

1                           **SENATE FLOOR VERSION**

2                           February 11, 2025

3 SENATE BILL NO. 625

By: Howard

6                           An Act relating to the Oklahoma Discovery Code;  
7                           amending 12 O.S. 2021, Section 3226, which relates to  
8                           general provisions governing discovery; requiring  
9                           production of commercial litigation funding agreement  
10                          upon request; prohibiting admissibility of certain  
                             information as evidence; requiring certain  
                             certification with production of agreement; providing  
                             exception; defining terms; providing for  
                             codification; and providing an effective date.

11  
12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14                           SECTION 1.       AMENDATORY       12 O.S. 2021, Section 3226, is  
15                           amended to read as follows:

16                           Section 3226. A. DISCOVERY METHODS; INITIAL DISCLOSURES.

17                           1. DISCOVERY METHODS. Parties may obtain discovery regarding  
18                           any matter that is relevant to any party's claim or defense by one  
19                           or more of the following methods: Depositions upon oral examination  
20                           or written questions; written interrogatories; production of  
21                           documents or things or permission to enter upon land or other  
22                           property, for inspection and other purposes; physical and mental  
23                           examinations; requests for admission; authorizations for release of  
24                           records; and otherwise by court order upon showing of good cause.

1 Except as provided in this section or unless the court orders  
2 otherwise under this section, the frequency of use of these methods  
3 is not limited.

4       2. INITIAL DISCLOSURES.

5           a. Except in categories of proceedings specified in  
6               subparagraph b of this paragraph, or to the extent  
7               otherwise stipulated or directed by order, a party,  
8               without awaiting a discovery request, shall provide to  
9               other parties a computation of any category of damages  
10              claimed by the disclosing party, making available for  
11              inspection and copying the documents or other  
12              evidentiary material, not privileged or protected from  
13              disclosure, on which such computation is based,  
14              including materials bearing on the nature and extent  
15              of injuries suffered. Subject to subsection B of this  
16              section, in any action in which physical or mental  
17              injury is claimed, the party making the claim shall  
18              provide to the other parties a release or  
19              authorization allowing the parties to obtain relevant  
20              medical records and bills, and, when relevant, a  
21              release or authorization for employment and scholastic  
22              records.

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

- (1) an action for review of an administrative record,
  - (2) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence,
  - (3) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision,
  - (4) an action to enforce or quash an administrative summons or subpoena,
  - (5) an action by the United States to recover benefit payments,
  - (6) an action by the United States to collect on a student loan guaranteed by the United States,
  - (7) a proceeding ancillary to proceedings in other courts, and
  - (8) an action to enforce an arbitration award.

c. Disclosures required under this paragraph shall be made at or within sixty (60) days after service unless a different time is set by stipulation or court order, or unless a party objects that initial disclosures are not appropriate in the circumstances of the action and states the objection in a motion filed with the court.

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

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

1. IN GENERAL.

a. Parties may obtain discovery regarding any matter, not privileged, which is relevant to any party's claim or defense, reasonably calculated to lead to the discovery of admissible evidence and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of

1                   discovery need not be admissible in evidence to be  
2                   discoverable.

3                   b. A party shall produce upon request pursuant to Section  
4                   3234 of this title, any insurance agreement under  
5                   which any person carrying on an insurance business may  
6                   be liable to satisfy part or all of a judgment which  
7                   may be entered in the action or to indemnify or  
8                   reimburse for payments made to satisfy the judgment.  
9                   Information concerning the insurance agreement is not  
10                  by reason of disclosure admissible in evidence at  
11                  trial. For purposes of this section, an application  
12                  for insurance shall not be treated as a part of an  
13                  insurance agreement.

14                  c. A party shall produce upon request, pursuant to  
15                  Section 3234 of this title, any commercial litigation  
16                  funding agreement as defined in Section 2 of this act.  
17                  Information related to the commercial litigation  
18                  funding agreement is not by reason of disclosure  
19                  admissible as evidence at trial. Production of a  
20                  commercial litigation funding agreement shall include  
21                  a certification by sworn affidavit by the producing  
22                  party as to whether any funds encumbered by the terms  
23                  of the agreement have been or will be sourced from a  
24                  foreign state or agency or instrumentality of a

1                   foreign state as defined in 28 U.S.C., Section 1603,  
2                   as amended. Certification that discloses that a  
3                   foreign state or agency or instrumentality of a  
4                   foreign state is such a source shall include the  
5                   identity of the foreign state, agency, or  
6                   instrumentality that is the source of the funds. Such  
7                   certification shall be supplemented or corrected by  
8                   the producing party within thirty (30) days in the  
9                   event the certification becomes incomplete or  
10                  inaccurate in a material respect. A consumer  
11                  litigation funding agreement as defined in Section 3-  
12                  801 of Title 14A of the Oklahoma Statutes shall be  
13                  exempt from the provisions of this subparagraph.

