

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 1016

By: Crain

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5
6 AS INTRODUCED

7 An Act relating to consumer lawsuit loans; amending
8 12 O.S. 2011, Section 3226, as last amended by
9 Section 2, Chapter 278, O.S.L. 2012 (12 O.S. Supp.
10 2012, Section 3226), which relates to discovery;
11 requiring production of certain documents; requiring
12 filing of certain agreements; establishing time
13 requirement for certain filings; amending 14A O.S.
14 2011, Section 3-104, as amended by Section 4, Chapter
15 172, O.S.L. 2012 (14A O.S. Supp. 2012, Section 3-
16 104), which relates to consumer loans; modifying
17 definition; defining terms; providing for
18 codification; and providing an effective date.

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

20 SECTION 1. AMENDATORY 12 O.S. 2011, Section 3226, as
21 last amended by Section 2, Chapter 278, O.S.L. 2012 (12 O.S. Supp.
22 2012, Section 3226), is amended to read as follows:

23 Section 3226. A. DISCOVERY METHODS; INITIAL DISCLOSURES.

24 1. DISCOVERY METHODS. Parties may obtain discovery by one or
more of the following methods: Depositions upon oral examination or
written questions; written interrogatories; production of documents
or things or permission to enter upon land or other property, for
inspection and other purposes; physical and mental examinations; and

1 requests for admission. Except as provided in this section or
2 unless the court orders otherwise under this section, the frequency
3 of use of these methods is not limited.

4 2. INITIAL DISCLOSURES.

5 a. Except in categories of proceedings specified in
6 subparagraph b of this paragraph, or to the extent
7 otherwise stipulated or directed by order, a party,
8 without awaiting a discovery request, shall provide to
9 other parties a computation of any category of damages
10 claimed by the disclosing party, making available for
11 inspection and copying the documents or other
12 evidentiary material, not privileged or protected from
13 disclosure, on which such computation is based,
14 including materials bearing on the nature and extent
15 of injuries suffered.

16 b. In any dispute with respect to which a consumer has
17 received money from a consumer lawsuit lender, as each
18 is defined in Article 3 of the Consumer Credit Code:

19 (1) any documents that the consumer or the consumer's
20 representative provided to the consumer lawsuit
21 lender shall be produced to the opposing party
22 without awaiting a discovery request, and

23 (2) a copy of any agreement between the consumer and
24 a consumer lawsuit lender shall be filed with the

1 tribunal hearing the dispute and served upon the
2 opposing party.

3 (a) If the consumer lawsuit lending agreement is
4 executed before the complaint or other
5 demand is served, the agreement shall be
6 filed promptly upon its execution or the
7 filing of the complaint or other demand,
8 whichever is later, and shall be served with
9 the complaint or other demand as provided in
10 Section 2004 of this Title.

11 (b) If the consumer lawsuit lending agreement is
12 executed after the complaint or other demand
13 is served, the agreement shall be filed and
14 served upon the opposing party within ten
15 (10) days of its execution.

16 c. The following categories of proceedings are exempt
17 from initial disclosure under subparagraph a of this
18 paragraph:

- 19 (1) an action for review of an administrative record,
20 (2) a petition for habeas corpus or other proceeding
21 to challenge a criminal conviction or sentence,
22 (3) an action brought without counsel by a person in
23 custody of the United States, a state, or a state
24 subdivision,

- (4) an action to enforce or quash an administrative summons or subpoena,
- (5) an action by the United States to recover benefit payments,
- (6) an action by the United States to collect on a student loan guaranteed by the United States,
- (7) a proceeding ancillary to proceedings in other courts, and
- (8) an action to enforce an arbitration award.

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d. Disclosures required under this paragraph shall be made at or within sixty (60) days after service unless a different time is set by stipulation or court order, or unless a party objects that initial disclosures are not appropriate in the circumstances of the action and states the objection in a motion filed with the court. In ruling on the objection, the court shall determine what disclosures, if any, are to be made and set the time for disclosure. A party shall make its initial disclosures based on the information then readily available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the

1 sufficiency of another party's disclosures or because
2 another party has not made its disclosures.

