

1 ENGROSSED SENATE
2 BILL NO. 424

By: Sparks and Sykes of the
Senate

3 and

4 Kannady of the House

5
6
7 An Act relating to discovery; amending 12 O.S. 2011,
8 Sections 3233, as amended by Section 2, Chapter 309,
9 O.S.L. 2015, 3234 and 3236 (12 O.S. Supp. 2016,
10 Section 3233), which relate to interrogatories,
11 production of documents and requests for admissions;
12 modifying requirements for certain service; modifying
procedures for certain responses; making language
gender neutral; and providing an effective date.

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

14 SECTION 1. AMENDATORY 12 O.S. 2011, Section 3233, as
15 amended by Section 2, Chapter 309, O.S.L. 2015 (12 O.S. Supp. 2016,
16 Section 3233), is amended to read as follows:

17 Section 3233. A. AVAILABILITY; PROCEDURES FOR USE. Any party
18 may serve upon any other party written interrogatories to be
19 answered by the party served or, if the party served is a public or
20 private corporation or a partnership or association or governmental
21 agency, by any officer or agent, who shall furnish such information
22 as is available to that party. Interrogatories may, without leave
23 of court, be served upon ~~the plaintiff after commencement of the~~
24 ~~action or upon any other party with the summons and petition or~~

1 ~~after service of the summons and petition on that party~~ or by any
2 party after the filing of an answer. Upon leave of court or
3 otherwise agreed to in writing by the parties subject to Section
4 3229 of this title, interrogatories may be served and answered prior
5 to the filing of an answer.

6 Each interrogatory shall be answered separately and fully in
7 writing under oath, unless it is objected to, in which event the
8 objecting party shall state the reasons for objection and shall
9 answer to the extent the interrogatory is not objectionable. When
10 answering each interrogatory, the party shall restate the
11 interrogatory, then provide the answer. The number of
12 interrogatories to a party shall not exceed thirty in number.
13 Interrogatories inquiring as to the names and locations of
14 witnesses, or the existence, location and custodian of documents or
15 physical evidence shall be construed as one interrogatory. All
16 other interrogatories, including subdivisions of one numbered
17 interrogatory, shall be construed as separate interrogatories. No
18 further interrogatories will be served unless authorized by the
19 court. If counsel for a party believes that more than thirty
20 interrogatories are necessary, ~~he~~ counsel shall consult with
21 opposing counsel promptly and attempt to reach a written stipulation
22 as to a reasonable number of additional interrogatories. Counsel
23 are expected to comply with this requirement in good faith. In the
24 event a written stipulation cannot be agreed upon, the party seeking

1 to submit such additional interrogatories shall file a motion with
2 the court (1) showing that counsel have conferred in good faith but
3 sincere attempts to resolve the issue have been unavailing, (2)
4 showing reasons establishing good cause for their use, and (3)
5 setting forth the proposed additional interrogatories. The answers
6 are to be signed by the person making them, and the objections
7 signed by the attorney making them. The party upon whom the
8 interrogatories have been served shall serve a copy of the answers,
9 and objections if any, within thirty (30) days after the service of
10 the interrogatories, ~~except that a defendant may serve answers or~~
11 ~~objections to interrogatories within forty-five (45) days after~~
12 ~~service of the summons and complaint upon that defendant.~~ A shorter
13 or longer time may be directed by the court or, in the absence of
14 such an order, agreed to in writing by the parties subject to
15 Section 3229 of this title. All grounds for an objection to an
16 interrogatory shall be stated with specificity. Any ground not
17 stated in a timely objection is waived unless the party's failure to
18 object is excused by the court for good cause shown. The party
19 submitting the interrogatories may move for an order under
20 subsection A of Section 3237 of this title with respect to any
21 objection to or other failure to answer an interrogatory.

22 B. SCOPE; USE AT TRIAL. Interrogatories may relate to any
23 matters which can be inquired into under subsection B of Section
24 3226 of this title, and the answers may be used to the extent

1 permitted by the Oklahoma Evidence Code as set forth in Sections
2 2101 et seq. of this title.

3 An interrogatory otherwise proper is not necessarily
4 objectionable because an answer to the interrogatory involves an
5 opinion or contention that relates to fact or the application of law
6 to fact. The court may order that such an interrogatory need not be
7 answered until after designated discovery has been completed or
8 until a pretrial conference or other later time.