14                  d.    If a commercial litigation funding agreement as  
15                  defined in Section 2 of this act, has been requested,  
16                  a party shall also produce, upon request pursuant to  
17                  Sections 3234 and 3236 of this title, a certification  
18                  by sworn affidavit by the producing party that  
19                  identifies whether the party is an entity controlled  
20                  by a foreign adversary. The certification shall also  
21                  include an admission or denial as to whether the party  
22                  is under the control or direction of an entity  
23                  controlled by a foreign adversary and whether the  
24                  party will allow access to any documents or

1                   information arising in the litigation not generally  
2                   available to the public to an entity controlled by a  
3                   foreign adversary. In the event that the producing  
4                   party admits that an entity controlled by a foreign  
5                   adversary may access any documents or information  
6                   arising in the litigation not generally available to  
7                   the public, the party shall specify the persons who  
8                   will have access to such documents or information.  
9                   Further, if the party receives funding pursuant to a  
10                  commercial litigation funding agreement as defined in  
11                  Section 2 of this act, the certification shall include  
12                  a statement that the funding was not sourced from an  
13                  entity controlled by a foreign adversary.

14                  2. LIMITATIONS ON FREQUENCY AND EXTENT.

15                  a. By order, the court may alter the limits on the length  
16                  of depositions under Section 3230 of this title, on  
17                  the number of interrogatories under Section 3233 of  
18                  this title, on the number of requests to produce under  
19                  Section 3234 of this title, or on the number of  
20                  requests for admission under Section 3236 of this  
21                  title.

22                  b. A party is not required to provide discovery of  
23                  electronically stored information from sources that  
24                  the party identifies as not reasonably accessible

1 because of undue burden or cost. On motion to compel  
2 discovery or for a protective order, the party from  
3 whom discovery is sought must show that the  
4 information is not reasonably accessible because of  
5 undue burden or cost. If that showing is made, the  
6 court may order discovery from such sources if the  
7 requesting party shows good cause, considering the  
8 limitations of subparagraph c of this paragraph. The  
9 court may specify conditions for the discovery.

- 10 c. On motion or on its own, the court shall limit the  
11 frequency or extent of discovery otherwise allowed if  
12 it determines that:
- 13 (1) the discovery sought is unreasonably cumulative  
14 or duplicative, or can be obtained from some  
15 other source that is more convenient, less  
16 burdensome, or less expensive,
- 17 (2) the party seeking discovery has had ample  
18 opportunity to obtain the information by  
19 discovery in the action, or
- 20 (3) the proposed discovery is outside the scope  
21 permitted by subparagraph a of paragraph 1 of  
22 this subsection.
- 23 d. If an officer, director or managing agent of a  
24 corporation or a government official is served with

1 notice of a deposition or subpoena regarding a matter  
2 about which he or she has no knowledge, he or she may  
3 submit at a reasonable time prior to the date of the  
4 deposition an affidavit to the noticing party so  
5 stating and identifying a person within the  
6 corporation or government entity who has knowledge of  
7 the subject matter involved in the pending action.  
8 Notwithstanding such affidavit, the noticing party may  
9 proceed with the deposition, subject to the noticed  
10 witness's right to seek a protective order.

11 3. TRIAL PREPARATION: MATERIALS.

12 a. Unless as provided by paragraph 4 of this subsection,  
13 a party may not discover documents and tangible things  
14 that are prepared in anticipation of litigation or for  
15 trial by or for another party or its representative,  
16 including the other party's attorney, consultant,  
17 surety, indemnitor, insurer or agent. Subject to  
18 paragraph 4 of this subsection, such materials may be  
19 discovered if:

- 20 (1) they are otherwise discoverable under paragraph 1  
21 of this subsection, and  
22 (2) the party shows that it has substantial need for  
23 the materials to prepare its case and cannot,

without undue hardship, obtain their substantial equivalent by other means.

b. If the court orders discovery of such materials, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of a party's attorney or other representative concerning the litigation.

- c. A party or other person may, upon request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and the provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses. A previous statement is either:

- (1) a written statement that the person has signed or otherwise adopted or approved, or
- (2) a contemporaneous stenographic, mechanical, electrical, or other recording, or a transcription thereof, which recites substantially verbatim the person's oral statement.

