacturer and any federal agency.

E. No product liability action may be asserted against a product seller other than the manufacturer, unless:

1. The product seller exercised substantial control over the aspect of the design, testing, manufacture, packaging, or labeling of the product that caused the alleged harm for which recovery of damages is sought; or

2. The product seller altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought; or

3. The product seller made an express warranty as to such product independent of any express warranty made by a manufacturer as to such product, such product failed to conform to the product seller's warranty, and the failure of such product to conform to the warranty caused the harm complained of by the claimant; or

4. The claimant is unable, despite a good-faith exercise of due diligence, to identify the manufacturer of the product; or

5. The manufacturer is not subject to service of process under the laws of the state; or

6. The court determines that the claimant would be unable to enforce a judgment against the manufacturer.

F. In a claim against a seller in a product liability action, discovery shall initially be limited to issues related to subsection E of this section.

G. A product seller other than a manufacturer is liable to a claimant on the basis of negligence if the claimant establishes that:

1. The product seller sold the product involved in such action;
2. The product seller did not exercise reasonable care;

- a. in assembling, inspecting, or maintaining such product, or
- b. in passing on warnings or instructions from such product's manufacturer about the dangers and proper use of such product; and

3. Such failure to exercise reasonable care was a proximate cause of the harm complained of by the claimant.

Added by Laws 2014, c. 217, § 1, eff. Nov. 1, 2014.

§76-58. Repealed by Laws 2013, 1st Ex.Sess., c. 20, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 53, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 58.1.

§76-58.1. Subsequent measures not admissible - Exceptions.

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.

Added by Laws 2013, 1st Ex.Sess., c. 20, § 3, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 58, which was derived from Laws 2009, c. 228, § 53, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-60. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 54, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 90.

§76-61. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 55, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 91.

§76-62. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 56, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 92.

§76-63. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 57, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 93.

§76-64. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 58, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 94.

§76-65. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 59, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 95.

§76-66. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 60, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 96.

§76-67. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 61, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 97.

§76-68. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 62, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas

v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 98.

§76-69. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 63, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 99.

§76-70. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 64, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 100.

§76-71. Repealed by Laws 2013, 1st Ex.Sess., c. 21, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 65, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 100.1.

§76-72. Repealed by Laws 2013, 1st Ex.Sess., c. 22, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 66, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 102.

§76-73. Repealed by Laws 2013, 1st Ex.Sess., c. 22, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 67, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 103.

§76-74. Repealed by Laws 2013, 1st Ex.Sess., c. 22, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 68, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 104.

§76-75. Repealed by Laws 2013, 1st Ex.Sess., c. 22, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 69, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 105.

§76-76. Repealed by Laws 2013, 1st Ex.Sess., c. 22, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 70, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 106.

§76-77. Repealed by Laws 2013, 1st Ex.Sess., c. 22, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 71, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 107.

§76-78. Repealed by Laws 2013, 1st Ex.Sess., c. 22, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 72, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 108.

§76-79. Repealed by Laws 2013, 1st Ex.Sess., c. 22, § 1, emerg. eff. Sept. 10, 2013.

NOTE: Laws 2009, c. 228, § 73, which created this section, was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013). See, now, Title 76, § 109.

§76-80. Safety of premises - Liability to trespasser.

A. A possessor of land, including an owner, lessee, or other occupant, has no duty to make its premises safe for a trespasser and is not subject to liability for any injury to a trespasser.

B. Notwithstanding subsection A of this section, a possessor of land may be subject to liability for physical injury or death to a trespasser in the following situations:

1. A land possessor who knows or reasonably should know of a trespasser's presence on the premises has a duty not to injure that trespasser by a wanton or intentional act, except as permitted by Sections 643 and 1289.25 of Title 21 of the Oklahoma Statutes; or

2. A land possessor may be subject to liability for physical injury or death to a child trespasser from a highly dangerous

artificial condition on the land if the plaintiff establishes all of the following:

- a. the possessor knew or had reason to know that children were likely to trespass at the location of the condition,
- b. the condition is one the possessor knew or reasonably should have known was unusually attractive to children and involved an unreasonable risk of death or serious bodily harm,
- c. the injured child was attracted onto the premises by the condition,
- d. the child lacked the ability to appreciate or realize the risk,
- e. the utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved, and
- f. the child's injury was directly caused by the possessor's failure to exercise reasonable care to eliminate the danger or otherwise protect the child.