3 B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by
4 order of the court in accordance with the Oklahoma Discovery Code,
5 the scope of discovery is as follows:

6 1. IN GENERAL.

7 a. Parties may obtain discovery regarding any matter, not
8 privileged, which is relevant to the subject matter
9 involved in the pending action, whether it relates to
10 the claim or defense of the party seeking discovery or
11 to the claim or defense of any other party, including
12 the existence, description, nature, custody, condition
13 and location of any documents, electronically stored
14 information or other tangible things and the identity
15 and location of persons having knowledge of any
16 discoverable matter. It is not a ground for objection
17 that the information sought will be inadmissible at
18 the trial if the information sought appears reasonably
19 calculated to lead to the discovery of admissible
20 evidence.

21 b. A party shall produce upon request pursuant to Section
22 3234 of this title, any insurance agreement under
23 which any person carrying on an insurance business may
24 be liable to satisfy part or all of a judgment which

1 may be entered in the action or to indemnify or
2 reimburse for payments made to satisfy the judgment.
3 Information concerning the insurance agreement is not
4 by reason of disclosure admissible in evidence at
5 trial. For purposes of this section, an application
6 for insurance shall not be treated as a part of an
7 insurance agreement.

8 2. LIMITATIONS ON FREQUENCY AND EXTENT.

9 a. By order, the court may alter the limits on the length
10 of depositions under Section 3230 of this title, on
11 the number of interrogatories under Section 3233 of
12 this title, on the number of requests to produce under
13 Section 3234 of this title, or on the number of
14 requests for admission under Section 3236 of this
15 title.

16 b. A party is not required to provide discovery of
17 electronically stored information from sources that
18 the party identifies as not reasonably accessible
19 because of undue burden or cost. On motion to compel
20 discovery or for a protective order, the party from
21 whom discovery is sought must show that the
22 information is not reasonably accessible because of
23 undue burden or cost. If that showing is made, the
24 court may order discovery from such sources if the

1 requesting party shows good cause, considering the
2 limitations of subparagraph c of this paragraph. The
3 court may specify conditions for the discovery.

4 c. On motion or on its own, the court shall limit the
5 frequency or extent of discovery otherwise allowed if
6 it determines that:

7 (1) the discovery sought is unreasonably cumulative
8 or duplicative, or can be obtained from some
9 other source that is more convenient, less
10 burdensome, or less expensive,

11 (2) the party seeking discovery has had ample
12 opportunity to obtain the information by
13 discovery in the action, or

14 (3) the burden or expense of the proposed discovery
15 outweighs its likely benefit, considering the
16 needs of the case, the amount in controversy, the
17 parties' resources, the importance of the issues
18 at stake in the action, and the importance of the
19 discovery in resolving the issues.

20 3. TRIAL PREPARATION: MATERIALS.

21 a. Unless as provided by paragraph 4 of this subsection,
22 a party may not discover documents and tangible things
23 that are prepared in anticipation of litigation or for
24 trial by or for another party or its representative,

1 including the other party's attorney, consultant,
2 surety, indemnitor, insurer or agent. Subject to
3 paragraph 4 of this subsection, such materials may be
4 discovered if:

5 (1) they are otherwise discoverable under paragraph 1
6 of this subsection, and

7 (2) the party shows that it has substantial need for
8 the materials to prepare its case and cannot,
9 without undue hardship, obtain their substantial
10 equivalent by other means.

11 b. If the court orders discovery of such materials, the
12 court shall protect against disclosure of the mental
13 impressions, conclusions, opinions or legal theories
14 of a party's attorney or other representative
15 concerning the litigation.

16 c. A party or other person may, upon request and without
17 the required showing, obtain the person's own previous
18 statement about the action or its subject matter. If
19 the request is refused, the person may move for a
20 court order, and the provisions of paragraph 4 of
21 subsection A of Section 3237 of this title apply to
22 the award of expenses. A previous statement is
23 either:
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- 1 (1) a written statement that the person has signed or
2 otherwise adopted or approved, or
3 (2) a contemporaneous stenographic, mechanical,
4 electrical, or other recording, or a
5 transcription thereof, which recites
6 substantially verbatim the person's oral
7 statement.

