

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2423

By: Sullivan (Leonard)

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 1991, Section 98, which relates to limitations on civil actions; clarifying language regarding tolling of statutes of limitations; providing for tolling of statute of limitations for certain civil actions; amending 12 O.S. 1991, Sections 3230, as last amended by Section 5, Chapter 61, O.S.L. 1996, 3233, as amended by Section 7, Chapter 61, O.S.L. 1996, and 3237, as amended by Section 8, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1997, Sections 3230, 3233 and 3237), which relate to the Oklahoma Discovery Code; imposing requirements regarding disclosure of certain information during civil cases; providing for effect of engaging in act of concealment; providing for imposition of certain sanctions for noncompliance with requirements governing disclosure during civil discovery; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 98, is amended to read as follows:

Section 98. When a cause of action accrues against a natural person and that natural person is out of the state or has concealed himself, the period limited for the commencement of the action shall not ~~begin to run~~ commence until he comes into the state, or while he is concealed. If, after a cause of action accrues against a natural person and that person leaves the state or conceals himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought. ~~Provided, however, that if~~ If any statute which extends the exercise of personal jurisdiction of courts over a person or ~~corporation~~ legally constituted business entity based upon service outside this state, or based upon substituted service

upon an official of this or any other state or nation, or based upon service by publication permits the courts of this state to acquire personal jurisdiction over the person or legally constituted business entity, the period of ~~his~~ absence or concealment, as related to a natural person, shall be computed as part of the period within which the action must be brought.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 98.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

Except as may be otherwise specifically provided by law, the statute limiting the period of time within which a civil action must be brought to preserve the rights of the party seeking recovery of damages or other relief, with respect to any cause of action that may be brought in this state against a general partnership, limited partnership, corporation, limited liability company or limited liability partnership or other entity which is not a natural person, shall be tolled with respect to the entity against which the plaintiff asserts a valid claim for the period of time during which the entity or an improperly joined defendant with actual or constructive knowledge regarding the entity or entities which should be defendants in the action fails to disclose information as required by paragraph 6 of Section 3230 of Title 12 of the Oklahoma Statutes or for the period of time after which the entity or an improperly joined defendant with actual or constructive knowledge regarding the entity or entities which should be defendants in the action engages in an act of concealment regarding its identity or the materiality of its identity to the causes of action for which a plaintiff or other adverse party seeks relief.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 3230, as last amended by Section 5, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1997, Section 3230), is amended to read as follows:

Section 3230. A. WHEN DEPOSITIONS MAY BE TAKEN.

1. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice,

shall be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant provided that leave is not required:

- a. If a defendant has served a notice of taking deposition or otherwise sought discovery; or
- b. If special notice is given as provided in paragraph 2 of subsection B of this section.

The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

2. Unless otherwise agreed, a deposition upon oral examination may be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a date other than a holiday designated in Section 82.1 of Title 25 of the Oklahoma Statutes.

B. PLACE WHERE WITNESS OR PARTY IS REQUIRED TO ATTEND TAKING OF DEPOSITIONS.

1. A witness shall be obligated to attend to give his deposition only in the county of his residence, a county adjoining the county of his residence or the county where he is located when the subpoena is served upon him.

2. A party, in addition to the places where a witness may be deposed, may be deposed in the county where the action is pending or the county where he is located when the notice is served upon him.

C. NOTICE OF EXAMINATION; GENERAL REQUIREMENTS; SPECIAL NOTICE; NONSTENOGRAPHIC RECORDING; PRODUCTION OF DOCUMENTS AND THINGS; DEPOSITION OF ORGANIZATION; DEPOSITION BY TELEPHONE.

1. A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and shall state the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice shall be served in

order to allow the adverse party sufficient time, by the usual route of travel, to attend, and three (3) days for preparation, exclusive of the day of service of the notice.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice.

2. Leave of court is not required for the taking of a deposition by plaintiff if the notice states that the person to be examined is about to leave the state and will be unavailable for examination, unless his deposition is taken before expiration of the thirty-day period, and sets forth facts to support the statement. The attorney for the plaintiff shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information and belief the statement and supporting facts are true. For a willful violation of this section, an attorney may be subject to appropriate disciplinary action and sanctions under Section 3237 of this title.

