

1 ENGROSSED SENATE
2 BILL NO. 747

3 By: Reinhardt of the Senate

4 and

5 Harris of the House

6 An Act relating to the Oklahoma Discovery Code;
7 amending 12 O.S. 2021, Sections 3226 and 3226.1,
8 which relate to general discovery provisions and
9 abusive discovery; removing certain affidavit
10 requirement for persons receiving certain notice or
11 subpoena; establishing grounds for good cause to
12 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.

13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

6 2. INITIAL DISCLOSURES.

7 a. Except in categories of proceedings specified in
8 subparagraph b of this paragraph, or to the extent
9 otherwise stipulated or directed by order, a party,
10 without awaiting a discovery request, shall provide to
11 other parties a computation of any category of damages
12 claimed by the disclosing party, making available for
13 inspection and copying the documents or other
14 evidentiary material, not privileged or protected from
15 disclosure, on which such computation is based,
16 including materials bearing on the nature and extent
17 of injuries suffered. Subject to subsection B of this
18 section, in any action in which physical or mental
19 injury is claimed, the party making the claim shall
20 provide to the other parties a release or
21 authorization allowing the parties to obtain relevant
22 medical records and bills, and, when relevant, a
23 release or authorization for employment and scholastic
24 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 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,
24

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

(3) in addition to taking the depositions of expert

witnesses the party may, through interrogatories,
require the party who expects to call the expert

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 | a. the identity and location of persons having knowledge
10 | of discoverable matters, and
11 | b. the identity of each person expected to be called as
12 | an expert witness at trial, the subject matter on
13 | which the person is expected to testify, and the
14 | substance of the testimony of the person;

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

- 18 | a. (1) the party knows that the response was incorrect
19 | in some material respect when made, or
20 | (2) the party knows that the response, which was
21 | correct when made, is no longer true in some
22 | 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

4 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.

7 F. DISCOVERY CONFERENCE. At any time after commencement of an
8 action, the court may direct the attorneys for the parties to appear
9 for a conference on the subject of discovery. The court shall do so
10 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.

18 Each party and his attorney are under a duty to participate in
19 good faith in the framing of a discovery plan if a plan is proposed
20 by the attorney for any party. Notice of the motion shall be served
21 on all parties. Objections or additions to matters set forth in the
22 motion shall be served not later than ten (10) days after service of
23 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. AMENDATORY 12 O.S. 2021, Section 3226.1, is
19 amended to read as follows:

20 Section 3226.1. A. ABUSIVE DISCOVERY. In addition to the
21 protective orders that a court may issue pursuant to paragraph 1 of
22 subsection C of Section 3226 of Title 12 of the Oklahoma Statutes, a
23 protective order may be issued by the court authorizing or denying
24 discovery in the court in which the action is pending. A protective

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

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

17 | 1. Is a current or former high-ranking officer of a government
18 | entity or any other public or private organization that is large and
19 | complex;
20 | 2. Has unique and extensive scheduling demands or
21 | responsibilities; and
22 | 3. Lacks unique personal knowledge of the issues being
23 | litigated.

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

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

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

20 C. AWARD OF EXPENSES OF MOTION. If the motion is granted, the
21 court may, after opportunity for hearing, require the party or
22 person whose conduct necessitated the motion or the party or
23 attorney advising such conduct or both of them to pay to the moving
24 party the reasonable expenses incurred in obtaining the order,

1 including attorney fees, unless the court finds that the opposition
2 to the motion was substantially justified or that other
3 circumstances make an award of expenses unjust.

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

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

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

15 Passed the Senate the 27th day of March, 2025.

16
17 _____
18 Presiding Officer of the Senate
19

20 Passed the House of Representatives the ____ day of _____,
21 2025.
22

23 _____
24 Presiding Officer of the House
of Representatives