

1 ENGROSSED HOUSE
2 BILL NO. 1570

By: Echols of the House

3 and

4 Holt of the Senate

5
6
7 An Act relating to the Oklahoma Discovery Code;
8 amending 12 O.S. 2011, Section 3226, as last amended
9 by Section 1, Chapter 192, O.S.L. 2014 (12 O.S. Supp.
10 2016, Section 3226), which relates to discovery
11 methods; modifying limitations on scope of discovery;
12 providing procedure when certain individuals are
13 served with notice of a deposition or subpoena
14 regarding matters of which they have no knowledge;
15 and providing an effective date.

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

17 SECTION 1. AMENDATORY 12 O.S. 2011, Section 3226, as
18 last amended by Section 1, Chapter 192, O.S.L. 2014 (12 O.S. Supp.
19 2016, Section 3226), is amended to read as follows:

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

21 1. DISCOVERY METHODS. Parties may obtain discovery regarding
22 any matter that is relevant to any party's claim or defense by one
23 or more of the following methods: Depositions upon oral examination
24 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

1 examinations; requests for admission; authorizations for release of
2 records; and otherwise by court order upon showing of good cause.
3 Except as provided in this section or unless the court orders
4 otherwise under this section, the frequency of use of these methods
5 is not limited.

6 2. INITIAL DISCLOSURES.

7 a. Except in categories of proceedings specified in
8 subparagraph b of this paragraph, or to the extent
9 otherwise stipulated or directed by order, a party,
10 without awaiting a discovery request, shall provide to
11 other parties a computation of any category of damages
12 claimed by the disclosing party, making available for
13 inspection and copying the documents or other
14 evidentiary material, not privileged or protected from
15 disclosure, on which such computation is based,
16 including materials bearing on the nature and extent
17 of injuries suffered. Subject to subsection B of this
18 section, in any action in which physical or mental
19 injury is claimed, the party making the claim shall
20 provide to the other parties a release or
21 authorization allowing the parties to obtain relevant
22 medical records and bills, and, when relevant, a
23 release or authorization for employment and scholastic
24 records.

1 b. The following categories of proceedings are exempt
2 from initial disclosure under subparagraph a of this
3 paragraph:

- 4 (1) an action for review of an administrative record,
5 (2) a petition for habeas corpus or other proceeding
6 to challenge a criminal conviction or sentence,
7 (3) an action brought without counsel by a person in
8 custody of the United States, a state, or a state
9 subdivision,
10 (4) an action to enforce or quash an administrative
11 summons or subpoena,
12 (5) an action by the United States to recover benefit
13 payments,
14 (6) an action by the United States to collect on a
15 student loan guaranteed by the United States,
16 (7) a proceeding ancillary to proceedings in other
17 courts, and
18 (8) an action to enforce an arbitration award.

19 c. Disclosures required under this paragraph shall be
20 made at or within sixty (60) days after service unless
21 a different time is set by stipulation or court order,
22 or unless a party objects that initial disclosures are
23 not appropriate in the circumstances of the action and
24 states the objection in a motion filed with the court.

1 In ruling on the objection, the court shall determine
2 what disclosures, if any, are to be made and set the
3 time for disclosure. A party shall make its initial
4 disclosures based on the information then readily
5 available to it and is not excused from making its
6 disclosures because it has not fully completed its
7 investigation of the case or because it challenges the
8 sufficiency of another party's disclosures or because
9 another party has not made its disclosures.

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

13 1. IN GENERAL.

14 a. Parties may obtain discovery regarding any matter, not
15 privileged, which is relevant to the subject matter
16 involved in the pending action, whether it relates to
17 the claim or defense of the party seeking discovery or
18 to the claim or defense of any other party, including
19 the existence, description, nature, custody, condition
20 and location of any documents, electronically stored
21 information or other tangible things and the identity
22 and location of persons having knowledge of any
23 discoverable matter. It is not a ground for objection
24 that the information sought will be inadmissible at

1 the trial if the information sought appears reasonably
2 calculated to lead to the discovery of admissible
3 evidence.

4 b. A party shall produce upon request pursuant to Section
5 3234 of this title, any insurance agreement under
6 which any person carrying on an insurance business may
7 be liable to satisfy part or all of a judgment which
8 may be entered in the action or to indemnify or
9 reimburse for payments made to satisfy the judgment.
10 Information concerning the insurance agreement is not
11 by reason of disclosure admissible in evidence at
12 trial. For purposes of this section, an application
13 for insurance shall not be treated as a part of an
14 insurance agreement.

15 2. LIMITATIONS ON FREQUENCY AND EXTENT.

16 a. By order, the court may alter the limits on the length
17 of depositions under Section 3230 of this title, on
18 the number of interrogatories under Section 3233 of
19 this title, on the number of requests to produce under
20 Section 3234 of this title, or on the number of
21 requests for admission under Section 3236 of this
22 title.

23 b. A party is not required to provide discovery of
24 electronically stored information from sources that

1 the party identifies as not reasonably accessible
2 because of undue burden or cost. On motion to compel
3 discovery or for a protective order, the party from
4 whom discovery is sought must show that the
5 information is not reasonably accessible because of
6 undue burden or cost. If that showing is made, the
7 court may order discovery from such sources if the
8 requesting party shows good cause, considering the
9 limitations of subparagraph c of this paragraph. The
10 court may specify conditions for the discovery.