If a party shows that when he was served with notice under this paragraph he was unable, through the exercise of diligence, to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

3. The court may for cause shown enlarge or shorten the time for taking the deposition and for notice of taking the deposition.

4. The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. Unless good cause is shown to the contrary, such motions shall be freely granted. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the deposition is recorded by other than stenographic means, the party taking the deposition shall upon request by any party or the witness furnish a copy of the deposition to the witness. The party taking the deposition may furnish either a stenographic copy

of the deposition or a copy of the deposition as recorded by other than stenographic means.

Any objections under subsection D of this section, any changes made by the witness, the signature of the witness identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in subsection F of this section, and the certification of the officer required by subsection G of this section shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.

5. The notice to a party deponent may be accompanied by a request made in compliance with Section 3234 of this title for the production of documents and tangible things at the taking of the deposition. The procedure of Section 3234 of this title shall apply to the request.

6. A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. Such designation of persons to testify and the subject of the testimony shall be delivered to the other party or parties prior to or at the commencement of the taking of the deposition of the organization. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. If the public or private corporation or partnership or association or governmental agency responding to a subpoena pursuant to this paragraph is misidentified in the case caption, in the summons prepared and served upon it with the petition in the action or in the documents forming the basis of discovery in any method permitted pursuant to the Oklahoma Discovery Code and the misidentification of the entity is known or should reasonably be known to the agents, employees or other representatives of the

entity, including the attorney or attorneys assisting the entity in responding to requests for discovery pursuant to the Oklahoma Discovery Code, the failure of the agents, employees, representatives or attorneys acting on behalf of the entity during the course of the discovery proceedings shall constitute an act of concealment for purposes of tolling the statute of limitations applicable to the causes of action for which the plaintiff or other adverse party seeks relief as provided by Section 2 of this act and shall constitute an act of concealment which may be punished as provided by subsection F of Section 3237 of this title.

This paragraph does not preclude taking a deposition by any other procedure authorized in the Oklahoma Discovery Code.

7. The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this section, subsection A of Section 3228, and paragraphs 1 of subsections A and B of Section 3237 of this title, a deposition taken by such means is taken in the county and state and at the place where the deponent is to answer questions.

D. EXAMINATION AND CROSS-EXAMINATION; RECORD OF EXAMINATION; OATH; OBJECTIONS. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Section 2101 et seq. of this title except Section 2104. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by paragraph 4 of subsection C of this section.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; however, the

examination shall proceed, with the testimony being taken subject to the objections.

In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the depositions and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

E. MOTION TO TERMINATE OR LIMIT EXAMINATION.

1. Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only where the information sought is not discoverable by law, when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, to present a motion under paragraph 2 of this subsection, or to move for a protective order under subsection C of Section 3226 of this title. If the court finds a person has engaged in conduct which has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

2. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection C of Section 3226 of this title. If the order entered terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for the order provided for in this section. The provisions of paragraph 4 of subsection A of Section 3237 of this Req. No. 9767Page 7

title apply to the award of expenses incurred in relation to the motion.

F. REVIEW BY WITNESS; CHANGES; SIGNING. The deponent shall have the opportunity to review the transcript of the deposition unless such examination and reading are waived by the deponent and by the parties. After being notified by the officer that the transcript is available, the deponent shall have thirty (30) days in which to review it and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph 1 of subsection G of this section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

G. CERTIFICATION AND FILING BY OFFICER; EXHIBITS; COPIES; NOTICE OF FILING.

1. The officer shall certify on any stenographic deposition:
 - a. the qualification of the officer to administer oaths, including his certificate number,
 - b. that the witness was duly sworn by him,
 - c. that the deposition is a true record of the testimony given by the witness, and
 - d. that the officer is not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, and is not financially interested in the action.