#### 4. TRIAL PREPARATION: EXPERTS.

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

(1) a party may, through interrogatories, require any other party to identify each person whom that

other party expects to call as an expert witness at trial and give the address at which that

expert witness may be located,

(2) after disclosure of the names and addresses of

the expert witnesses, the other party expects to call as witnesses, the party, who has requested

disclosure, may depose any such expert witness subject to scope of this section. Prior to

taking the deposition the party must give notice.

as required in subsections A and C of Section

3230 of this title, and

In addition to taking the depositions of expert witnesses the party may, through interrogatories

witnesses to state the subject matter on which each expert witness is expected to testify; the

substance of the facts and opinions to which the

1                   expert is expected to testify and a summary of  
2                   the grounds for each opinion; the qualifications  
3                   of each expert witness, including a list of all  
4                   publications authored by the expert witness  
5                   within the preceding ten (10) years; the  
6                   compensation to be paid to the expert witness for  
7                   the testimony and preparation for the testimony;  
8                   and a listing of any other cases in which the  
9                   expert witness has testified as an expert at  
10                  trial or by deposition within the preceding four  
11                  (4) years. An interrogatory seeking the  
12                  information specified above shall be treated as a  
13                  single interrogatory for purposes of the  
14                  limitation on the number of interrogatories in  
15                  Section 3233 of this title.

- 16                 b. The protection provided by paragraph 3 of this  
17                 subsection extends to communications between the  
18                 party's attorney and any expert witness retained or  
19                 specially employed to provide expert testimony in the  
20                 case or whose duties as the party's employee regularly  
21                 involve giving expert testimony, except to the extent  
22                 that the communications:  
23                   (1) relate to compensation for the expert's study or  
24                   testimony,

- (2) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed, or
  - (3) identify assumptions that the party's attorney provided and that the expert relied upon in forming the opinions to be expressed.

c. A party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial, except as provided in Section 3235 of this title or upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

d. Unless manifest injustice would result:

- (1) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under division (2) of subparagraph a of this paragraph and subparagraph c of this paragraph, and
- (2) the court shall require that the party seeking discovery with respect to discovery obtained

1                   under subparagraph c of this paragraph, pay the  
2                   other party a fair portion of the fees and  
3                   expenses reasonably incurred by the latter party  
4                   in obtaining facts and opinions from the expert.

5        5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION

6 MATERIALS.

7        a. When a party withholds information otherwise  
8                  discoverable under the Oklahoma Discovery Code by  
9                  claiming that it is privileged or subject to  
10                 protection as trial preparation material, the party  
11                 shall make the claim expressly and shall describe the  
12                 nature of the documents, communications, or things not  
13                 produced or disclosed in a manner that, without  
14                 revealing information itself privileged or protected,  
15                 will enable other parties to assess the applicability  
16                 of the privilege or protection.

17       b. If information produced in discovery is subject to a  
18                 claim of privilege or of protection as trial  
19                 preparation material, the party making the claim may  
20                 notify any party that received the information of the  
21                 claim and the basis for it. After being notified, a  
22                 party shall promptly return, sequester, or destroy the  
23                 specified information and any copies the party has;  
24                 shall not use or disclose the information until the

1                   claim is resolved; shall take reasonable steps to  
2                   retrieve the information if the party has disclosed it  
3                   before being notified; and may promptly present the  
4                   information to the court under seal for a  
5                   determination of the claim. The producing party shall  
6                   preserve the information until the claim is resolved.  
7                   This mechanism is procedural only and does not alter  
8                   the standards governing whether the information is  
9                   privileged or subject to protection as trial  
10                  preparation material or whether such privilege or  
11                  protection has been waived.

12                  C. PROTECTIVE ORDERS.

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

24                  a. that the discovery not be had,

- 1           b. that the discovery may be had only on specified terms  
2           and conditions, including a designation of the time,  
3           place or the allocation of expenses,  
4           c. that the discovery may be had only by a method of  
5           discovery other than that selected by the party  
6           seeking discovery,  
7           d. that certain matters not be inquired into, or that the  
8           scope of the disclosure or discovery be limited to  
9           certain matters,  
10          e. that discovery be conducted with no one present except  
11           persons designated by the court,  
12          f. that a deposition after being sealed be opened only by  
13           order of the court,  
14          g. that a trade secret or other confidential research,  
15           development or commercial information not be disclosed  
16           or be disclosed only in a designated way, and  
17          h. that the parties simultaneously file specified  
18           documents or information enclosed in sealed envelopes  
19           to be opened as directed by the court.