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

14 (1) the discovery sought is unreasonably cumulative
15 or duplicative, or can be obtained from some
16 other source that is more convenient, less
17 burdensome, or less expensive,

18 (2) the party seeking discovery has had ample
19 opportunity to obtain the information by
20 discovery in the action, or

21 (3) the burden or expense of the proposed discovery
22 outweighs its likely benefit, considering the
23 needs of the case, the amount in controversy, the
24 parties' resources, the importance of the issues

1 at stake in the action, and the importance of the
2 discovery in resolving the issues.

3 d. If an officer, director or managing agent of a
4 corporation or a government official is served with
5 notice of a deposition or subpoena regarding a matter
6 about which he or she has no knowledge, he or she may
7 submit at a reasonable time prior to the date of the
8 deposition an affidavit to the noticing party so
9 stating and identifying a person within the
10 corporation or government entity who has knowledge of
11 the subject matter involved in the pending action.
12 Notwithstanding such affidavit, the noticing party may
13 proceed with the deposition, subject to the noticed
14 witness's right to seek a protective order.

15 3. TRIAL PREPARATION: MATERIALS.

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

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

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

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

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

20 (1) a written statement that the person has signed or
21 otherwise adopted or approved, or

22 (2) a contemporaneous stenographic, mechanical,
23 electrical, or other recording, or a
24 transcription thereof, which recites

1 substantially verbatim the person's oral
2 statement.

3 4. TRIAL PREPARATION: EXPERTS.

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

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

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

22 (3) in addition to taking the depositions of expert
23 witnesses the party may, through interrogatories,
24 require the party who expects to call the expert

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

- 19 b. The protection provided by paragraph 3 of this
20 subsection extends to communications between the
21 party's attorney and any expert witness retained or
22 specially employed to provide expert testimony in the
23 case or whose duties as the party's employee regularly
24

1 involve giving expert testimony, except to the extent
2 that the communications:

- 3 (1) relate to compensation for the expert's study or
4 testimony,
- 5 (2) identify facts or data that the party's attorney
6 provided and that the expert considered in
7 forming the opinions to be expressed, or
- 8 (3) identify assumptions that the party's attorney
9 provided and that the expert relied upon in
10 forming the opinions to be expressed.

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

21 d. Unless manifest injustice would result:

- 22 (1) the court shall require that the party seeking
23 discovery pay the expert a reasonable fee for
24 time spent in responding to discovery under

1 division (2) of subparagraph a of this paragraph
2 and subparagraph c of this paragraph, and

3 (2) the court shall require that the party seeking
4 discovery with respect to discovery obtained
5 under subparagraph c of this paragraph, pay the
6 other party a fair portion of the fees and
7 expenses reasonably incurred by the latter party
8 in obtaining facts and opinions from the expert.

9 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
10 MATERIALS.

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

21 b. If information produced in discovery is subject to a
22 claim of privilege or of protection as trial
23 preparation material, the party making the claim may
24 notify any party that received the information of the

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

16 C. PROTECTIVE ORDERS.

17 1. Upon motion by a party or by the person from whom discovery
18 is sought, accompanied by a certification that the movant has in
19 good faith conferred or attempted to confer, either in person or by
20 telephone, with other affected parties in an effort to resolve the
21 dispute without court action, and for good cause shown, the court in
22 which the action is pending or on matters relating to a deposition,
23 the district court in the county where the deposition is to be taken
24 may enter any order which justice requires to protect a party or

1 person from annoyance, harassment, embarrassment, oppression or
2 undue delay, burden or expense, including one or more of the
3 following:

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

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

- 9 a. a statement that the court has determined it is
10 necessary in the interests of justice to remove the
11 material from the public record,
12 b. specific identification of the material which is to be
13 removed or withdrawn from the public record, or which
14 is to be filed but not placed in the public record,
15 and
16 c. a requirement that any party obtaining a protective
17 order place the protected material in a sealed manila
18 envelope clearly marked with the caption and case
19 number and is clearly marked with the word
20 "CONFIDENTIAL", and stating the date the order was
21 entered and the name of the judge entering the order.
22 This requirement may also be satisfied by requiring
23 the party to file the documents pursuant to the
24 procedure for electronically filing sealed or

1 confidential documents approved for electronic filing
2 in the courts of this state.

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

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

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

12 6. Counsel for the respective parties shall be responsible for
13 informing witnesses, as necessary, of the contents of the protective
14 order.

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

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

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

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

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

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

- 22 a. (1) the party knows that the response was incorrect
23 in some material respect when made, or
24

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

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

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

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

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

15 2. A proposed plan and schedule of discovery;

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

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

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

21 Each party and his attorney are under a duty to participate in
22 good faith in the framing of a discovery plan if a plan is proposed
23 by the attorney for any party. Notice of the motion shall be served
24 on all parties. Objections or additions to matters set forth in the

1 motion shall be served not later than ten (10) days after service of
2 the motion.

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

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

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

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

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

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

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

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

20 SECTION 2. This act shall become effective November 1, 2017.
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1 Passed the House of Representatives the 22nd day of March, 2017.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2017.

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8 Presiding Officer of the Senate