Except on order of the court or unless a deposition is attached to a motion response thereto, is needed for use in a trial or hearing, or the parties stipulate otherwise, depositions shall not be filed with the court clerk. The officer shall securely seal any stenographic deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and send it to the attorney who arranged for the deposition, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party. If the person producing the materials desires to retain them he may:

- a. Offer copies to be marked for identification and annexed to the deposition and to serve as originals if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or
- b. Offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

2. Each party who takes the deposition of a witness or of another party shall bear all expenses thereof, including the cost of transcription, and shall furnish upon request to the adverse party or parties, free of charge, one copy of the transcribed deposition. If the party taking the deposition recorded it on videotape or by other nonstenographic means, that party shall also furnish upon request to the adverse party or parties, free of charge, one copy of the videotape or other recording of the deposition.

H. FAILURE TO ATTEND OR TO SERVE SUBPOENA; EXPENSES.

1. If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

2. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the

witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

I. WITNESS FEES.

1. The attendance and travel fees for a witness shall be paid as provided in Section 400 of this title.

2. A party deponent must attend the taking of a deposition without the payment or tender of attendance or travel fees.

J. TAXING OF COSTS OF DEPOSITIONS. The cost of transcription of a deposition, as verified by the statement of the certified court reporter, the fees of the sheriff for serving the notice to take depositions and fees of witnesses shall each constitute an item of costs to be taxed in the case in the manner provided by law. The court may upon motion of a party retax the costs if the court finds the deposition was unauthorized by statute or unnecessary for protection of the interest of the party taking the deposition.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 3233, as amended by Section 7, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1997, Section 3233), is amended to read as follows:

Section 3233. A. AVAILABILITY; PROCEDURES FOR USE. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to that party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action or upon any other party with the summons and petition or after service of the summons and petition on that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall

answer to the extent the interrogatory is not objectionable. The number of interrogatories to a party shall not exceed thirty in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. No further interrogatories will be served unless authorized by the court. If counsel for a party believes that more than thirty interrogatories are necessary, he shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit such additional interrogatories shall file a motion with the court (1) showing that counsel have conferred in good faith but sincere attempts to resolve the issue have been unavailing, (2) showing reasons establishing good cause for their use, and (3) setting forth the proposed additional interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories, except that a defendant may serve answers or objections to interrogatories within forty-five (45) days after service of the summons and complaint upon that defendant. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Section 3229 of this title. All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown. The party submitting the interrogatories may move for an order under subsection A of Section 3237 of this title with

respect to any objection to or other failure to answer an interrogatory.

B. SCOPE; USE AT TRIAL. Interrogatories may relate to any matters which can be inquired into under subsection B of Section 3226 of this title, and the answers may be used to the extent permitted by the Oklahoma Evidence Code as set forth in Sections 2101 et seq. of this title.

An interrogatory otherwise proper is not necessarily objectionable because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact. The court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

C. OPTION TO PRODUCE BUSINESS RECORDS. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries thereof. A specification shall be in sufficient detail to permit the party submitting the interrogatory to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

D. FAILURE TO DISCLOSE INFORMATION OR DELIBERATE MISREPRESENTATION OF IDENTITY OF CERTAIN ENTITIES. If a person required to respond to an interrogatory pursuant to subsection A of this section fails to disclose information regarding the accurate identity of an association, a general partnership, limited partnership, corporation, limited liability company, limited liability partnership or any other legally constituted

entity, including a government agency, relevant to a determination of whether the proper party defendant has been identified in a civil case or whether the proper party defendant has been served with the summons and petition to commence a civil case, in addition to the tolling of any applicable statute of limitations as provided by Section 2 of this act, on motion by a party, the court may take each and every action authorized pursuant to subsection E of Section 3237 of this title, including the award of reasonable expenses, including attorney fees, caused by the failure to disclose information or engaging in an act of concealment as defined by paragraph 6 of subsection C of Section 3230 of this title.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 3237, as amended by Section 8, Chapter 61, O.S.L. 1996 (12 O.S. Supp. 1997, Section 3237), is amended to read as follows:

Section 3237. A. MOTION FOR ORDER COMPELLING DISCOVERY. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

1. APPROPRIATE COURT. An application for an order to a party may be made to the court in which the action is pending, or, on matters, relating to a deposition, to the district court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the district court in the county where the deposition is being taken or to the court in which the action is pending.

