

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1329

By: Smith

AS INTRODUCED

An Act relating to courts; amending 12 O.S. 1991, Section 2004.1, as last amended by Section 19, Chapter 293, O.S.L. 1999 (12 O.S. Supp. 1999, Section 2004.1), which relates to subpoenas; providing for judicial review of issuance or enforcement of certain subpoenas; requiring filing of action and payment of fee; amending 21 O.S. 1991, Section 1102, as amended by Section 4, Chapter 274, O.S.L. 1995 (21 O.S. Supp. 1999, Section 1102), which relates to licensing of pool and billiard halls and tables; modifying procedure for protest of issuance of certain license; requiring provision of certain information relating to monies deposited with court clerk; stating uses for information; requiring compliance with certain provisions for removal of materials from public record; 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 2004.1, as last amended by Section 19, Chapter 293, O.S.L. 1999 (12 O.S. Supp. 1999, Section 2004.1), is amended to read as follows:

Section 2004.1

SUBPOENA

A. SUBPOENA; FORM; ISSUANCE.

1. Every subpoena shall:

- a. state the name of the court from which it is issued and the title of the action; and
- b. command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time

and place therein specified. A subpoena shall issue from the court where the action is pending, and it may be served at any place within the state. If the action is pending outside of ~~Oklahoma~~ this state, the district court for the county in which the deposition is to be taken shall issue the subpoena. Proof of service of a notice to take deposition constitutes a sufficient authorization for the issuance by the clerk of subpoenas for the persons named or described therein; provided, any person aggrieved by the issuance or enforcement of the subpoena may obtain judicial review upon the filing of a civil action and payment of the required fees.

2. A witness shall be obligated upon service of a subpoena to attend a trial or hearing at any place within the state and to attend a deposition or produce or allow inspection of documents at a location that is authorized by subsection B of Section 3230 of this title.

3. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. As an officer of the court, an attorney authorized to practice law in this state may also issue and sign a subpoena on behalf of a court of this state.

4. Leave of court for issuance of a subpoena for the production of documentary evidence shall be required if the plaintiff seeks to serve a subpoena for the production of documentary evidence on any person who is not a party prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant.

B. 1. SERVICE. Service of a subpoena upon a person named therein shall be made by delivering or mailing a copy thereof to such person and, if the person's attendance is demanded, by

tendering to ~~him~~ that person the fees for one (1) day's attendance and the mileage allowed by law. Service of a subpoena may be accomplished by any person who is eighteen (18) years of age or older. A copy of any subpoena that commands production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by subsection B of Section 2005 of this title. If the subpoena commands production of documents and things or inspection of premises from a nonparty before trial but does not require attendance of a witness, the subpoena shall specify a date for the production or inspection that is at least seven (7) days after the date that the subpoena and copies of the subpoena are served on the witness and all parties, and the subpoena shall include the following language: "In order to allow objections to the production of documents and things to be filed, you should not produce them until the date specified in this subpoena, and if an objection is filed, until the court rules on the objection."

2. Service of a subpoena by mail may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. The person serving the subpoena shall make proof of service thereof to the court promptly and, in any event, before the witness is required to testify at the hearing or trial. If service is made by a person other than a sheriff or deputy sheriff, such person shall make affidavit thereof. If service is by mail, the person serving the subpoena shall show in ~~his~~ the proof of service the date and place of mailing and attach a copy of the return receipt showing that the mailing was accepted. Failure to make proof of service does not affect the validity of the service, but service of a subpoena by mail shall not be effective if the mailing was not accepted by the person named in the subpoena. Costs of service shall be allowed whether service is made by the sheriff, ~~his~~ the sheriff's deputy, or any other person. When the subpoena is issued on behalf of a state

department, board, commission, or legislative committee, fees and mileage shall be paid to the witness at the conclusion of the testimony out of funds appropriated to the state department, board, commission, or legislative committee.

C. PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney, or both, in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

2. a. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

b. Subject to paragraph 2 of subsection D of this section, a person commanded to produce and permit inspection and copying or any party may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve written objection to inspection or copying of any or all of the designated materials or of the premises. If the objection is made by the witness, the witness shall serve the objection on all parties; if objection is made by a party, the party shall serve the objection on the witness and all other parties. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the

materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

3. a. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
  - (1) fails to allow reasonable time for compliance; or
  - (2) requires a person to travel to a place beyond the limits allowed under paragraph 2 of subsection A of this section; or
  - (3) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
  - (4) subjects a person to undue burden; or
  - (5) requires production of books, papers, documents or tangible things that fall outside the scope of discovery permitted by Section 3226 of this title.
- b. If a subpoena:
  - (1) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
  - (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena. However, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

D. DUTIES IN RESPONDING TO SUBPOENA.

1. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

2. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

E. CONTEMPT. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 1102, as amended by Section 4, Chapter 274, O.S.L. 1995 (21 O.S. Supp. 1999, Section 1102), is amended to read as follows:

Section 1102. It shall be unlawful for any person ~~or persons or corporation~~ to maintain or operate a public pool or billiard hall, or any public pool or billiard table, in any incorporated city or town, without first securing a license ~~issued by~~ from the district court clerk. The person applying for ~~such~~ the license ~~must make a showing~~ shall appear once each year, and satisfy the district court

clerk that he or she is a person of good moral character; that he or she has never been convicted of violating any of the laws regulating the traffic in any spirituous, vinous, fermented, or malt liquors, or any of the intoxicating beverage or low-point beer laws of ~~the~~ this state, or convicted of violating any of the gambling laws of ~~the~~ this state. A fee of Ten Dollars (\$10.00) per year shall be charged for ~~the issuing of such~~ the license. Upon application ~~being filed~~, the district court clerk shall give five (5) days' notice by posting notices, ~~one of said notices~~ notice to be posted at the county courthouse, one notice to be served on the district attorney or ~~his or her~~ the district attorney's assistant, and three (3) notices in the city or town where ~~said~~ the pool hall shall be located. ~~Said~~ The notice shall contain the name of the applicant and the location of ~~said~~ the pool or billiard hall. Any citizen of ~~said~~ the city or town may ~~appear before~~ file a written protest to the issuance of the license with the district court clerk and ~~protest the issuance of said license.~~ ~~Any party aggrieved by any decision of the court clerk can appeal to the district court as specified in Section 163.11 of Title 37 of the Oklahoma Statutes~~ the court shall set the matter of protest for hearing. Any person violating any provision of this section shall be punished by fine, not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00), for each offense.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 151.1 of Title 28, unless there is created a duplication in numbering, reads as follows:

The clerk of the district court shall accept monies only as ordered by the court or as required by law. Upon delivery of monies, a written statement of ownership of the monies, including the name and mailing address of the owner, shall be provided to the court clerk. Unless amended through judicial proceeding, the court clerk shall use this information for case-related mailings and other

legal notices, including notice of proceedings relating to unclaimed property.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24A.25 of Title 51, unless there is created a duplication in numbering, reads as follows:

Any order of the court for removal of materials from the public record shall require compliance with the provisions of paragraphs 2 through 7 of subsection C of Section 3226 of Title 12 of the Oklahoma Statutes.

SECTION 5. This act shall become effective November 1, 2000.

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