

1 **SENATE FLOOR VERSION**

2 April 11, 2023

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2391

6 By: Culver of the House

7 and

8 Howard of the Senate

9 [civil procedure - consumer litigation funding
10 agreements - effective date]

11 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

12 SECTION 1. AMENDATORY 12 O.S. 2021, Section 3226, is
13 amended to read as follows:

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

15 1. DISCOVERY METHODS. Parties may obtain discovery regarding
16 any matter that is relevant to any party's claim or defense by one
17 or more of the following methods: Depositions upon oral examination
18 or written questions; written interrogatories; production of
19 documents or things or permission to enter upon land or other
20 property, for inspection and other purposes; physical and mental
21 examinations; requests for admission; authorizations for release of
22 records; and otherwise by court order upon showing of good cause.
23 Except as provided in this section or unless the court orders

1 otherwise under this section, the frequency of use of these methods
2 is not limited.

3 2. INITIAL DISCLOSURES.

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

22 b. The following categories of proceedings are exempt
23 from initial disclosure under subparagraph a of this
24 paragraph:

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

16 c. Disclosures required under this paragraph shall be
17 made at or within sixty (60) days after service unless
18 a different time is set by stipulation or court order,
19 or unless a party objects that initial disclosures are
20 not appropriate in the circumstances of the action and
21 states the objection in a motion filed with the court.
22 In ruling on the objection, the court shall determine
23 what disclosures, if any, are to be made and set the
24 time for disclosure. A party shall make its initial

1 disclosures based on the information then readily
2 available to it and is not excused from making its
3 disclosures because it has not fully completed its
4 investigation of the case or because it challenges the
5 sufficiency of another party's disclosures or because
6 another party has not made its disclosures.

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

10 1. IN GENERAL.

11 a. Parties may obtain discovery regarding any matter, not
12 privileged, which is relevant to any party's claim or
13 defense, reasonably calculated to lead to the
14 discovery of admissible evidence and proportional to
15 the needs of the case, considering the importance of
16 the issues at stake in the action, the amount in
17 controversy, the parties' relative access to relevant
18 information, the parties' resources, the importance of
19 the discovery in resolving the issues, and whether the
20 burden or expense of the proposed discovery outweighs
21 its likely benefit. Information within this scope of
22 discovery need not be admissible in evidence to be
23 discoverable.

1 b. A party shall produce upon request pursuant to Section
2 3234 of this title, any insurance agreement under
3 which any person carrying on an insurance business may
4 be liable to satisfy part or all of a judgment which
5 may be entered in the action or to indemnify or
6 reimburse for payments made to satisfy the judgment.
7 Information concerning the insurance agreement is not
8 by reason of disclosure admissible in evidence at
9 trial. For purposes of this section, an application
10 for insurance shall not be treated as a part of an
11 insurance agreement.

12 c. Production and Disclosure of Consumer Litigation
13 Funding Agreements.

14 (1) Except as otherwise stipulated or ordered by a
15 court of competent jurisdiction, a consumer or
16 the consumer's legal representative shall,
17 without awaiting a discovery request, disclose
18 and deliver to the following persons the consumer
19 litigation funding agreement:

20 (a) each party to the civil action,
21 administrative proceeding, claim or cause of
22 action, or to each party's legal
23 representative,`

1 (b) the court, agency or tribunal in which the
2 civil action, administrative proceeding,
3 claim or cause of action may be pending, and

4 (c) any known entity or insurer with a
5 preexisting contractual obligation to
6 indemnify or defend a party to the civil
7 action, administrative proceeding, claim or
8 cause of action.

9 This is a continuing obligation and within thirty
10 (30) days of entering into a litigation financing
11 contract, the consumer or the consumer's legal
12 representative must disclose and deliver any
13 subsequently entered into litigation funding
14 agreements.