As a matter of law, a child under seven (7) years of age has no ability to appreciate the risk from highly dangerous artificial conditions. A child between seven (7) and fourteen (14) years of age is presumed to lack the ability to appreciate the risk from highly dangerous artificial conditions; this presumption may be overcome if the possessor proves by the greater weight of the evidence that the child had the ability to appreciate the danger on the premises at the time of the harm. A child trespasser who is fourteen (14) years of age or older has the burden of proving by the greater weight of the evidence that the child lacked the ability to appreciate the danger on the premises at the time of the harm.

C. "Trespasser" means a person who enters the real estate of another without the permission of the person lawfully entitled to possession. Permission may be either expressed or implied.

D. 1. This section shall not affect Section 16-71.7 of Title 2 of the Oklahoma Statutes relating to trespass upon agricultural land or Section 10.1 of Title 76 of the Oklahoma Statutes relating to trespass upon land used for recreational purposes not for profit.

2. This section shall not create or increase the liability of any person or entity.

Added by Laws 2011, c. 234, § 9.

§76-80.1. Liability and vicarious liability for damages while trespassing.

A. A person who is arrested for or convicted of trespass may be held liable for any damages to personal or real property while trespassing.

B. A person or entity that compensates, provides consideration to or remunerates a person for trespassing as described in subsection A of this section may also be held vicariously liable for any damages to personal or real property committed by the person compensated or remunerated for trespassing.

Added by Laws 2017, c. 262, § 1, eff. Nov. 1, 2017.

§76-81. Short title - Personal Injury Trust Fund Transparency Act.

This act shall be known and may be cited as the "Personal Injury Trust Fund Transparency Act".

Added by Laws 2013, c. 215, § 1, eff. Nov. 1, 2013.

§76-82. Definitions.

As used in the Personal Injury Trust Fund Transparency Act:

1. "Personal injury claim" means any claim for damages, loss, indemnification, contribution, restitution or other relief, including punitive damages, that is related to bodily injury or another harm, including loss of consortium, society, or companionship, loss of support, personal injury or death, mental or emotional injury, risk or fear of disease or other injury, or costs of medical monitoring or surveillance. "Personal injury claim" includes a claim made by or on behalf of the person who claims the injury or harm or by or on behalf of the person's representative, spouse, parent, minor child, or other relative. "Personal injury claim" does not include a claim for compensatory benefits pursuant to crime victim's compensation, workers' compensation or veteran's benefits;

2. "Personal injury trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund or claims facility created as a result of a federal or state administrative or legal action, a court-approved bankruptcy, or pursuant to 11 USC 524(g) or 49 USC 40101, that is intended to provide compensation to claimants alleging personal injury claims as a result of harm, also potentially compensable in the immediate tort action, for which the entity creating the trust, compensation fund, or claims facility is alleged to be responsible;

3. "Trust claims materials" means all documents and information relevant or related to a pending or potential claim against a personal injury trust. "Trust claims materials" include, but are not limited to, claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, and medical and health records; and

4. "Trust governance document" means any document that determines eligibility and payment levels, including claims payment matrices, trust distribution procedures, or plans for reorganization, for a personal injury trust.

Added by Laws 2013, c. 215, § 2, eff. Nov. 1, 2013.

§76-83. Required disclosures by plaintiff.

REQUIRED DISCLOSURES BY PLAINTIFF.

A. Within ninety (90) days after an action for a personal injury or other tort is filed, the plaintiff, without awaiting a discovery request, shall provide to all parties a statement identifying all personal injury claims the plaintiff has or anticipates filing against a personal injury trust, and for each claim, whether there has been a request to defer, delay, suspend or toll the claim against the personal injury trust. The statement shall include an attestation that the plaintiff swears or affirms, under penalties of perjury, that the statement is complete and is based on the plaintiff's and plaintiff's attorney's good-faith investigation of all potential claims against personal injury trusts.

