

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2273

By: Jolley

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7 AS INTRODUCED

8 An Act relating to civil procedure; amending 12 O.S.  
9 2001, Section 3232, as amended by Section 6, Chapter  
10 181, O.S.L. 2004 (12 O.S. Supp. 2009, Section 3232),  
11 which relates to use of depositions in court  
12 proceedings; authorizing motion for certain purpose;  
13 providing for deposition for specified purpose;  
14 requiring certain notice; authorizing certain change  
15 in time and location; and providing an effective  
16 date.

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

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

21 Section 3232. A. USE OF DEPOSITIONS. At the trial or upon the  
22 hearing of a motion or an interlocutory proceeding, any part or all  
23 of a deposition, so far as admissible under the Oklahoma Evidence  
24 Code applied as though the witness were then present and testifying,  
may be used against any party who was present or who was represented

1 at the taking of the deposition or who had reasonable notice  
2 thereof, in accordance with any of the following provisions:

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

6 2. The deposition of a party or of anyone who at the time of  
7 taking the deposition was an officer, director or managing agent, or  
8 a person designated under paragraph 6 of subsection C of Section  
9 3230 or subsection A of Section 3231 of this title to testify on  
10 behalf of a public or private corporation, partnership or  
11 association or governmental agency which is a party may be used for  
12 any purpose;

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

15 a. That the witness is dead, or

16 b. That the witness does not reside in the county where  
17 the action or proceeding is pending or is sent for  
18 trial by a change of venue or the witness is absent  
19 therefrom, unless it appears that the absence of the  
20 witness was procured by the party offering the  
21 deposition, or

22 c. That the witness is unable to attend or testify  
23 because of age, illness, infirmity or imprisonment, or  
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- 1           d. That the party offering the deposition has been unable  
2           to procure the attendance of the witness by subpoena,  
3           or  
4           e. That the witness is an expert witness, who for  
5           purposes of this section is a person educated in a  
6           special art or profession or a person possessing  
7           special or peculiar knowledge acquired from practical  
8           experience, or  
9           f. Upon application and notice, that such exceptional  
10          circumstances exist as to make it desirable, in the  
11          interest of justice and with due regard to the  
12          importance of presenting the testimony of witnesses  
13          orally in open court, to allow the deposition to be  
14          used.

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

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

22          Substitution of parties pursuant to Section 1081, 1082, 1083 or  
23          2025 of this title does not affect the right to use depositions  
24          previously taken. When an action has been brought in this state or

1 in any court of the United States or of any other state and another  
2 action involving the same subject matter is afterward brought  
3 between the same parties or their representatives or successors in  
4 interest, all depositions lawfully taken and duly filed in the  
5 former action may be used in the latter as if originally taken  
6 therefor.

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

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

21 B. OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of  
22 subsection B of Section 3228 of this title and paragraph 3 of  
23 subsection D of this section, objection may be made, at the trial or  
24 hearing, to receiving in evidence any deposition or part thereof for

1 any reason which would require the exclusion of the evidence if the  
2 witness were then present and testifying.

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

8 D. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

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

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

17 3. AS TO TAKING OF DEPOSITION.

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

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

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

15          4. AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and  
16 irregularities:

17           a. in the manner in which the testimony is transcribed or  
18           recorded, or

19           b. in the manner in which the deposition is prepared,  
20           signed, certified, sealed, endorsed, transmitted,  
21           filed, or otherwise dealt with by the officer under  
22           Sections 3230 and 3231 of this title  
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1 are waived unless a motion to suppress the deposition or some part  
2 thereof is made with reasonable promptness after such defect is, or  
3 with due diligence might have been, ascertained.

4 SECTION 2. This act shall become effective November 1, 2010.

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