

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 1618

By: Smith of the Senate

and

Askins of the House

An Act relating to courts; amending 20 O.S. 2001, Sections 15, 78.1 and 1503.1, as amended by Section 3, Chapter 183, O.S.L. 2003 (20 O.S. Supp. 2003, Section 1503.1), which relate to deposits, management of records and continuing education; adding fee for certain application; deleting construing provision; clarifying certain continuing education requirements; and providing an effective date.

AUTHOR: Remove Askins as principal House author and substitute Harrison as principal House author and show Askins as coauthor

AMENDMENT NO. 1. Page 1, line 13 1/2, insert a new Section 1 to read

"SECTION 1. AMENDATORY 12 O.S. 2001, Section 3227, is amended to read as follows:

Section 3227. A. BEFORE ACTION.

1. PETITION. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court may file a verified petition in the district court in the county of the residence of any expected adverse party for such perpetuation of testimony. The petition shall be entitled in the name of the petitioner and shall show:

- a. That the petitioner or his personal representative, heirs, beneficiaries, successors or assigns may be a party to an action cognizable in a court but is presently unable to bring it or cause it to be brought.

- b. The subject matter of the expected action and his interest therein, and a copy, attached to the petition, of any written instrument the validity or construction of which may be called in question or which is connected with the subject matter of the requested deposition.
- c. The facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it.
- d. The names or, if the names are unknown, a description of the persons he expects will be adverse parties and their addresses so far as known.
- e. The names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each.

The petition shall request an order authorizing the petitioner to take the depositions of the persons named in the petition to be examined for the purpose of perpetuating their testimony.

2. NOTICE AND SERVICE. The petitioner shall thereafter serve a notice upon each person named or described in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing, the notice shall be served either within or without the state in the manner provided for personal service of summons. If such service cannot, with due diligence, be made upon any expected adverse party named or described in the petition, the court may enter such order as is just for service by publication or otherwise, and shall appoint, for persons not served by personal service, an attorney who shall represent them and, if they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a

minor or incompetent the court shall appoint a guardian ad litem for any such minor or incompetent not legally represented.

3. ORDER AND EXAMINATION. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall enter an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and how the depositions shall be taken. The depositions may then be taken in accordance with the Oklahoma Discovery Code, Section 3224 et seq. of this title. The court may enter orders of the character provided for by Sections 3234 and 3235 of this title. For the purpose of applying the Oklahoma Discovery Code to depositions for perpetuating testimony, each reference to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

4. USE OF DEPOSITION. If a deposition to perpetuate testimony is taken under the Oklahoma Discovery Code, it may be used in any action involving the same subject matter subsequently brought in a court of this state, in accordance with the provisions of subsection A of Section 3232 of this title.

B. PENDING APPEAL. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case, the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show:

1. The names and addresses of persons to be examined and the substance of the testimony which he expects to elicit from each;
2. The reasons for perpetuating the testimony.

If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may enter an order allowing the depositions to be taken and may make orders of the character provided for by Sections 3234 and 3235 of this title, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in the Oklahoma Discovery Code for depositions taken in actions pending in the district court.

C. PERPETUATION BY ACTION. The procedures prescribed in this section do not limit the power of a court to entertain an action to perpetuate testimony.

D. FILING OF DEPOSITION. Depositions taken under this section shall not be filed with the court in which the petition is filed or the motion is made except on order of the court or unless they are attached to a motion, response thereto, or are needed for use in a trial or hearing.

E. COSTS. The ~~party~~ attorney taking any deposition under this section shall pay the costs thereof unless otherwise ordered by the court.

F. DEPOSITIONS TAKEN IN OTHER JURISDICTIONS ADMISSIBLE. A deposition taken under procedures of another jurisdiction, which are similar to those in this section, is admissible in this state to the same extent as a deposition taken under this section."

and renumber subsequent sections

and amend title to conform

Passed the House of Representatives the 22nd day of April, 2004.

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Presiding Officer of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2004.

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Presiding Officer of the Senate