

SB 2273

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THE STATE SENATE  
Thursday, February 11, 2010

Senate Bill No. 2273  
As Amended

SENATE BILL NO. 2273 - By: Jolley of the Senate and Duncan of the House.

[ civil procedure - use of depositions in court proceedings  
- effective date ]

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 3232, as amended by Section 6, Chapter 181, O.S.L. 2004 (12 O.S. Supp. 2009, Section 3232), is amended to read as follows:

Section 3232. A. USE OF DEPOSITIONS. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Oklahoma Evidence Code applied as though the witness were then present and testifying, may be used against any party who was present or who was represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

1. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Oklahoma Evidence Code;

2. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent, or

1 a person designated under paragraph 6 of subsection C of Section  
2 3230 or subsection A of Section 3231 of this title to testify on  
3 behalf of a public or private corporation, partnership or  
4 association or governmental agency which is a party may be used for  
5 any purpose;

6 3. The deposition of a witness, whether or not a party may be  
7 used for any purpose if the court finds:

- 8 a. That the witness is dead, or
- 9 b. That the witness does not reside in the county where  
10 the action or proceeding is pending or is sent for  
11 trial by a change of venue or the witness is absent  
12 therefrom, unless it appears that the absence of the  
13 witness was procured by the party offering the  
14 deposition, or
- 15 c. That the witness is unable to attend or testify  
16 because of age, illness, infirmity or imprisonment, or
- 17 d. That the party offering the deposition has been unable  
18 to procure the attendance of the witness by subpoena,  
19 or
- 20 e. That the witness is an expert witness, who for  
21 purposes of this section is a person educated in a  
22 special art or profession or a person possessing

1 special or peculiar knowledge acquired from practical  
2 experience, or

3 f. Upon application and notice, that such exceptional  
4 circumstances exist as to make it desirable, in the  
5 interest of justice and with due regard to the  
6 importance of presenting the testimony of witnesses  
7 orally in open court, to allow the deposition to be  
8 used.

9 Nothing in this paragraph shall be construed to limit the  
10 authority of the appropriate office to issue a subpoena to compel an  
11 expert witness to appear in the same manner as any other witness;

12 4. If only part of a deposition is offered in evidence by a  
13 party, an adverse party may require the introduction of any other  
14 part which ought in fairness to be considered with the part  
15 introduced, and any party may introduce any other parts.

16 Substitution of parties pursuant to Section 1081, 1082, 1083 or  
17 2025 of this title does not affect the right to use depositions  
18 previously taken. When an action has been brought in this state or  
19 in any court of the United States or of any other state and another  
20 action involving the same subject matter is afterward brought  
21 between the same parties or their representatives or successors in  
22 interest, all depositions lawfully taken and duly filed in the

1 former action may be used in the latter as if originally taken  
2 therefor.

3 A deposition previously taken may also be used as permitted by  
4 the Oklahoma Evidence Code.

5 5. A party may move that a prospective witness be deposed in  
6 order to preserve testimony for trial. The court may grant the  
7 motion because of exceptional circumstances and in the interest of  
8 justice. If the court orders the deposition to be taken, it may  
9 also require the deponent to produce at the deposition any  
10 designated material that is not privileged, including any book,  
11 paper, document, record, recording, or data. A party seeking to  
12 take a deposition shall give every other party reasonable written  
13 notice of the deposition's date and location. The notice shall  
14 state the name and address of each deponent. If requested by a  
15 party receiving the notice, the court may, for good cause, change  
16 the deposition's date or location.

17 B. OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of  
18 subsection B of Section 3228 of this title and paragraph 3 of  
19 subsection D of this section, objection may be made, at the trial or  
20 hearing, to receiving in evidence any deposition or part thereof for  
21 any reason which would require the exclusion of the evidence if the  
22 witness were then present and testifying.

1 C. FORM OF PRESENTATION. Except as otherwise directed by the  
2 court, a party offering deposition testimony pursuant to this  
3 section may offer it in stenographic or nonstenographic form, but,  
4 if in nonstenographic form, the party shall also provide the court  
5 with a transcript of the portions so offered.

6 D. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

7 1. AS TO NOTICE. All errors and irregularities in the notice  
8 for taking a deposition are waived unless written objection is  
9 promptly served upon the party giving the notice.

10 2. AS TO DISQUALIFICATION OF OFFICER. Objection to taking a  
11 deposition because of disqualification of the officer before whom it  
12 is to be taken is waived unless made before the taking of the  
13 deposition begins or as soon thereafter as the disqualification  
14 becomes known or could be discovered with reasonable diligence.

15 3. AS TO TAKING OF DEPOSITION.

16 a. Objections to the competency of a witness or to the  
17 competency, relevancy or materiality of testimony are  
18 not waived by failure to make them before or during  
19 the taking of the deposition, unless the ground of the  
20 objection is one which might have been obviated or  
21 removed if presented at that time.

22 b. Errors and irregularities occurring in the manner of  
23 the oral examination in the taking of the deposition,

1 in the form of the questions or answers, in the oath  
2 or affirmation, or in the conduct of parties, and  
3 errors of any kind which might be obviated, removed or  
4 cured if promptly presented, are waived unless  
5 seasonable objection thereto is made at the taking of  
6 the deposition.

7 c. Objections to the form of written questions submitted  
8 under Section 3231 of this title are waived unless  
9 served in writing upon the party propounding them  
10 within the time allowed for serving the succeeding  
11 cross or other questions or within five (5) days after  
12 service of the last questions authorized.

13 4. AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and  
14 irregularities:

15 a. in the manner in which the testimony is transcribed or  
16 recorded, or

17 b. in the manner in which the deposition is prepared,  
18 signed, certified, sealed, endorsed, transmitted,  
19 filed, or otherwise dealt with by the officer under  
20 Sections 3230 and 3231 of this title

21 are waived unless a motion to suppress the deposition or some part  
22 thereof is made with reasonable promptness after such defect is, or  
23 with due diligence might have been, ascertained.

1           SECTION 2.   This act shall become effective November 1, 2010.  
2   COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-9-10 - DO PASS,  
3   As Amended and Coauthored.