

1 ENGROSSED SENATE
2 BILL NO. 1016

By: Crain of the Senate

3 and

4 Osborn of the House

5
6 **[consumer lawsuit loans - requiring production of**
7 **documents - requiring filing of agreements -**
8 **codification - effective date]**

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

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

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

14 1. DISCOVERY METHODS. Parties may obtain discovery by one or
15 more of the following methods: Depositions upon oral examination or
16 written questions; written interrogatories; production of documents
17 or things or permission to enter upon land or other property, for
18 inspection and other purposes; physical and mental examinations; and
19 requests for admission. Except as provided in this section or
20 unless the court orders otherwise under this section, the frequency
21 of use of these methods is not limited.

22 2. INITIAL DISCLOSURES.

23 a. Except in categories of proceedings specified in
24 subparagraph b of this paragraph, or to the extent

1 otherwise stipulated or directed by order, a party,
2 without awaiting a discovery request, shall provide to
3 other parties a computation of any category of damages
4 claimed by the disclosing party, making available for
5 inspection and copying the documents or other
6 evidentiary material, not privileged or protected from
7 disclosure, on which such computation is based,
8 including materials bearing on the nature and extent
9 of injuries suffered.

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

13 (1) any documents that the consumer or the consumer's
14 representative provided to the consumer lawsuit
15 lender shall be produced to the opposing party
16 without awaiting a discovery request, and

17 (2) a copy of any agreement between the consumer and
18 a consumer lawsuit lender shall be filed with the
19 tribunal hearing the dispute and served upon the
20 opposing party.

21 (a) If the consumer lawsuit lending agreement is
22 executed before the complaint or other
23 demand is served, the agreement shall be
24 filed promptly upon its execution or the

1 filing of the complaint or other demand,
2 whichever is later, and shall be served with
3 the complaint or other demand as provided in
4 Section 2004 of this Title.

5 (b) If the consumer lawsuit lending agreement is
6 executed after the complaint or other demand
7 is served, the agreement shall be filed and
8 served upon the opposing party within ten
9 (10) days of its execution.

10 c. The following categories of proceedings are exempt
11 from initial disclosure under subparagraph a of this
12 paragraph:

- 13 (1) an action for review of an administrative record,
14 (2) a petition for habeas corpus or other proceeding
15 to challenge a criminal conviction or sentence,
16 (3) an action brought without counsel by a person in
17 custody of the United States, a state, or a state
18 subdivision,
19 (4) an action to enforce or quash an administrative
20 summons or subpoena,
21 (5) an action by the United States to recover benefit
22 payments,
23 (6) an action by the United States to collect on a
24 student loan guaranteed by the United States,

1 (7) a proceeding ancillary to proceedings in other
2 courts, and

3 (8) an action to enforce an arbitration award.

4 ~~e.~~

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

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

23 1. IN GENERAL.
24

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

15 b. A party shall produce upon request pursuant to Section
16 3234 of this title, any insurance agreement under
17 which any person carrying on an insurance business may
18 be liable to satisfy part or all of a judgment which
19 may be entered in the action or to indemnify or
20 reimburse for payments made to satisfy the judgment.
21 Information concerning the insurance agreement is not
22 by reason of disclosure admissible in evidence at
23 trial. For purposes of this section, an application
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1 for insurance shall not be treated as a part of an
2 insurance agreement.

3 2. LIMITATIONS ON FREQUENCY AND EXTENT.

4 a. By order, the court may alter the limits on the length
5 of depositions under Section 3230 of this title, on
6 the number of interrogatories under Section 3233 of
7 this title, on the number of requests to produce under
8 Section 3234 of this title, or on the number of
9 requests for admission under Section 3236 of this
10 title.

11 b. A party is not required to provide discovery of
12 electronically stored information from sources that
13 the party identifies as not reasonably accessible
14 because of undue burden or cost. On motion to compel
15 discovery or for a protective order, the party from
16 whom discovery is sought must show that the
17 information is not reasonably accessible because of
18 undue burden or cost. If that showing is made, the
19 court may order discovery from such sources if the
20 requesting party shows good cause, considering the
21 limitations of subparagraph c of this paragraph. The
22 court may specify conditions for the discovery.

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

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

8 (2) the party seeking discovery has had ample
9 opportunity to obtain the information by
10 discovery in the action, or

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

17 3. TRIAL PREPARATION: MATERIALS.

