# An Act

ENROLLED SENATE
BILL NO. 574

By: Jolley, Schulz, Sykes and Shortey of the Senate

and

Trebilcock, Derby, Cox, Joyner, Blackwell, Peterson, Ritze, Sanders and Shannon of the House

An Act relating to the practice of dentistry; amending 59 O.S. 2001, Sections 328.15, as last amended by Section 16, Chapter 413, O.S.L. 2010, 328.27, as amended by Section 3, Chapter 377, O.S.L. 2005, 328.32, 328.36a and 328.44a, as last amended by Section 6, Chapter 377, O.S.L. 2005 (59 O.S. Supp. 2010, Sections 328.15, 328.27 and 328.44a), which relate to the State Dental Act; modifying certain powers of Board of Dentistry; requiring faculty permit holders to show certain proof; modifying list of acts by a dentist which constitute grounds for penalties by Board; modifying requirements of laboratory prescriptions issued by a dentist; requiring Board to make certain forms readily available; permitting dentists to produce, transfer and retain certain copies electronically; permitting Board to collect certain fees; amending 59 O.S. 2001, Section 738.1, which relates to injunctions; adding certain boards that may be granted injunctions without bonds; providing duties of Board investigators; providing for possession of sidearm and badge upon retirement; requiring professional liability insurance for dentists; providing for exceptions; permitting the Board to promulgate certain rules; amending 47 O.S. 2001, Section 2-300, as last amended by Section 1 of Enrolled Senate Bill

No. 584 of the 1st Session of the 53rd Oklahoma Legislature, which relates to definitions; modifying certain definition; providing for codification; providing an effective date; and declaring an emergency.

SUBJECT: Practice of dentistry

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

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

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

B. The Board is authorized and empowered to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Enter into contracts;

20. Acquire~~, rent~~ by purchase, lease, gift, solicitation of gift or by any other manner, hold, encumber, and dispose of personal property as is needed, maintain, use and operate or contract for the maintenance, use and operation of or lease of any and all property of any kind, real, personal or mixed or any interest therein unless otherwise provided by the State Dental Act; provided, all contracts for real property shall be subject to the provisions of Section 63 of Title 74 of the Oklahoma Statutes.

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

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

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

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

a. is a graduate of a school of dentistry approved by the Board and is licensed to practice dentistry in another state or country,

b. successfully completes advanced training in a specialty approved by the Commission on Dental Accreditation of the American Dental Association, or

c. is a graduate of an accredited dental hygiene program and is licensed to practice dental hygiene in another state.

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

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

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

B. The holder of a faculty permit shall be entitled to perform services and procedures in the same manner as a person holding a license to practice dentistry or dental hygiene in this state, but all services and procedures performed by the faculty permit holder shall only be without compensation other than that received in salary from a faculty position or through faculty practice as authorized by the Board. Such services and procedures shall be performed only within the facilities of an accredited dental college or accredited dental hygiene program or in a seminar or postgraduate course and as an adjunct to teaching functions. A holder of a faculty permit shall only engage in faculty practice of dentistry or dental hygiene within the facilities designated by the accredited dental college and including teaching hospitals approved by the Board.

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

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

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

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

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

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

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

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

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

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

9. Failing to complete continuing education requirements;

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

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

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

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

14. Being shown to be mentally unsound;

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

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

17. Committing gross negligence in the practice of dentistry;

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

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

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

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

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

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

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

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

26. Willfully disclosing confidential information;

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

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

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

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

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

32. Failing to retain all patient records for at least three (3) years, except that the failure to retain records shall not be a violation of the State Dental Act if the dentist shows that the records were lost, destroyed, or removed by another, without the consent of the dentist;

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

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

a. limit a patient's right of informed consent, or

b. to prohibit insurers, preferred provider organizations and managed care plans from operating pursuant to the applicable provisions of the Oklahoma Insurance Code and the Public Health Code;

35. Violating the state dental act of another state resulting in a plea of guilty or nolo contendere, conviction or suspension or revocation of the license of the dentist under the laws of that state;

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

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

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

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

otherwise advertise as a licensed, registered, certified, or credentialed dentist.

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

Section 328.36a A. A dentist may utilize a dental laboratory technician and a dental laboratory to perform or provide dental laboratory technology. Except as provided in subsection C of Section 328.36 of this title, a dentist who utilizes the services of a dental laboratory technician or dental laboratory shall furnish a laboratory prescription for each patient for whom a work product is prescribed.

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

C. The patient's name or the identification number of the laboratory prescription shall appear on all dental models and correspond to all dental restorations, appliances or other devices being constructed, reproduced or repaired. Any dental model, restoration, appliance or other device in the possession of a dental laboratory technician or dental laboratory without a laboratory prescription and corresponding number on the model, restoration, appliance or device shall be prima facie evidence of a violation of the State Dental Act. After completion, the prescribed work product shall be returned by the dental laboratory technician or dental

laboratory to the prescribing dentist or the dental office of the dentist with the name or number of the laboratory prescription accompanying the invoice.