8 4. TRIAL PREPARATION: EXPERTS.

9 a. Discovery of facts known and opinions held by experts,
10 otherwise discoverable under the provisions of
11 paragraph 1 of this subsection and acquired or
12 developed in anticipation of litigation or for trial,
13 may be obtained only as follows:

- 14 (1) a party may, through interrogatories, require any
15 other party to identify each person whom that
16 other party expects to call as an expert witness
17 at trial and give the address at which that
18 expert witness may be located,
19 (2) after disclosure of the names and addresses of
20 the expert witnesses, the other party expects to
21 call as witnesses, the party, who has requested
22 disclosure, may depose any such expert witnesses
23 subject to scope of this section. Prior to
24 taking the deposition the party must give notice

1 as required in subsections A and C of Section
2 3230 of this title, and

3 (3) in addition to taking the depositions of expert
4 witnesses the party may, through interrogatories,
5 require the party who expects to call the expert
6 witnesses to state the subject matter on which
7 each expert witness is expected to testify; the
8 substance of the facts and opinions to which the
9 expert is expected to testify and a summary of
10 the grounds for each opinion; the qualifications
11 of each expert witness, including a list of all
12 publications authored by the expert witness
13 within the preceding ten (10) years; the
14 compensation to be paid to the expert witness for
15 the testimony and preparation for the testimony;
16 and a listing of any other cases in which the
17 expert witness has testified as an expert at
18 trial or by deposition within the preceding four
19 (4) years. An interrogatory seeking the
20 information specified above shall be treated as a
21 single interrogatory for purposes of the
22 limitation on the number of interrogatories in
23 Section 3233 of this title.
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1 b. The protection provided by paragraph 3 of this
2 subsection extends to communications between the
3 party's attorney and any expert witness retained or
4 specially employed to provide expert testimony in the
5 case or whose duties as the party's employee regularly
6 involve giving expert testimony, except to the extent
7 that the communications:

8 (1) relate to compensation for the expert's study or
9 testimony,

10 (2) identify facts or data that the party's attorney
11 provided and that the expert considered in
12 forming the opinions to be expressed, or

13 (3) identify assumptions that the party's attorney
14 provided and that the expert relied upon in
15 forming the opinions to be expressed.

16 c. A party may not, by interrogatories or deposition,
17 discover facts known or opinions held by an expert who
18 has been retained or specially employed by another
19 party in anticipation of litigation or to prepare for
20 trial and who is not expected to be called as a
21 witness at trial, except as provided in Section 3235
22 of this title or upon a showing of exceptional
23 circumstances under which it is impracticable for the
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1 party to obtain facts or opinions on the same subject
2 by other means.

3 d. Unless manifest injustice would result:

4 (1) the court shall require that the party seeking
5 discovery pay the expert a reasonable fee for
6 time spent in responding to discovery under
7 division (2) of subparagraph a of this paragraph
8 and subparagraph c of this paragraph, and

9 (2) the court shall require that the party seeking
10 discovery with respect to discovery obtained
11 under subparagraph c of this paragraph, pay the
12 other party a fair portion of the fees and
13 expenses reasonably incurred by the latter party
14 in obtaining facts and opinions from the expert.

15 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION

16 MATERIALS.

17 a. When a party withholds information otherwise
18 discoverable under the Oklahoma Discovery Code by
19 claiming that it is privileged or subject to
20 protection as trial preparation material, the party
21 shall make the claim expressly and shall describe the
22 nature of the documents, communications, or things not
23 produced or disclosed in a manner that, without
24 revealing information itself privileged or protected,

1 will enable other parties to assess the applicability
2 of the privilege or protection.