15 (2) The existence of consumer litigation funding
16 agreements and all participants or parties to
17 such a litigation funding agreement are
18 permissible subjects of discovery in any civil
19 action, administrative proceeding, claim or cause
20 of action to which consumer litigation financing
21 is provided under the litigation funding
22 agreement.

23 (3) Litigation funding provided to commercial
24 enterprises in support of litigation strictly

1 between commercial enterprises is subject to the
2 requirements of 12-3226(c) and Section 14A 3-809
3 -3-817. The funded commercial enterprise and its
4 legal representative shall also have the duties
5 set forth in 12-3226(c). A commercial enterprise
6 does not include a law firm or attorney
7 prosecuting or defending litigation.

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 proposed discovery is outside the scope
15 permitted by subparagraph a of paragraph 1 of
16 this subsection.

17 d. If an officer, director or managing agent of a
18 corporation or a government official is served with
19 notice of a deposition or subpoena regarding a matter
20 about which he or she has no knowledge, he or she may
21 submit at a reasonable time prior to the date of the
22 deposition an affidavit to the noticing party so
23 stating and identifying a person within the
24 corporation or government entity who has knowledge of

1 the subject matter involved in the pending action.

2 Notwithstanding such affidavit, the noticing party may
3 proceed with the deposition, subject to the noticed
4 witness's right to seek a protective order.

5 3. TRIAL PREPARATION: MATERIALS.

6 a. Unless as provided by paragraph 4 of this subsection,
7 a party may not discover documents and tangible things
8 that are prepared in anticipation of litigation or for
9 trial by or for another party or its representative,
10 including the other party's attorney, consultant,
11 surety, indemnitor, insurer or agent. Subject to
12 paragraph 4 of this subsection, such materials may be
13 discovered if:

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

16 (2) the party shows that it has substantial need for
17 the materials to prepare its case and cannot,
18 without undue hardship, obtain their substantial
19 equivalent by other means.

20 b. If the court orders discovery of such materials, the
21 court shall protect against disclosure of the mental
22 impressions, conclusions, opinions or legal theories
23 of a party's attorney or other representative
24 concerning the litigation.

1 c. A party or other person may, upon request and without
2 the required showing, obtain the person's own previous
3 statement about the action or its subject matter. If
4 the request is refused, the person may move for a
5 court order, and the provisions of paragraph 4 of
6 subsection A of Section 3237 of this title apply to
7 the award of expenses. A previous statement is
8 either:

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

11 (2) a contemporaneous stenographic, mechanical,
12 electrical, or other recording, or a
13 transcription thereof, which recites
14 substantially verbatim the person's oral
15 statement.

16 4. TRIAL PREPARATION: EXPERTS.

17 a. Discovery of facts known and opinions held by experts,
18 otherwise discoverable under the provisions of
19 paragraph 1 of this subsection and acquired or
20 developed in anticipation of litigation or for trial,
21 may be obtained only as follows:

22 (1) a party may, through interrogatories, require any
23 other party to identify each person whom that
24 other party expects to call as an expert witness

1 at trial and give the address at which that
2 expert witness may be located,

3 (2) after disclosure of the names and addresses of
4 the expert witnesses, the other party expects to
5 call as witnesses, the party, who has requested
6 disclosure, may depose any such expert witnesses
7 subject to scope of this section. Prior to
8 taking the deposition the party must give notice
9 as required in subsections A and C of Section
10 3230 of this title, and

11 (3) in addition to taking the depositions of expert
12 witnesses the party may, through interrogatories,
13 require the party who expects to call the expert
14 witnesses to state the subject matter on which
15 each expert witness is expected to testify; the
16 substance of the facts and opinions to which the
17 expert is expected to testify and a summary of
18 the grounds for each opinion; the qualifications
19 of each expert witness, including a list of all
20 publications authored by the expert witness
21 within the preceding ten (10) years; the
22 compensation to be paid to the expert witness for
23 the testimony and preparation for the testimony;
24 and a listing of any other cases in which the

1 expert witness has testified as an expert at
2 trial or by deposition within the preceding four
3 (4) years. An interrogatory seeking the
4 information specified above shall be treated as a
5 single interrogatory for purposes of the
6 limitation on the number of interrogatories in
7 Section 3233 of this title.