20         2. If the motion for a protective order is denied in whole or

21         in part, the court may, on such terms and conditions as are just,

22         order that any party or person provide or permit discovery. The

23         provisions of paragraph 4 of subsection A of Section 3237 of this

24         title apply to the award of expenses incurred in relation to the

1 motion. Any protective order of the court which has the effect of  
2 removing any material obtained by discovery from the public record  
3 shall contain the following:

- 4           a. a statement that the court has determined it is  
5                 necessary in the interests of justice to remove the  
6                 material from the public record,
- 7           b. specific identification of the material which is to be  
8                 removed or withdrawn from the public record, or which  
9                 is to be filed but not placed in the public record,  
10                 and
- 11           c. a requirement that any party obtaining a protective  
12                 order place the protected material in a sealed manila  
13                 envelope clearly marked with the caption and case  
14                 number and is clearly marked with the word  
15                 "CONFIDENTIAL", and stating the date the order was  
16                 entered and the name of the judge entering the order.  
17                 This requirement may also be satisfied by requiring  
18                 the party to file the documents pursuant to the  
19                 procedure for electronically filing sealed or  
20                 confidential documents approved for electronic filing  
21                 in the courts of this state.

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

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

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

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

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

20      D. SEQUENCE AND TIMING OF DISCOVERY. Unless the parties  
21 stipulate or the court orders otherwise for the convenience of  
22 parties and witnesses and in the interests of justice, methods of  
23 discovery may be used in any sequence. The fact that a party is  
24

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

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

7 |       1. A party is under a duty seasonably to supplement the  
8 | response with respect to any question directly addressed to:  
9 |  
10 |           a. the identity and location of persons having knowledge  
11 |                   of discoverable matters, and  
12 |  
13 |           b. the identity of each person expected to be called as  
14 |                   an expert witness at trial, the subject matter on  
15 |                   which the person is expected to testify, and the  
16 |                   substance of the testimony of the person;

17 |       2. A party is under a duty seasonably to amend a prior response  
18 | to an interrogatory, request for production, or request for  
19 | admission if the party obtains information upon the basis of which:  
20 |  
21 |           a. (1) the party knows that the response was incorrect  
22 |                   in some material respect when made, or  
23 |  
24 |           (2) the party knows that the response, which was  
25 |                   correct when made, is no longer true in some  
26 |                   material respect, and

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

3. A duty to supplement responses may be imposed by order of

5 the court, agreement of the parties, or at any time prior to trial  
6 through new requests for supplementation of prior responses.

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

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

2. A proposed plan and schedule of discovery;

3. Any limitations proposed to be placed on discovery;

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

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

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

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

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

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

23      1. To the best of the party's knowledge, information and belief  
24 formed after a reasonable inquiry consistent with the Oklahoma

1      Discovery Code and warranted by existing law or a good faith  
2      argument for the extension, modification or reversal of existing  
3      law;

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

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

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

18            SECTION 2.        NEW LAW        A new section of law to be codified  
19     in the Oklahoma Statutes as Section 3226.2 of Title 12, unless there  
20     is created a duplication in numbering, reads as follows:

21            As used in the Oklahoma Discovery Code:

22            1. "Commercial litigation funder" means any person or entity,  
23     other than an attorney permitted to charge a contingent fee  
24     representing a party, that enters into a contract establishing a

1 right to receive compensation that is contingent on and sourced from  
2 any proceeds of the civil action by settlement, judgment, or  
3 otherwise. Commercial litigation funder shall not include a  
4 consumer litigation funder as defined in Section 3-801 of Title 14A  
5 of the Oklahoma Statutes;

6 2. "Commercial litigation funding agreement" means an agreement  
7 under which the commercial litigation funder is granted a right to  
8 receive compensation contingent on and sourced from any proceeds of  
9 a civil action by settlement, judgment, or otherwise. A commercial  
10 litigation funding agreement shall not include:

11 a. funding provided by an attorney to a client as  
12 authorized by the Oklahoma Rules of Professional  
13 Conduct, Appendix 3-A of Chapter 1 of Title 5 of the  
14 Oklahoma Statutes, unless such funds are encumbered  
15 pursuant to a commercial litigation funding agreement,  
16 or

17 b. a consumer litigation funding agreement as defined in  
18 Section 3-801 of Title 14A of the Oklahoma Statutes;

19 3. "Entity controlled by a foreign adversary" means, with  
20 respect to a person, whether a human being or bodies politic or  
21 corporate, that such person is:

22 a. a foreign person that is a national of, is  
23 headquartered in, has its principal place of business

1                   in, or is organized under the law of a foreign  
2                   adversary country,  
3                   b. a body corporate with respect to which a foreign  
4                   person or combination of foreign persons described in  
5                   subparagraph a of this paragraph directly or  
6                   indirectly owns at least 20 percent (20%) of such  
7                   body, or  
8                   c. a person subject to the direction or control of a  
9                   foreign person or entity described in subparagraph a  
10                  or b of this paragraph; and  
11                 4. "Foreign adversary country" means a country identified in 10  
12                 U.S.C., Section 4872(d) (2).  
13                 SECTION 3. This act shall become effective November 1, 2025.  
14                 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
15                 February 11, 2025 - DO PASS