3 b. If information produced in discovery is subject to a
4 claim of privilege or of protection as trial
5 preparation material, the party making the claim may
6 notify any party that received the information of the
7 claim and the basis for it. After being notified, a
8 party shall promptly return, sequester, or destroy the
9 specified information and any copies the party has;
10 shall not use or disclose the information until the
11 claim is resolved; shall take reasonable steps to
12 retrieve the information if the party has disclosed it
13 before being notified; and may promptly present the
14 information to the court under seal for a
15 determination of the claim. The producing party shall
16 preserve the information until the claim is resolved.
17 This mechanism is procedural only and does not alter
18 the standards governing whether the information is
19 privileged or subject to protection as trial
20 preparation material or whether such privilege or
21 protection has been waived.

22 C. PROTECTIVE ORDERS.

23 1. Upon motion by a party or by the person from whom discovery
24 is sought, accompanied by a certification that the movant has in

1 good faith conferred or attempted to confer, either in person or by
2 telephone, with other affected parties in an effort to resolve the
3 dispute without court action, and for good cause shown, the court in
4 which the action is pending or on matters relating to a deposition,
5 the district court in the county where the deposition is to be taken
6 may enter any order which justice requires to protect a party or
7 person from annoyance, harassment, embarrassment, oppression or
8 undue delay, burden or expense, including one or more of the
9 following:

- 10 a. that the discovery not be had,
- 11 b. that the discovery may be had only on specified terms
12 and conditions, including a designation of the time or
13 place,
- 14 c. that the discovery may be had only by a method of
15 discovery other than that selected by the party
16 seeking discovery,
- 17 d. that certain matters not be inquired into, or that the
18 scope of the disclosure or discovery be limited to
19 certain matters,
- 20 e. that discovery be conducted with no one present except
21 persons designated by the court,
- 22 f. that a deposition after being sealed be opened only by
23 order of the court,

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- 1 g. that a trade secret or other confidential research,
2 development or commercial information not be disclosed
3 or be disclosed only in a designated way, and
- 4 h. that the parties simultaneously file specified
5 documents or information enclosed in sealed envelopes
6 to be opened as directed by the court.

7 2. If the motion for a protective order is denied in whole or
8 in part, the court may, on such terms and conditions as are just,
9 order that any party or person provide or permit discovery. The
10 provisions of paragraph 4 of subsection A of Section 3237 of this
11 title apply to the award of expenses incurred in relation to the
12 motion. Any protective order of the court which has the effect of
13 removing any material obtained by discovery from the public record
14 shall contain the following:

- 15 a. a statement that the court has determined it is
16 necessary in the interests of justice to remove the
17 material from the public record,
- 18 b. specific identification of the material which is to be
19 removed or withdrawn from the public record, or which
20 is to be filed but not placed in the public record,
21 and
- 22 c. a requirement that any party obtaining a protective
23 order place the protected material in a sealed manila
24 envelope clearly marked with the caption and case

1 number and is clearly marked with the word
2 "CONFIDENTIAL", and stating the date the order was
3 entered and the name of the judge entering the order.
4 This requirement may also be satisfied by requiring
5 the party to file the documents pursuant to the
6 procedure for electronically filing sealed or
7 confidential documents approved for electronic filing
8 in the courts of this state.

9 3. No protective order entered after the filing and
10 microfilming of documents of any kind shall be construed to require
11 the microfilm record of such filing to be amended in any fashion.

12 4. The party or counsel which has received the protective order
13 shall be responsible for promptly presenting the order to
14 appropriate court clerk personnel for appropriate action.

15 5. All documents produced or testimony given under a protective
16 order shall be retained in the office of counsel until required by
17 the court to be filed in the case.

18 6. Counsel for the respective parties shall be responsible for
19 informing witnesses, as necessary, of the contents of the protective
20 order.

21 7. When a case is filed in which a party intends to seek a
22 protective order removing material from the public record, the
23 plaintiff(s) and defendant(s) shall be initially designated on the
24 petition under pseudonym such as "John or Jane Doe", or "Roe", and

1 the petition shall clearly indicate that the party designations are
2 fictitious. The party seeking confidentiality or other order
3 removing the case, in whole or in part, from the public record,
4 shall immediately present application to the court, seeking
5 instructions for the conduct of the case, including confidentiality
6 of the records.