18 a. Unless as provided by paragraph 4 of this subsection,
19 a party may not discover documents and tangible things
20 that are prepared in anticipation of litigation or for
21 trial by or for another party or its representative,
22 including the other party's attorney, consultant,
23 surety, indemnitor, insurer or agent. Subject to
24

1 paragraph 4 of this subsection, such materials may be
2 discovered if:

3 (1) they are otherwise discoverable under paragraph 1
4 of this subsection, and

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

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

14 c. A party or other person may, upon request and without
15 the required showing, obtain the person's own previous
16 statement about the action or its subject matter. If
17 the request is refused, the person may move for a
18 court order, and the provisions of paragraph 4 of
19 subsection A of Section 3237 of this title apply to
20 the award of expenses. A previous statement is
21 either:

22 (1) a written statement that the person has signed or
23 otherwise adopted or approved, or
24

1 (2) a contemporaneous stenographic, mechanical,
2 electrical, or other recording, or a
3 transcription thereof, which recites
4 substantially verbatim the person's oral
5 statement.

6 4. TRIAL PREPARATION: EXPERTS.

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

12 (1) a party may, through interrogatories, require any
13 other party to identify each person whom that
14 other party expects to call as an expert witness
15 at trial and give the address at which that
16 expert witness may be located,

17 (2) after disclosure of the names and addresses of
18 the expert witnesses, the other party expects to
19 call as witnesses, the party, who has requested
20 disclosure, may depose any such expert witnesses
21 subject to scope of this section. Prior to
22 taking the deposition the party must give notice
23 as required in subsections A and C of Section
24 3230 of this title, and

1 (3) in addition to taking the depositions of expert
2 witnesses the party may, through interrogatories,
3 require the party who expects to call the expert
4 witnesses to state the subject matter on which
5 each expert witness is expected to testify; the
6 substance of the facts and opinions to which the
7 expert is expected to testify and a summary of
8 the grounds for each opinion; the qualifications
9 of each expert witness, including a list of all
10 publications authored by the expert witness
11 within the preceding ten (10) years; the
12 compensation to be paid to the expert witness for
13 the testimony and preparation for the testimony;
14 and a listing of any other cases in which the
15 expert witness has testified as an expert at
16 trial or by deposition within the preceding four
17 (4) years. An interrogatory seeking the
18 information specified above shall be treated as a
19 single interrogatory for purposes of the
20 limitation on the number of interrogatories in
21 Section 3233 of this title.

22 b. The protection provided by paragraph 3 of this
23 subsection extends to communications between the
24 party's attorney and any expert witness retained or

1 specially employed to provide expert testimony in the
2 case or whose duties as the party's employee regularly
3 involve giving expert testimony, except to the extent
4 that the communications:

5 (1) relate to compensation for the expert's study or
6 testimony,

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

10 (3) identify assumptions that the party's attorney
11 provided and that the expert relied upon in
12 forming the opinions to be expressed.

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

23 d. Unless manifest injustice would result:
24

- 1 (1) the court shall require that the party seeking
2 discovery pay the expert a reasonable fee for
3 time spent in responding to discovery under
4 division (2) of subparagraph a of this paragraph
5 and subparagraph c of this paragraph, and
6 (2) the court shall require that the party seeking
7 discovery with respect to discovery obtained
8 under subparagraph c of this paragraph, pay the
9 other party a fair portion of the fees and
10 expenses reasonably incurred by the latter party
11 in obtaining facts and opinions from the expert.

12 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
13 MATERIALS.

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

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

20 C. PROTECTIVE ORDERS.

21 1. Upon motion by a party or by the person from whom discovery
22 is sought, accompanied by a certification that the movant has in
23 good faith conferred or attempted to confer, either in person or by
24 telephone, with other affected parties in an effort to resolve the

1 dispute without court action, and for good cause shown, the court in
2 which the action is pending or on matters relating to a deposition,
3 the district court in the county where the deposition is to be taken
4 may enter any order which justice requires to protect a party or
5 person from annoyance, harassment, embarrassment, oppression or
6 undue delay, burden or expense, including one or more of the
7 following:

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

1 h. that the parties simultaneously file specified
2 documents or information enclosed in sealed envelopes
3 to be opened as directed by the court.

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

12 a. a statement that the court has determined it is
13 necessary in the interests of justice to remove the
14 material from the public record,

15 b. specific identification of the material which is to be
16 removed or withdrawn from the public record, or which
17 is to be filed but not placed in the public record,
18 and

19 c. a requirement that any party obtaining a protective
20 order place the protected material in a sealed manila
21 envelope clearly marked with the caption and case
22 number and is clearly marked with the word
23 "CONFIDENTIAL", and stating the date the order was
24 entered and the name of the judge entering the order.

1 This requirement may also be satisfied by requiring
2 the party to file the documents pursuant to the
3 procedure for electronically filing sealed or
4 confidential documents approved for electronic filing
5 in the courts of this state.

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

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

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

15 6. Counsel for the respective parties shall be responsible for
16 informing witnesses, as necessary, of the contents of the protective
17 order.

