

1                           **SENATE FLOOR VERSION**

2                           February 25, 2025

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 SENATE BILL NO. 747

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7                           By: Reinhardt

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An Act relating to the Oklahoma Discovery Code;  
amending 12 O.S. 2021, Sections 3226 and 3226.1,  
which relate to general discovery provisions and  
abusive discovery; removing certain affidavit  
requirement for persons receiving certain notice or  
subpoena; establishing grounds for good cause to  
issue protective order to prevent deposition of  
certain officers; requiring certain motion; requiring  
court to issue certain order; providing exceptions;  
authorizing limitation of scope of deposition of  
certain officers; authorizing vacating or modifying  
order under certain circumstances; and providing an  
effective date.

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

17                         SECTION 1.           AMENDATORY           12 O.S. 2021, Section 3226, is

18 amended to read as follows:

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

20                         1. DISCOVERY METHODS. Parties may obtain discovery regarding  
21 any matter that is relevant to any party's claim or defense by one  
22 or more of the following methods: Depositions upon oral examination  
23 or written questions; written interrogatories; production of  
24 documents or things or permission to enter upon land or other

1 property, for inspection and other purposes; physical and mental  
2 examinations; requests for admission; authorizations for release of  
3 records; and otherwise by court order upon showing of good cause.  
4 Except as provided in this section or unless the court orders  
5 otherwise under this section, the frequency of use of these methods  
6 is not limited.

7       2. INITIAL DISCLOSURES.

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

1 release or authorization for employment and scholastic  
2 records.

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

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

21 c. Disclosures required under this paragraph shall be  
22 made at or within sixty (60) days after service unless  
23 a different time is set by stipulation or court order,  
24 or unless a party objects that initial disclosures are

1                   not appropriate in the circumstances of the action and  
2                   states the objection in a motion filed with the court.  
3                   In ruling on the objection, the court shall determine  
4                   what disclosures, if any, are to be made and set the  
5                   time for disclosure. A party shall make its initial  
6                   disclosures based on the information then readily  
7                   available to it and is not excused from making its  
8                   disclosures because it has not fully completed its  
9                   investigation of the case or because it challenges the  
10                  sufficiency of another party's disclosures or because  
11                  another party has not made its disclosures.

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

15                  1. IN GENERAL.

16                  a. Parties may obtain discovery regarding any matter, not  
17                  privileged, which is relevant to any party's claim or  
18                  defense, reasonably calculated to lead to the  
19                  discovery of admissible evidence and proportional to  
20                  the needs of the case, considering the importance of  
21                  the issues at stake in the action, the amount in  
22                  controversy, the parties' relative access to relevant  
23                  information, the parties' resources, the importance of  
24                  the discovery in resolving the issues, and whether the

1                   burden or expense of the proposed discovery outweighs  
2                   its likely benefit. Information within this scope of  
3                   discovery need not be admissible in evidence to be  
4                   discoverable.

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

16                  2. LIMITATIONS ON FREQUENCY AND EXTENT.

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

- 1           b. A party is not required to provide discovery of  
2           electronically stored information from sources that  
3           the party identifies as not reasonably accessible  
4           because of undue burden or cost. On motion to compel  
5           discovery or for a protective order, the party from  
6           whom discovery is sought must show that the  
7           information is not reasonably accessible because of  
8           undue burden or cost. If that showing is made, the  
9           court may order discovery from such sources if the  
10          requesting party shows good cause, considering the  
11          limitations of subparagraph c of this paragraph. The  
12          court may specify conditions for the discovery.
- 13         c. On motion or on its own, the court shall limit the  
14          frequency or extent of discovery otherwise allowed if  
15          it determines that:
- 16           (1) the discovery sought is unreasonably cumulative  
17           or duplicative, or can be obtained from some  
18           other source that is more convenient, less  
19           burdensome, or less expensive,
- 20           (2) the party seeking discovery has had ample  
21           opportunity to obtain the information by  
22           discovery in the action, or

(3) the proposed discovery is outside the scope  
permitted by subparagraph a of paragraph 1 of  
this subsection.

d. If an officer, director or managing agent of a corporation or a government official is served with notice of a deposition or subpoena regarding a matter about which he or she has no knowledge, he or she may submit at a reasonable time prior to the date of the deposition an affidavit to the noticing party so stating and identifying a person within the corporation or government entity who has knowledge of the subject matter involved in the pending action. Notwithstanding such affidavit, the noticing party may proceed with the deposition, subject to the noticed witness's right to seek a protective order.

### 3. TRIAL PREPARATION: MATERIALS.

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

- (1) they are otherwise discoverable under paragraph 1 of this subsection, and
  - (2) the party shows that it has substantial need for 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 witnesses subject to scope of this section. Prior to taking the deposition the party must give notice as required in subsections A and C of Section 3230 of this title, and

(3) in addition to taking the depositions of expert witnesses the party may, through interrogatories, require the party who expects to call the expert

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

b. The protection provided by paragraph 3 of this subsection extends to communications between the party's attorney and any expert witness retained or specially employed to provide expert testimony in the case or whose duties as the party's employee regularly

1 involve giving expert testimony, except to the extent  
2 that the communications:

- 3 (1) relate to compensation for the expert's study or  
4 testimony,  
5 (2) identify facts or data that the party's attorney  
6 provided and that the expert considered in  
7 forming the opinions to be expressed, or  
8 (3) identify assumptions that the party's attorney  
9 provided and that the expert relied upon in  
10 forming the opinions to be expressed.