9 C. OPTION TO PRODUCE BUSINESS RECORDS. Where the answer to an
10 interrogatory may be derived or ascertained from the business
11 records, including electronically stored information, of the party
12 upon whom the interrogatory has been served or from an examination,
13 audit or inspection of such business records, including a
14 compilation, abstract or summary thereof, and the burden of deriving
15 or ascertaining the answer is substantially the same for the party
16 serving the interrogatory as for the party served, it is a
17 sufficient answer to such interrogatory to specify the records from
18 which the answer may be derived or ascertained and to afford to the
19 party serving the interrogatory reasonable opportunity to examine,
20 audit or inspect such records and to make copies, compilations,
21 abstracts or summaries thereof. A specification shall be in
22 sufficient detail to permit the party submitting the interrogatory
23 to locate and to identify, as readily as can the party served, the
24 records from which the answer may be ascertained.

SECTION 2. AMENDATORY 12 O.S. 2011, Section 3234, is amended to read as follows:

Section 3234. A. SCOPE. Any party may serve on any other party a request:

1. To produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test and sample any designated documents or electronically stored information - including, but not limited to, writings, drawings, graphs, charts, photographs, motion picture films, phonograph records, tape and video recordings, records and other data compilations from which information can be obtained - translated, if necessary, by the respondent through detection devices into reasonably usable form, or to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope of subsection B of Section 3226 of this title and which are in the possession, custody or control of the party upon whom the request is served; or

2. To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon, within the scope of subsection B of Section 3226 of this title.

B. PROCEDURE. 1. The request to produce or permit inspection or copying may, without leave of court, be served upon ~~the plaintiff~~

1 ~~after commencement of the action and upon any other party with the~~
2 ~~summons and petition or after service of the summons and petition~~
3 ~~upon that party~~ or by any party after the filing of an answer. Upon
4 leave of court or otherwise agreed to in writing by the parties
5 subject to Section 3229 of this title, request to produce or permit
6 inspection or copying may be served and responded to prior to the
7 filing of an answer.

8 2. The number of requests to produce or permit inspection or
9 copying shall not exceed thirty in number. If counsel for a party
10 believes that more than thirty requests to produce or permit
11 inspection or copying are necessary, ~~he or she~~ counsel shall consult
12 with opposing counsel promptly and attempt to reach a written
13 stipulation as to a reasonable number of additional requests.
14 Counsel are expected to comply with this requirement in good faith.
15 In the event a written stipulation cannot be agreed upon, the party
16 seeking to submit such additional requests for production or
17 inspection shall file a motion with the court (1) showing that
18 counsel have conferred in good faith but sincere attempts to resolve
19 the issue have been unavailing, (2) showing reasons establishing
20 good cause for their use, and (3) setting forth the proposed
21 additional requests for production or inspection.

22 3. The request:
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- 1 a. shall set forth and describe with reasonable
2 particularity the items to be inspected either by
3 individual item or by category,
4 b. shall specify a reasonable time, place and manner of
5 making the inspection and performing the related acts,
6 and
7 c. may specify the form or forms in which electronically
8 stored information is to be produced.

9 4. a. The party, upon whom the request is served, shall
10 serve a written response within thirty (30) days after
11 the service of the request, ~~except that a defendant~~
12 ~~may serve a response within forty-five (45) days after~~
13 ~~service of the summons and petition upon that~~
14 ~~defendant.~~ The court may allow a shorter or longer
15 time.

- 16 b. The response shall state, with respect to each item or
17 category, that inspection and related activities shall
18 be permitted as requested, unless the request is
19 objected to, in which event the reasons for objection
20 shall be stated. If objection is made to part of an
21 item or category, the part shall be specified and
22 inspection permitted of the remaining parts.
23 c. If objection is made to the requested form or forms
24 for producing electronically stored information, or if

1 no form was specified in the request, the responding
2 party shall state the form or forms it intends to use.

3 d. The party submitting the request may move for an order
4 under subsection A of Section 3237 of this title with
5 respect to any objection to or other failure to
6 respond to the request or any part thereof, or any
7 failure to permit inspection as requested.

8 5. Unless the parties otherwise agree, or the court otherwise
9 orders:

10 a. a party who produces documents for inspection shall
11 produce them as they are kept in the usual course of
12 business or shall organize and label them to
13 correspond with the categories in the request,

14 b. if a request does not specify the form or forms for
15 producing electronically stored information, a
16 responding party shall produce the information in a
17 form or forms in which it is ordinarily maintained or
18 in a form or forms that are reasonably usable, and

19 c. a party is not required to produce the same
20 electronically stored information in more than one
21 form.

22 C. PERSONS NOT PARTIES. A person not a party to the action may
23 be compelled to produce documents and things or to submit to an
24 inspection as provided in Section 2004.1 of this title.