7 D. SEQUENCE AND TIMING OF DISCOVERY. Unless the court upon
8 motion, for the convenience of parties and witnesses and in the
9 interests of justice, orders otherwise, methods of discovery may be
10 used in any sequence. The fact that a party is conducting
11 discovery, whether by deposition or otherwise, shall not operate to
12 delay discovery by any other party.

13 E. SUPPLEMENTATION OF RESPONSES. A party who has responded to
14 a request for discovery with a response that was complete when it
15 was made is under no duty to supplement the response to include
16 information thereafter acquired, except as follows:

- 17 1. A party is under a duty seasonably to supplement the
18 response with respect to any question directly addressed to:
 - 19 a. the identity and location of persons having knowledge
20 of discoverable matters, and
 - 21 b. the identity of each person expected to be called as
22 an expert witness at trial, the subject matter on
23 which the person is expected to testify, and the
24 substance of the testimony of the person;

1 2. A party is under a duty seasonably to amend a prior response
2 to an interrogatory, request for production, or request for
3 admission if the party obtains information upon the basis of which:

4 a. (1) the party knows that the response was incorrect
5 in some material respect when made, or

6 (2) the party knows that the response, which was
7 correct when made, is no longer true in some
8 material respect, and

9 b. the additional or corrective information has not
10 otherwise been made known to the other parties during
11 the discovery process or in writing; and

12 3. A duty to supplement responses may be imposed by order of
13 the court, agreement of the parties, or at any time prior to trial
14 through new requests for supplementation of prior responses.

15 F. DISCOVERY CONFERENCE. At any time after commencement of an
16 action, the court may direct the attorneys for the parties to appear
17 for a conference on the subject of discovery. The court shall do so
18 upon motion by the attorney for any party if the motion includes:

19 1. A statement of the issues as they then appear;

20 2. A proposed plan and schedule of discovery;

21 3. Any limitations proposed to be placed on discovery;

22 4. Any other proposed orders with respect to discovery; and
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1 5. A statement showing that the attorney making the motion has
2 made a reasonable effort to reach agreement with opposing attorneys
3 on the matters set forth in the motion.

4 Each party and his attorney are under a duty to participate in
5 good faith in the framing of a discovery plan if a plan is proposed
6 by the attorney for any party. Notice of the motion shall be served
7 on all parties. Objections or additions to matters set forth in the
8 motion shall be served not later than ten (10) days after service of
9 the motion.

10 Following the discovery conference, the court shall enter an
11 order tentatively identifying the issues for discovery purposes,
12 establishing a plan and schedule for discovery, setting limitations
13 on discovery, if any; and determining such other matters, including
14 the allocation of expenses, as are necessary for the proper
15 management of discovery in the action. In preparing the plan for
16 discovery the court shall protect the parties from excessive or
17 abusive use of discovery. An order shall be altered or amended
18 whenever justice so requires.

19 Subject to the right of a party who properly moves for a
20 discovery conference to prompt convening of the conference, the
21 court may combine the discovery conference with a pretrial
22 conference.

23 G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS.

24 Every request for discovery, response or objection thereto made by a

1 party represented by an attorney shall be signed by at least one of
2 the party's attorneys of record in the party's individual name whose
3 address shall be stated. A party who is not represented by an
4 attorney shall sign the request, response or objection and state the
5 party's address. The signature of the attorney or party constitutes
6 a certification that the party has read the request, response or
7 objection, and that it is:

8 1. To the best of the party's knowledge, information and belief
9 formed after a reasonable inquiry consistent with the Oklahoma
10 Discovery Code and warranted by existing law or a good faith
11 argument for the extension, modification or reversal of existing
12 law;

13 2. Interposed in good faith and not primarily to cause delay or
14 for any other improper purpose; and

15 3. Not unreasonable or unduly burdensome or expensive, given
16 the nature and complexity of the case, the discovery already had in
17 the case, the amount in controversy, and other values at stake in
18 the litigation. If a request, response or objection is not signed,
19 it shall be deemed ineffective.