B. The plaintiff shall produce to all parties, for each personal injury claim he or she filed against a personal injury trust identified in subsection A of this section, a final executed proof of claim and all other trust claims materials relevant to each claim.

C. The plaintiff shall supplement the information and materials he or she provided under this section within thirty (30) days after the plaintiff files an additional claim, supplements an existing claim or receives additional information or materials.

Added by Laws 2013, c. 215, § 3, eff. Nov. 1, 2013.

§76-84. Discovery - Use of materials.

DISCOVERY; USE OF MATERIALS.

A. Trust claims materials and trust governance documents shall be presumed to be relevant and authentic, subject to the Rules of Evidence governing admissibility. Any party may present trust claims materials to prove alternative causation for a plaintiff's injuries or to allocate liability for the plaintiff's injury. No claims of privilege may apply to trust claims materials or trust governance documents.

B. A defendant in a personal injury claim may seek discovery against a personal injury trust identified under Section 3 of this act. The plaintiff may not claim privilege or confidentiality to bar discovery under this subsection and shall provide consent or other expression of permission that may be required by the personal injury trust to release information and materials sought by the defendant.

Added by Laws 2013, c. 215, § 4, eff. Nov. 1, 2013.

§76-85. Scheduling trial - Stay of action.

SCHEDULING TRIAL; STAY OF ACTION.

A. The trial date in a personal injury action in this state shall be no earlier than one hundred eighty (180) days after the plaintiff makes the disclosures required under subsections A and B of Section 3 of this act.

B. If a plaintiff states under Section 3 of this act that he or she anticipates a claim against a personal injury trust, all proceedings shall be stayed until the plaintiff files such trust claims and provides to all parties a final executed proof of claim and all other trust claims materials relevant to each claim. The plaintiff shall also state whether there has been a request to defer, delay, suspend, or toll the claim against the personal injury trust. Added by Laws 2013, c. 215, § 5, eff. Nov. 1, 2013.

§76-86. Defendant's identification of additional or alternative personal injury trusts.

DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE PERSONAL INJURY TRUSTS.

A. 1. Not later than ninety (90) days before trial, any defendant may move the court for an order under subsection D of this section by identifying a personal injury trust against which the defendant in good faith believes the plaintiff can file a successful claim. For each personal injury trust a defendant identifies, the defendant shall produce or describe the evidence sufficient to meet the personal injury trust distribution procedure requirements to file a valid claim and the amount of money the trust should pay for the claim.

2. Notwithstanding any other provision of this subsection, if the plaintiff produces additional information that supports the filing of an additional personal injury trust claim, a defendant may file a motion to stay the proceedings within seven (7) days of receiving the additional information.

B. Within ten (10) days of receiving a motion under subsection A of this section, the plaintiff shall, for each personal injury trust identified by the defendant:

1. File a claim with the personal injury trust;

2. File a written response with the court that sets forth reasons why there is insufficient evidence to permit the plaintiff to file a claim in good faith under the personal injury trust distribution procedure identified by the defendant; or

3. File a written response with the court requesting a determination that the plaintiff's or attorney's fees and expenses to prepare and file the personal injury trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the personal injury trust.

C. If the defendant has met its burden under subsection A of this section, and if the plaintiff files a response pursuant to paragraph 2 of subsection B of this section, the court shall determine, for each personal injury trust identified under subsection A of this section, whether there is a good-faith basis for the plaintiff to file a claim with the personal injury trust or if the

plaintiff does not meet criteria set forth in the personal injury trust's trust governance documents.

D. If the defendant has met its burden under subsection A of this section and if the plaintiff files a response pursuant to paragraph 3 of subsection B of this section, the court shall determine if the plaintiff's or attorney's fees and expenses to prepare and file the personal injury trust claim identified in the defendant's motion, exceed the plaintiff's reasonably anticipated recovery from the personal injury trust.