2. MOTION. If a deponent fails to answer a question propounded or submitted under Section 3230 or 3231 of this title, or a corporation or other entity fails to make a designation under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title, or a party fails to answer an interrogatory submitted under Section 3233 of this title, or if a party, in response to a request for inspection submitted under Section 3234 of this title, fails to respond that the inspection will be permitted as requested or fails to permit the inspection as requested, the discovering party may move for an order

compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a statement that the movant has in good faith conferred or attempted to confer either in person or by telephone with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subsection C of Section 3226 of this title.

3. EVASIVE OR INCOMPLETE ANSWER. For purposes of this subsection, an evasive or incomplete answer is to be treated as a failure to answer.

4. AWARD OF EXPENSES OF MOTION. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

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

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

B. FAILURE TO COMPLY WITH ORDER.

1. SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN.

If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

2. SANCTION BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director or managing agent of a party or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection A of this section or Section 3235 of this title, or if a party fails to obey an order entered under subsection F of Section 3226 of this title, the court in which the action is pending may make such orders in regard to the failure as are just. Such orders may include the following:

- a. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order,
- b. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence,
- c. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party,
- d. In lieu of or in addition to the orders provided for in subparagraphs a through c of this paragraph, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination,

- e. Where a party has failed to comply with an order under subsection A of Section 3235 of this title requiring him to produce another for examination, such orders as are listed in subparagraphs a, b and c of this paragraph, unless the party failing to comply shows that he is unable to produce such person for examination,
- f. If a person, not a party, fails to obey an order entered under subsection C of Section 3234 of this title, the court may treat the failure to obey the order as contempt of court.

In lieu of or in addition to the orders provided for in this paragraph, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

C. EXPENSES ON EXAMINATION OF PROPERTY. The reasonable expense of making the property available under Section 3234 of this title shall be paid by the requesting party, and at the time of the taxing of costs in the case, the court may tax such expenses as costs, or it may apportion such expenses between the parties, or it may provide that they are an expense of the requesting party.

D. EXPENSES ON FAILURE TO ADMIT. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 3236 of this title, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that:

1. The request was held objectionable pursuant to subsection C of Section 3236 of this title; or

2. The admission sought was of no substantial importance; or

3. The party failing to admit had reasonable ground to believe that he might prevail on the matter; or

4. There was other good reason for the failure to admit.

E. FAILURE OF PARTY TO ATTEND AT OWN DEPOSITION OR SERVE ANSWER TO INTERROGATORIES OR RESPOND TO REQUEST FOR INSPECTION.

If a party or an officer, director or managing agent of a party or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a party fails:

1. To appear before the officer who is to take his deposition, after being served with a proper notice; or

2. To serve answers or objections to interrogatories submitted under Section 3233 of this title, after proper service of the interrogatories; or

3. To serve a written response to a request for inspection submitted under Section 3234 of this title, after proper service of the request;

the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs a, b and c of paragraph 2 of subsection B of this section. In lieu of or in addition to any order, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act as described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subsection C of Section 3226 of this title.

F. FAILURE TO DISCLOSE INFORMATION OR DELIBERATE MISREPRESENTATION OF IDENTITY OF CERTAIN ENTITIES. If a person required to testify during a deposition pursuant to paragraph 6 of subsection C of Section 3230 of this title fails to disclose information regarding the accurate identity of an association, a general partnership, limited partnership, corporation, limited

liability company, limited liability partnership or any other legally constituted entity, including a government agency, relevant to a determination of whether the proper party defendant has been identified in a civil case or whether the proper party defendant has been served with a summons and petition to commence a civil case, in addition to the tolling of any applicable statute of limitations as provided by Section 2 of this act, on motion by a party, the court may take each and every action authorized pursuant to subsection E of this section, including the award of reasonable expenses, including attorney fees, caused by the failure to disclose information or engaging in an act of concealment as defined by paragraph 6 of subsection C of Section 3230 of this title.

G. FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN. If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by subsection F of Section 3226 of this title, the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

SECTION 6. This act shall become effective November 1, 1998.

46-2-9767

MAH