8 b. The protection provided by paragraph 3 of this
9 subsection extends to communications between the
10 party's attorney and any expert witness retained or
11 specially employed to provide expert testimony in the
12 case or whose duties as the party's employee regularly
13 involve giving expert testimony, except to the extent
14 that the communications:

15 (1) relate to compensation for the expert's study or
16 testimony,

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

20 (3) identify assumptions that the party's attorney
21 provided and that the expert relied upon in
22 forming the opinions to be expressed.

23 c. A party may not, by interrogatories or deposition,
24 discover facts known or opinions held by an expert who

1 has been retained or specially employed by another
2 party in anticipation of litigation or to prepare for
3 trial and who is not expected to be called as a
4 witness at trial, except as provided in Section 3235
5 of this title or upon a showing of exceptional
6 circumstances under which it is impracticable for the
7 party to obtain facts or opinions on the same subject
8 by other means.

9 d. Unless manifest injustice would result:

10 (1) the court shall require that the party seeking
11 discovery pay the expert a reasonable fee for
12 time spent in responding to discovery under
13 division (2) of subparagraph a of this paragraph
14 and subparagraph c of this paragraph, and

15 (2) the court shall require that the party seeking
16 discovery with respect to discovery obtained
17 under subparagraph c of this paragraph, pay the
18 other party a fair portion of the fees and
19 expenses reasonably incurred by the latter party
20 in obtaining facts and opinions from the expert.

21 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
22 MATERIALS.

23 a. When a party withholds information otherwise
24 discoverable under the Oklahoma Discovery Code by

1 claiming that it is privileged or subject to
2 protection as trial preparation material, the party
3 shall make the claim expressly and shall describe the
4 nature of the documents, communications, or things not
5 produced or disclosed in a manner that, without
6 revealing information itself privileged or protected,
7 will enable other parties to assess the applicability
8 of the privilege or protection.

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

1 privileged or subject to protection as trial
2 preparation material or whether such privilege or
3 protection has been waived.

4 C. PROTECTIVE ORDERS.

5 1. Upon motion by a party or by the person from whom discovery
6 is sought, accompanied by a certification that the movant has in
7 good faith conferred or attempted to confer, either in person or by
8 telephone, with other affected parties in an effort to resolve the
9 dispute without court action, and for good cause shown, the court in
10 which the action is pending or on matters relating to a deposition,
11 the district court in the county where the deposition is to be taken
12 may enter any order which justice requires to protect a party or
13 person from annoyance, harassment, embarrassment, oppression or
14 undue delay, burden or expense, including one or more of the
15 following:

- 16 a. that the discovery not be had,
17 b. that the discovery may be had only on specified terms
18 and conditions, including a designation of the time,
19 place or the allocation of expenses,
20 c. that the discovery may be had only by a method of
21 discovery other than that selected by the party
22 seeking discovery,
23
24

- 1 d. that certain matters not be inquired into, or that the
2 scope of the disclosure or discovery be limited to
3 certain matters,
4 e. that discovery be conducted with no one present except
5 persons designated by the court,
6 f. that a deposition after being sealed be opened only by
7 order of the court,
8 g. that a trade secret or other confidential research,
9 development or commercial information not be disclosed
10 or be disclosed only in a designated way, and
11 h. that the parties simultaneously file specified
12 documents or information enclosed in sealed envelopes
13 to be opened as directed by the court.

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

- 22 a. a statement that the court has determined it is
23 necessary in the interests of justice to remove the
24 material from the public record,

1 b. specific identification of the material which is to be
2 removed or withdrawn from the public record, or which
3 is to be filed but not placed in the public record,
4 and

5 c. a requirement that any party obtaining a protective
6 order place the protected material in a sealed manila
7 envelope clearly marked with the caption and case
8 number and is clearly marked with the word
9 "CONFIDENTIAL", and stating the date the order was
10 entered and the name of the judge entering the order.
11 This requirement may also be satisfied by requiring
12 the party to file the documents pursuant to the
13 procedure for electronically filing sealed or
14 confidential documents approved for electronic filing
15 in the courts of this state.