E. If the court determines that there is a good-faith basis for the plaintiff to file a claim against a personal injury trust identified by a defendant, the court shall:

1. Order the plaintiff to file a claim with the personal injury trust and stay the immediate action until the plaintiff swears or affirms that he or she has filed the claim against the personal injury trust and the plaintiff provides to all parties a final executed proof of claim and all other trust claims materials relevant to each claim the plaintiff has against a personal injury trust; or

2. If the court determines, pursuant to subsection D of this section, that the plaintiff's or attorney's fees and expenses exceed the plaintiff's reasonably anticipated recovery from the personal injury trust, the court shall stay the immediate action until the plaintiff files with the court and produces to all parties a verified statement of the plaintiff's history of exposure, usage, or other connection, as relevant, to the products, services, or events covered by the personal injury trust.

F. Not less than thirty (30) days after the plaintiff provides the documentation required under subsection D of this section, the court may schedule the plaintiff's action for trial.

G. Not less than thirty (30) days prior to trial, the court shall enter into the record a trust claims document that identifies each personal injury claim the plaintiff has made against a personal injury trust.

Added by Laws 2013, c. 215, § 6, eff. Nov. 1, 2013.

§76-87. Valuation of personal injury trust claims - Judicial notice.

VALUATION OF PERSONAL INJURY TRUST CLAIMS; JUDICIAL NOTICE.

If a plaintiff proceeds to trial under this section before one of more of his or her personal injury trust claims is resolved, there is a rebuttable presumption that the plaintiff is entitled to, and will receive, the liquidated value specified in the trust governance document applicable to his or her claim at the time of trial. The court may take judicial notice that the trust governance document specifies compensation amounts and payment percentages and shall establish an attributed value to the plaintiff's personal injury trust claim.

Added by Laws 2013, c. 215, § 7, eff. Nov. 1, 2013.

§76-88. Setoffs - Credits.

SETOFFS; CREDIT.

In any personal injury claim for which damages are awarded, a defendant is entitled to a setoff or credit in the amount of the valuation established under Section 7 of this act and any amount the plaintiff has been awarded from a personal injury trust claim identified in subsection F of Section 6 of this act. If multiple defendants are found liable for damages, the court shall distribute the amount of setoff or credit proportionally, according to the liability of each defendant.

Added by Laws 2013, c. 215, § 8, eff. Nov. 1, 2013.

§76-89. Failure to provide information - Sanctions.

FAILURE TO PROVIDE INFORMATION; SANCTIONS.

A plaintiff who fails to provide all of the information required under Section 3, subsection B of Section 4 or subsection D of Section 6 of this act is subject to sanctions as provided in Sections 2011 and 3237 of Title 12 of the Oklahoma Statutes.

Added by Laws 2013, c. 215, § 9, eff. Nov. 1, 2013.

§76-90. Short title - Asbestos and Silica Claims Priorities Act.

This act shall be known and may be cited as the "Asbestos and Silica Claims Priorities Act".

Added by Laws 2013, 1st Ex.Sess., c. 21, § 2, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 60, which was derived from Laws 2009, c. 228, § 54, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-91. Legislative findings.

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.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 3, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 61, which was derived from Laws 2009, c. 228, § 55, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-92. Definitions.

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 5 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 6 or 7 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.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 4, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 62, which was derived from Laws 2009, c. 228, § 56, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-93. Pulmonary function testing - Interpretation.

Pulmonary function testing required by this act 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.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 5, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 63, which was derived from Laws 2009, c. 228, § 57, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-94. Prerequisite of prima facie showing in asbestos claims - Detailed occupational and exposure history - Evidence standards.

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.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 6, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 64, which was derived from Laws 2009, c. 228, § 58, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-95. Prerequisite of prima facie showing in silica claims - Medical report - Evidence requirements.

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.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 7, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 65, which was derived from Laws 2009, c. 228, § 59, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-96. Service of report on all defendants - Trial docket - Interpretation.

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.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 8, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 66, which was derived from Laws 2009, c. 228, § 60, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-97. Filing of written report and supporting test results of prima facie showing - Expediting mesothelioma claims.