1 SECTION 3. AMENDATORY 12 O.S. 2011, Section 3236, is
2 amended to read as follows:

3 Section 3236. A. REQUEST FOR ADMISSION. A party may serve
4 upon any other party a written request for the admission, for
5 purposes of the pending action only, of the truth of any matters
6 within the scope of Section 3226 of this title set forth in the
7 request that relate to statements or opinions of fact or of the
8 application of law to fact, including the genuineness of any
9 documents described in the request. Copies of documents shall be
10 served with the request for admission unless they have been or are
11 otherwise furnished or made available for inspection and copying.
12 The request may, without leave of court, be served upon ~~the~~
13 ~~plaintiff after commencement of the action and upon any other party~~
14 ~~with the summons and petition or after service of the summons and~~
15 ~~petition upon that party~~ or by any party after the filing of an
16 answer. Upon leave of court or otherwise agreed to in writing by
17 the parties subject to Section 3229 of this title, the request may
18 be served and responded to prior to the filing of an answer. The
19 number of requests for admissions for each party is limited to
20 thirty. No further requests for admission will be served unless
21 authorized by the court. If counsel for a party believes that more
22 than thirty requests for admissions are necessary, ~~he~~ counsel shall
23 consult with opposing counsel promptly and attempt to reach a
24 written stipulation as to a reasonable number of additional requests

1 for admissions. Counsel are expected to comply with this
2 requirement in good faith. In the event a written stipulation
3 cannot be agreed upon, the party seeking to submit such additional
4 requests for admissions shall file a motion with the court (1)
5 showing that counsel have conferred in good faith but sincere
6 attempts to resolve the issue have been unavailing, (2) showing
7 reasons establishing good cause for their use, and (3) setting forth
8 the proposed additional requests.

9 Each matter of which an admission is requested shall be
10 separately set forth. The matter is admitted unless, within thirty
11 (30) days after service of the request, or within such shorter or
12 longer time as the court may allow, the party to whom the request is
13 directed serves upon the party requesting the admission a written
14 answer or objection addressed to the matter, signed by the party or
15 by his the party's attorney, ~~but unless the court shortens the time,~~
16 ~~a defendant shall not be required to serve answers or objections~~
17 ~~before the expiration of forty-five (45) days after service of the~~
18 ~~summons and petition upon him.~~

19 If objection is made, the reasons therefor shall be stated. The
20 answer shall specifically deny the matter or set forth in detail the
21 reasons why the answering party cannot truthfully admit or deny the
22 matter. A denial shall fairly meet the substance of the requested
23 admission, and when good faith requires that a party qualify his or
24 her answer or deny only a part of the matter of which an admission

1 is requested, he or she shall specify so much of it as is true and
2 qualify or deny the remainder. An answering party may not give lack
3 of information or knowledge as a reason for failure to admit or deny
4 unless ~~he~~ the party states that he or she has made reasonable
5 inquiry and that the information known or readily obtainable by ~~him~~
6 the party is insufficient to enable him or her to admit or deny. A
7 party who considers that a matter of which an admission has been
8 requested presents a genuine issue for trial may not, on that ground
9 alone, object to the request; he or she may, subject to the
10 provisions of subsection D of Section 3237 of this title, deny the
11 matter or set forth reasons why he or she cannot admit or deny it.

12 The party who has requested the admission may move to determine
13 the sufficiency of the answers or objections. Unless the court
14 determines that an objection is justified, it shall order that an
15 answer be served. If the court determines that an answer does not
16 comply with the requirements of this section, it may order either
17 that the matter is admitted or that an amended answer be served.

18 The court may, in lieu of these orders, determine that final
19 disposition of the request be made at a pretrial conference or at a
20 designated time prior to trial. The provisions of paragraph 4 of
21 subsection A of Section 3237 of this title apply to the award of
22 expenses incurred in relation to the motion.

23 B. EFFECT OF ADMISSION. Any matter admitted under this section
24 is conclusively established unless the court on motion permits

1 withdrawal or amendment of the admission. The court may permit
2 withdrawal or amendment of an admission when the presentation of the
3 merits of the action will be subverted thereby and the party who
4 obtained the admission fails to satisfy the court that withdrawal or
5 amendment will prejudice him or her in maintaining his or her action
6 or defense on the merits.

7 C. SCOPE OF ADMISSIONS. Any admission made by a party under
8 this section is for the purpose of the pending action only and is
9 not an admission ~~by him~~ for any other purpose nor may it be used
10 against him or her in any other proceeding.

11 SECTION 4. This act shall become effective November 1, 2017.

12 Passed the Senate the 8th day of March, 2017.

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14 _____
15 Presiding Officer of the Senate

16 Passed the House of Representatives the ____ day of _____,
17 2017.

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19 _____
20 Presiding Officer of the House
21 of Representatives
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