20 If a certification is made in violation of the provisions of
21 this subsection, the court, upon motion or upon its own initiative,
22 shall impose upon the person who made the certification, the party
23 on whose behalf the request, response or objection is made, or both,
24 an appropriate sanction, which may include an order to pay to the

1 amount of the reasonable expenses occasioned thereby, including a
2 reasonable attorney fee.

3 SECTION 2. AMENDATORY 14A O.S. 2011, Section 3-104, as
4 amended by Section 4, Chapter 172, O.S.L. 2012 (14A O.S. Supp. 2012,
5 Section 3-104), is amended to read as follows:

6 Section 3-104. A. Except with respect to a loan primarily
7 secured by an interest in land (Section 3-105 of this title), or
8 except with respect to loans granted by institutions of
9 postsecondary education except that such loans by institutions of
10 postsecondary education shall be subject to disclosure requirements
11 pursuant to Section 3-301 of this title and remedies for violation
12 of disclosure provisions pursuant to Articles 5 and 6 of this title
13 if otherwise they meet the definition of consumer loan, a "consumer
14 loan" is a loan made by a person regularly engaged in the business
15 of making loans in which:

16 ~~(a) the~~ 1. The debtor is a person other than an organization;

17 ~~(b) the~~ 2. The debt is incurred primarily for a personal,
18 family or household purpose;

19 ~~(c) either~~ 3. Either the debt is payable in installments or a
20 loan finance charge is made; and

21 ~~(d) either~~ 4. Either the principal does not exceed Fifty
22 Thousand Dollars (\$50,000.00), unless the loan is a private
23 education loan as that term is defined in the Federal Consumer
24 Credit Protection Act, or the debt is secured by an interest in

1 land. The dollar amount in this paragraph shall be adjusted
2 annually as indicated by the Consumer Financial Protection Bureau by
3 the annual percentage increase in the Consumer Price Index for Urban
4 Wage Earners and Clerical Workers, as published by the Bureau of
5 Labor Statistics, rounded to the nearest multiple of One Hundred
6 Dollars (\$100.00) or One Thousand Dollars (\$1,000.00) as applicable.

7 B. Notwithstanding any other provision of the Consumer Credit
8 Code, a consumer lawsuit lending transaction, regardless of the
9 amount thereof, shall be a "consumer loan" within the meaning of
10 Article 3 of this title and be subject to the limitations and
11 disclosure requirements of this title. Any amount payable to the
12 consumer lawsuit lender in the consumer lawsuit lending transaction
13 above the amount provided by the consumer lawsuit lender to the
14 consumer shall be a loan finance charge as defined in Section 3-109
15 of this title.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3-110 of Title 14A, unless there
18 is created a duplication in numbering, reads as follows:

19 As used in Article 3 of Title 14A of the Oklahoma Statutes:

20 1. "Consumer lawsuit lender" means any person that engages in
21 consumer lawsuit lending. A consumer lawsuit lender shall be
22 considered a person who is regularly engaged in the business of
23 making loans to consumers;

24 2. "Consumer lawsuit lending" means:

- 1 a. providing any money to any consumer, to use for any
2 purpose other than prosecuting the consumer's legal
3 dispute, with the repayment of such money conditioned
4 upon and sourced from the consumer's proceeds of the
5 legal dispute, by judgment or settlement or otherwise,
6 or
7 b. purchasing from any consumer a contingent right to
8 receive a share of the potential proceeds of the
9 consumer's dispute, by judgment or settlement or
10 otherwise; and

11 3. "Legal dispute" means:

- 12 a. any civil action,
13 b. any alternative dispute-resolution proceeding, or
14 c. any administrative proceeding before any agency or
15 instrumentality of the government of this State.

16 SECTION 4. This act shall become effective November 1, 2013.

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