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 8 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 6 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.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 9, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 67, which was derived from Laws 2009, c. 228, § 61, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-98. Effect of act in bankruptcy cases.

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.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 10, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 68, which was derived from Laws 2009, c. 228, § 62, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-99. Restriction on adverse actions in regard to health benefit plans, annuities, or life insurance, as a result of meeting this act's procedural requirements.

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.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 11, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 69, which was derived from Laws 2009, c. 228, § 63, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-100. Beginning of limitations period - Separate claims for nonmalignant conditions and cancer.

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 6 or 7 of this act.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 12, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 70, which was derived from Laws 2009, c. 228, § 64, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-100.1. Applicability of act.

EFFECTIVE DATE. The Asbestos and Silica Claims Priorities Act shall apply to all asbestos or silica claims filed on or after the effective date of this act. The Asbestos and Silica Claims Priorities Act shall also apply to any pending asbestos or silica claims in which trial has not commenced by the effective date of this act, except that any provisions of these sections which would be unconstitutional if applied retroactively shall be applied prospectively.

Added by Laws 2013, 1st Ex.Sess., c. 21, § 13, emerg. eff. Sept. 10, 2013.

NOTE: Editorially renumbered from Title 76, § 101 to avoid a duplication in numbering.

NOTE: Text formerly resided under repealed Title 76, § 71, which was derived from Laws 2009, c. 228, § 65, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-101. Severe weather shelter - Immunity from suit.

Any entity or individual that provides access to a safe place in times of severe weather shall not be liable for any civil damages to any person using the safe place during severe weather if the entity or individual was acting in good faith and the damage or injury was not caused by the willful or wanton negligence or misconduct of the entity or individual.

As used in this section:

1. "Safe place" means any property, dwelling, shelter or other structure that can be reasonably considered protection from severe weather; and

2. "Severe weather" includes but is not limited to tornadoes, high winds and floods.

Added by Laws 2012, c. 181, § 1, emerg. eff. May 4, 2012.

§76-102. Short title - Innocent Successor Asbestos-Related Liability Fairness Act.

SHORT TITLE. This act shall be known and may be cited as the "Innocent Successor Asbestos-Related Liability Fairness Act".

Added by Laws 2013, 1st Ex.Sess., c. 22, § 2, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 72, which was derived from Laws 2009, c. 228, § 66, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-103. Definitions.

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 6 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. Added by Laws 2013, 1st Ex.Sess., c. 22, § 3, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 73, which was derived from Laws 2009, c. 228, § 67, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-104. Applicability.

APPLICABILITY. A. The limitations in Section 5 of this act shall apply to any innocent successor corporation.

B. The limitations in Section 5 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.

Added by Laws 2013, 1st Ex.Sess., c. 22, § 4, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 74, which was derived from Laws 2009, c. 228, § 68, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-105. Limitations on successor asbestos-related liabilities.

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.

Added by Laws 2013, 1st Ex.Sess., c. 22, § 5, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 75, which was derived from Laws 2009, c. 228, § 69, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-106. Establishing fair market value of total gross assets.

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 5 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.

Added by Laws 2013, 1st Ex.Sess., c. 22, § 6, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 76, which was derived from Laws 2009, c. 228, § 70, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-107. Adjustment.

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 6 of this act.

Added by Laws 2013, 1st Ex.Sess., c. 22, § 7, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 77, which was derived from Laws 2009, c. 228, § 71, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-108. Scope of act.

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.

Added by Laws 2013, 1st Ex.Sess., c. 22, § 8, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 78, which was derived from Laws 2009, c. 228, § 72, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).

§76-109. Effective date.

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.

Added by Laws 2013, 1st Ex.Sess., c. 22, § 9, emerg. eff. Sept. 10, 2013.

NOTE: Text formerly resided under repealed Title 76, § 79, which was derived from Laws 2009, c. 228, § 73, which was held unconstitutional by the Oklahoma Supreme Court in the case of Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.2d 789 (Okla. 2013).