18 7. When a case is filed in which a party intends to seek a
19 protective order removing material from the public record, the
20 plaintiff(s) and defendant(s) shall be initially designated on the
21 petition under pseudonym such as "John or Jane Doe", or "Roe", and
22 the petition shall clearly indicate that the party designations are
23 fictitious. The party seeking confidentiality or other order
24 removing the case, in whole or in part, from the public record,

1 shall immediately present application to the court, seeking
2 instructions for the conduct of the case, including confidentiality
3 of the records.

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

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

14 1. A party is under a duty seasonably to supplement the
15 response with respect to any question directly addressed to:

- 16 a. the identity and location of persons having knowledge
17 of discoverable matters, and
18 b. the identity of each person expected to be called as
19 an expert witness at trial, the subject matter on
20 which the person is expected to testify, and the
21 substance of the testimony of the person;

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

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

3 (2) the party knows that the response, which was
4 correct when made, is no longer true in some
5 material respect, and

6 b. the additional or corrective information has not
7 otherwise been made known to the other parties during
8 the discovery process or in writing; and

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

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

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

17 2. A proposed plan and schedule of discovery;

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

19 4. Any other proposed orders with respect to discovery; and

20 5. A statement showing that the attorney making the motion has
21 made a reasonable effort to reach agreement with opposing attorneys
22 on the matters set forth in the motion.

23 Each party and his attorney are under a duty to participate in
24 good faith in the framing of a discovery plan if a plan is proposed

1 by the attorney for any party. Notice of the motion shall be served
2 on all parties. Objections or additions to matters set forth in the
3 motion shall be served not later than ten (10) days after service of
4 the motion.

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

14 Subject to the right of a party who properly moves for a
15 discovery conference to prompt convening of the conference, the
16 court may combine the discovery conference with a pretrial
17 conference.

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

19 Every request for discovery, response or objection thereto made by a
20 party represented by an attorney shall be signed by at least one of
21 the party's attorneys of record in the party's individual name whose
22 address shall be stated. A party who is not represented by an
23 attorney shall sign the request, response or objection and state the
24 party's address. The signature of the attorney or party constitutes

1 a certification that the party has read the request, response or
2 objection, and that it is:

3 1. To the best of the party's knowledge, information and belief
4 formed after a reasonable inquiry consistent with the Oklahoma
5 Discovery Code and warranted by existing law or a good faith
6 argument for the extension, modification or reversal of existing
7 law;

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

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

15 If a certification is made in violation of the provisions of
16 this subsection, the court, upon motion or upon its own initiative,
17 shall impose upon the person who made the certification, the party
18 on whose behalf the request, response or objection is made, or both,
19 an appropriate sanction, which may include an order to pay to the
20 amount of the reasonable expenses occasioned thereby, including a
21 reasonable attorney fee.

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

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

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

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

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

16 ~~(d) — either~~ 4. Either the principal does not exceed Fifty
17 Thousand Dollars (\$50,000.00), unless the loan is a private
18 education loan as that term is defined in the Federal Consumer
19 Credit Protection Act, or the debt is secured by an interest in
20 land. The dollar amount in this paragraph shall be adjusted
21 annually as indicated by the Consumer Financial Protection Bureau by
22 the annual percentage increase in the Consumer Price Index for Urban
23 Wage Earners and Clerical Workers, as published by the Bureau of
24

1 Labor Statistics, rounded to the nearest multiple of One Hundred
2 Dollars (\$100.00) or One Thousand Dollars (\$1,000.00) as applicable.

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

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

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

16 1. "Consumer lawsuit lender" means any person that engages in
17 consumer lawsuit lending. A consumer lawsuit lender shall be
18 considered a person who is regularly engaged in the business of
19 making loans to consumers;

20 2. "Consumer lawsuit lending" means:

21 a. providing any money to any consumer, to use for any
22 purpose other than prosecuting the consumer's legal
23 dispute, with the repayment of such money conditioned
24 upon and sourced from the consumer's proceeds of the

1 legal dispute, by judgment or settlement or otherwise,
2 or

- 3 b. purchasing from any consumer a contingent right to
4 receive a share of the potential proceeds of the
5 consumer's dispute, by judgment or settlement or
6 otherwise; and

7 3. "Legal dispute" means:

- 8 a. any civil action,
9 b. any alternative dispute-resolution proceeding, or
10 c. any administrative proceeding before any agency or
11 instrumentality of the government of this state.

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

13 Passed the Senate the 20th day of February, 2013.

14
15 _____
16 Presiding Officer of the Senate

17 Passed the House of Representatives the ____ day of _____,
18 2013.

19
20 _____
21 Presiding Officer of the House
22 of Representatives
23
24