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

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

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

1 6. Counsel for the respective parties shall be responsible for
2 informing witnesses, as necessary, of the contents of the protective
3 order.

4 7. When a case is filed in which a party intends to seek a
5 protective order removing material from the public record, the
6 plaintiff(s) and defendant(s) shall be initially designated on the
7 petition under pseudonym such as "John or Jane Doe", or "Roe", and
8 the petition shall clearly indicate that the party designations are
9 fictitious. The party seeking confidentiality or other order
10 removing the case, in whole or in part, from the public record,
11 shall immediately present application to the court, seeking
12 instructions for the conduct of the case, including confidentiality
13 of the records.

14 D. SEQUENCE AND TIMING OF DISCOVERY. Unless the parties
15 stipulate or the court orders otherwise for the convenience of
16 parties and witnesses and in the interests of justice, methods of
17 discovery may be used in any sequence. The fact that a party is
18 conducting discovery, whether by deposition or otherwise, shall not
19 operate to delay discovery by any other party.

20 E. SUPPLEMENTATION OF RESPONSES. A party who has responded to
21 a request for discovery with a response that was complete when it
22 was made is under no duty to supplement the response to include
23 information thereafter acquired, except as follows:
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1 1. A party is under a duty seasonably to supplement the
2 response with respect to any question directly addressed to:

3 a. the identity and location of persons having knowledge
4 of discoverable matters, and

5 b. the identity of each person expected to be called as
6 an expert witness at trial, the subject matter on
7 which the person is expected to testify, and the
8 substance of the testimony of the person;

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

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

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

17 b. the additional or corrective information has not
18 otherwise been made known to the other parties during
19 the discovery process or in writing; and

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

23 F. DISCOVERY CONFERENCE. At any time after commencement of an
24 action, the court may direct the attorneys for the parties to appear

1 for a conference on the subject of discovery. The court shall do so
2 upon motion by the attorney for any party if the motion includes:

- 3 1. A statement of the issues as they then appear;
- 4 2. A proposed plan and schedule of discovery;
- 5 3. Any limitations proposed to be placed on discovery;
- 6 4. Any other proposed orders with respect to discovery; and
- 7 5. A statement showing that the attorney making the motion has
8 made a reasonable effort to reach agreement with opposing attorneys
9 on the matters set forth in the motion.

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

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

1 Subject to the right of a party who properly moves for a
2 discovery conference to prompt convening of the conference, the
3 court may combine the discovery conference with a pretrial
4 conference.

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

6 Every request for discovery, response or objection thereto made by a
7 party represented by an attorney shall be signed by at least one of
8 the party's attorneys of record in the party's individual name whose
9 address shall be stated. A party who is not represented by an
10 attorney shall sign the request, response or objection and state the
11 party's address. The signature of the attorney or party constitutes
12 a certification that the party has read the request, response or
13 objection, and that it is:

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

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

21 3. Not unreasonable or unduly burdensome or expensive, given
22 the nature and complexity of the case, the discovery already had in
23 the case, the amount in controversy, and other values at stake in
24

1 the litigation. If a request, response or objection is not signed,
2 it shall be deemed ineffective.

3 If a certification is made in violation of the provisions of
4 this subsection, the court, upon motion or upon its own initiative,
5 shall impose upon the person who made the certification, the party
6 on whose behalf the request, response or objection is made, or both,
7 an appropriate sanction, which may include an order to pay to the
8 amount of the reasonable expenses occasioned thereby, including a
9 reasonable attorney fee.

10 SECTION 2. This act shall become effective November 1, 2023.

11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
12 April 11, 2023 - DO PASS AS AMENDED
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