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

1. The name and address of the dental laboratory;

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

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

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

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

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

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

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

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

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

Section 328.44a A. The Board of Dentistry is authorized, after notice and opportunity for a hearing pursuant to Article II of the

Administrative Procedures Act, to issue an order imposing one or more of the following penalties whenever the Board finds, by clear and convincing evidence, that a dentist, dental hygienist, dental assistant, dental laboratory technician, or holder of a permit to operate a dental laboratory has committed any of the acts or occurrences set forth in Sections 328.29, 328.32, 328.33, 328.39 and 328.39a of this title:

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

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

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

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

5. Issuance of a censure;

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

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

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

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

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

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

Section 738.1 Injunctions, without bond, may be granted by district courts to the Board of Podiatric Medical Examiners, the Board of Chiropractic Examiners, the State Board of Medical Licensure and Supervision, the Board of Examiners in Optometry, the Board of Pharmacy, the Board of Dentistry, the Board of Veterinary Medical Examiners or the State Board of Osteopathic Examiners, for the purpose of enforcing the respective acts and laws creating and establishing these boards.

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

A. Investigators for the Board shall be authorized to:

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

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

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

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

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

A. All dentists in active practice licensed by the Board of Dentistry shall maintain a policy for professional liability

insurance; provided, however, that such requirement shall not apply to dentists:

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

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

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

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

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

SECTION 9. AMENDATORY 47 O.S. 2001, Section 2-300, as last amended by Section 1 of Enrolled Senate Bill No. 584 of the 1st Session of the 53rd Oklahoma Legislature, is amended to read as follows:

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

1. "System" means the Oklahoma Law Enforcement Retirement System;

2. "Act" means Section 2-300 et seq. of this title;

3. "Board" means the Oklahoma Law Enforcement Retirement Board of the System;

4. "Executive Director" means the managing officer of the System employed by the Board;

5. "Fund" means the Oklahoma Law Enforcement Retirement Fund;

6. a. "Member" means:

(1) all commissioned law enforcement officers of the Oklahoma Highway Patrol Division of the Department of Public Safety who have obtained certification from the Council on Law Enforcement Education and Training, and all cadets of a Patrol Academy of the Department of Public Safety,

(2) law enforcement officers and criminalists of the Oklahoma State Bureau of Investigation,

(3) law enforcement officers of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control designated to perform duties in the investigation and prevention of crime and the enforcement of the criminal laws of this state,

(4) law enforcement officers of the Oklahoma Alcoholic Beverage Laws Enforcement Commission designated to perform duties in the investigation and prevention of crime and the enforcement of the criminal laws of this state,

(5) employees of the Communications Section of the Oklahoma Highway Patrol Division, radio technicians, and tower technicians of the Department of Public Safety, who are employed in any such capacity as of June 30, 2008, and who remain employed on or after July 1, 2008, until a termination of service, or until a termination of service with an election of a vested benefit from the System, or until retirement. Effective July 1, 2008, a person employed for the first time as an employee of the Department of Public Safety in the Communications Division as an information systems telecommunication technician of the Department of Public Safety shall not be a member of the System,

(6) park rangers of the Oklahoma Tourism and Recreation Department and any park manager or

park supervisor of the Oklahoma Tourism and Recreation Department who was employed in such a position prior to July 1, 1985, and who elects on or before September 1, 1996, to participate in the System, and

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

b. Effective July 1, 1987, a member does not include a "leased employee" as defined under Section 414(n)(2) of the Internal Revenue Code of 1986, as amended. Effective July 1, 1999, any individual who agrees with the participating employer that the individual's services are to be performed as a leased employee or an independent contractor shall not be a member regardless of any classification as a common-law employee by the Internal Revenue Service or any other governmental agency, or any court of competent jurisdiction.

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

(1) all such persons shall be of good moral character, free from deformities, mental or physical conditions, or disease and alcohol or drug addiction which would prohibit the person from performing the duties of a law enforcement officer,

(2) the physical-medical examination shall pertain to age, sight, hearing, agility and other conditions the requirements of which shall be established by the Board,

(3) the person shall be required to meet the conditions of this subsection prior to the beginning of actual employment but after an offer of employment has been tendered by a participating employer,

(4) the Board shall have authority to deny or revoke membership of any person submitting false information in such person's membership application, and

(5) the Board shall have final authority in determining eligibility for membership in the System, pursuant to the provisions of this subsection;

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

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

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

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

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

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

With respect to distributions under the System made for calendar years beginning on or after January 1, 2005, the System shall apply the minimum distribution incidental benefit requirements, incidental benefit requirements, and minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the final regulations under Section 401(a)(9) of

the Internal Revenue Code of 1986, as amended, which were issued in April 2002 and June 2004, notwithstanding any provision of the System to the contrary. With respect to distributions under the System made for calendar years beginning on or after January 1, 2001, through December 31, 2004, the System shall apply the minimum distribution requirements and incidental benefit requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, which were proposed in January 2001, notwithstanding any provision of the System to the contrary.