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

21 d. Unless manifest injustice would result:

- 22 (1) the court shall require that the party seeking  
23 discovery pay the expert a reasonable fee for  
24 time spent in responding to discovery under

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

5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION

## MATERIALS.

- a. When a party withholds information otherwise discoverable under the Oklahoma Discovery Code by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.
  - b. If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the

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

16 C. PROTECTIVE ORDERS.

17 1. Upon motion by a party or by the person from whom discovery  
18 is sought, accompanied by a certification that the movant has in  
19 good faith conferred or attempted to confer, either in person or by  
20 telephone, with other affected parties in an effort to resolve the  
21 dispute without court action, and for good cause shown, the court in  
22 which the action is pending or on matters relating to a deposition,  
23 the district court in the county where the deposition is to be taken  
24 may enter any order which justice requires to protect a party or

1 person from annoyance, harassment, embarrassment, oppression or  
2 undue delay, burden or expense, including one or more of the  
3 following:

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

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

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

1                   confidential documents approved for electronic filing  
2                   in the courts of this state.

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

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

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

12      6. Counsel for the respective parties shall be responsible for  
13      informing witnesses, as necessary, of the contents of the protective  
14      order.

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

1       D. SEQUENCE AND TIMING OF DISCOVERY. Unless the parties  
2 stipulate or the court orders otherwise for the convenience of  
3 parties and witnesses and in the interests of justice, methods of  
4 discovery may be used in any sequence. The fact that a party is  
5 conducting discovery, whether by deposition or otherwise, shall not  
6 operate to delay discovery by any other party.

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

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

19       2. A party is under a duty seasonably to amend a prior response  
20 to an interrogatory, request for production, or request for  
21 admission if the party obtains information upon the basis of which:  
22               a. (1) the party knows that the response was incorrect  
23                       in some material respect when made, or

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

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

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

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

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

Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the

1 motion shall be served not later than ten (10) days after service of  
2 the motion.

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

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

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

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

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

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

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

20       SECTION 2.       AMENDATORY       12 O.S. 2021, Section 3226.1, is  
21 amended to read as follows:

22       Section 3226.1. A. ABUSIVE DISCOVERY. In addition to the  
23 protective orders that a court may issue pursuant to paragraph 1 of  
24 subsection C of Section 3226 of Title 12 of the Oklahoma Statutes, a

1 protective order may be issued by the court authorizing or denying  
2 discovery in the court in which the action is pending. A protective  
3 order may also be authorized on matters relating to a deposition.  
4 The order may be issued upon a motion by a party or the person from  
5 whom discovery is sought. The motion shall be accompanied by a  
6 certification that the movant has in good faith conferred or  
7 attempted to confer, either in person or by telephone, with other  
8 affected parties in an effort to resolve the dispute without court  
9 action. Upon receipt by the court of the motion and certification,  
10 the court may enter the protective order authorizing or denying the  
11 discovery upon a finding that justice requires a party or person be  
12 protected from annoyance, harassment, embarrassment, oppression or  
13 undue delay, burden, or expense.

14       B. DEPOSITION OF HIGH-RANKING OFFICER. Good cause for a  
15 protective order exists under subsection A of this section to  
16 prevent the deposition of an officer of an organization if the party  
17 or the person seeking the protective order demonstrates that the  
18 person sought to be deposed:

19           1. Is a current or former high-ranking officer of a government  
20 entity or any other public or private organization that is large and  
21 complex;

22           2. Has unique and extensive scheduling demands or  
23 responsibilities; and

1       3. Lacks unique personal knowledge of the issues being  
2       litigated.

3       The party or person seeking the protective order shall file a  
4       motion, accompanied by an affidavit or declaration of the officer,  
5       establishing such requirements and identifying a person within the  
6       organization who has knowledge of the subject matter involved in the  
7       pending action.

8       If the party or person meets the burden, the court shall issue  
9       an order preventing the deposition unless the party seeking the  
10      deposition demonstrates that it has exhausted other reasonable means  
11      of discovery, that such discovery is inadequate, and that the  
12      officer has unique and personal knowledge of discoverable  
13      information.

14      To the extent that the party or the person seeking a protective  
15      order shows that an officer lacks unique personal knowledge of some,  
16      but fewer than all, matters relevant to the subject matter involved  
17      in the pending action, the court may limit the scope of the  
18      deposition accordingly rather than prohibiting altogether the  
19      deposition of the officer. The court may vacate or modify the order  
20      if, after additional discovery, the party seeking the deposition can  
21      meet its burden under this section.

22      C. AWARD OF EXPENSES OF MOTION. If the motion is granted, the  
23      court may, after opportunity for hearing, require the party or  
24      person whose conduct necessitated the motion or the party or

1 attorney advising such conduct or both of them to pay to the moving  
2 party the reasonable expenses incurred in obtaining the order,  
3 including attorney fees, unless the court finds that the opposition  
4 to the motion was substantially justified or that other  
5 circumstances make an award of expenses unjust.

6 If the motion is denied, the court may, after opportunity for  
7 hearing, require the moving party or the attorney advising the  
8 motion or both of them to pay to the party or deponent who opposed  
9 the motion the reasonable expenses incurred in opposing the motion,  
10 including attorney fees, unless the court finds that the making of  
11 the motion was substantially justified or that other circumstances  
12 make an award of expenses unjust.

13 If the motion is granted in part and denied in part, the court  
14 may apportion the reasonable expenses incurred in relation to the  
15 motion among the parties and persons in a just manner.

16 SECTION 3. This act shall become effective November 1, 2025.

17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
February 25, 2025 - DO PASS AS AMENDED BY CS

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