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

Effective September 8, 2009, notwithstanding anything to the contrary of the System, the System, which as a governmental plan (within the meaning of Section 414(d) of the Internal Revenue Code of 1986, as amended), is treated as having complied with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, for all years to which Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, applies to the System if the System complies with a reasonable and good faith interpretation of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended.

A member who was required to join the System effective July 1, 1980, because of the transfer of the employing agency from the Oklahoma Public Employees Retirement System to the System, and was not a member of the Oklahoma Public Employees Retirement System on the date of such transfer shall be allowed to receive credit for prior law enforcement service rendered to this state, if the member is not receiving or eligible to receive retirement credit or benefits for such service in any other public retirement system, upon payment to the System of the employee contribution the member would have been subject to had the member been a member of the System at the time, plus five percent (5%) interest. Service credit

received pursuant to this paragraph shall be used in determining the member's retirement benefit, and shall be used in determining years of service for retirement or vesting purposes;

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

9. "Final average salary" means the average of the highest thirty (30) consecutive complete months of actual paid gross salary. Gross salary shall include any amount of elective salary reduction under Section 457 of the Internal Revenue Code of 1986, as amended, and any amount of nonelective salary reduction under Section 414(h) of the Internal Revenue Code of 1986, as amended. Effective July 1, 1992, gross salary shall include any amount of elective salary reduction under Section 125 of the Internal Revenue Code of 1986, as amended. Effective July 1, 1998, gross salary shall include any amount of elective salary reduction not includable in the gross income of the member under Section 132(f)(4) of the Internal Revenue Code of 1986, as amended. Effective July 1, 1998, for purposes of determining a member's compensation, any contribution by the member to reduce his or her regular cash remuneration under Section 132(f)(4) of the Internal Revenue Code of 1986, as amended, shall be treated as if the member did not make such an election. Only salary on which required contributions have been made may be used in computing the final average salary. Gross salary shall not include severance pay.

In addition to other applicable limitations, and notwithstanding any other provision to the contrary, for plan years beginning on or after July 1, 2002, the annual gross salary of each "Noneligible Member" taken into account under the System shall not exceed the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") annual salary limit. The EGTRRA annual salary limit is Two Hundred Thousand Dollars ($200,000.00), as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code of 1986, as amended. The annual salary limit in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which salary is determined ("determination period") beginning in such calendar year. If a determination period consists of fewer than twelve (12) months,

the EGTRRA salary limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12). For purposes of this section, a "Noneligible Member" is any member who first became a member during a plan year commencing on or after July 1, 1996.

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

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

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

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

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

10. "Credited service" means the period of service used to determine the amount of benefits payable to a member. Credited service shall consist of the period during which the member participated in the System or the predecessor Plan as an active employee in an eligible membership classification, plus any service prior to the establishment of the predecessor Plan which was credited under the predecessor Plan and for law enforcement officers and criminalists of the Oklahoma State Bureau of Investigation and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control who became members of the System on July 1, 1980, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1980, and for members of the Communications and Lake Patrol Divisions of the Oklahoma Department of Public Safety, who became members of the System on July 1, 1981, any service credited under the predecessor Plan or the Oklahoma Public Employees Retirement System as of June 30, 1981, and for law enforcement officers of the Alcoholic Beverage Laws Enforcement Commission who became members of the System on July 1, 1982, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1982, and for park rangers of the Oklahoma Tourism and Recreation Department who became members of the System on July 1, 1985, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1985, and for inspectors of the Oklahoma State Board of Pharmacy who became members of the System on July 1, 1986, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1986, for law enforcement officers of the Oklahoma Capitol Patrol Division of the Department of Public Safety who became members of the System effective July 1, 1993, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1993, and for all commissioned officers in the Gunsmith/Ammunition Reloader Division of the Department of Public Safety who became members of the System effective July 1, 1994, any service credited under the Oklahoma Public Employees Retirement System as of June 30, 1994, and for the park managers or park supervisors of the Oklahoma Tourism and Recreation Department who were employed in such a position prior to July 1, 1985, and who elect to become members of the System effective September 1, 1996, any service transferred pursuant to subsection C of Section 2-309.6 of this title and any service

purchased pursuant to subsection B of Section 2-307.2 of this title. Effective August 5, 1993, an authorized leave of absence shall include a period of absence pursuant to the Family and Medical Leave Act of 1993;

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

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

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

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

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

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

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

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

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

Passed the Senate the 11th day of May, 2011.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of April, 2011.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 12th

day of May, 20 11,

at 1:24 o'clock P.M.

By: Jessica R. Rogers

Approved by the Governor of the State of Oklahoma the 18th day of

May, 20 11, at 1:36 o'clock P.M.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

18th day of May, 20 11,

at 3:13 o'clock P M.

By: V. Glenn Coffee