

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2391

By: Culver

7  
8                                   COMMITTEE SUBSTITUTE

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

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12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

4 2. INITIAL DISCLOSURES.

5 a. Except in categories of proceedings specified in  
6 subparagraph b of this paragraph, or to the extent  
7 otherwise stipulated or directed by order, a party,  
8 without awaiting a discovery request, shall provide to  
9 other parties a computation of any category of damages  
10 claimed by the disclosing party, making available for  
11 inspection and copying the documents or other  
12 evidentiary material, not privileged or protected from  
13 disclosure, on which such computation is based,  
14 including materials bearing on the nature and extent  
15 of injuries suffered. Subject to subsection B of this  
16 section, in any action in which physical or mental  
17 injury is claimed, the party making the claim shall  
18 provide to the other parties a release or  
19 authorization allowing the parties to obtain relevant  
20 medical records and bills, and, when relevant, a  
21 release or authorization for employment and scholastic  
22 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 any party's claim or  
16 defense, reasonably calculated to lead to the  
17 discovery of admissible evidence and proportional to  
18 the needs of the case, considering the importance of  
19 the issues at stake in the action, the amount in  
20 controversy, the parties' relative access to relevant  
21 information, the parties' resources, the importance of  
22 the discovery in resolving the issues, and whether the  
23 burden or expense of the proposed discovery outweighs  
24 its likely benefit. Information within this scope of

1 discovery need not be admissible in evidence to be  
2 discoverable.

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

14 c. Production and Disclosure of Consumer Litigation  
15 Funding Agreements.

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

22 (a) each party to the civil action,  
23 administrative proceeding, claim or cause of  
24

1 action, or to each party's legal  
2 representative;

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

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

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

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

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

10       2. LIMITATIONS ON FREQUENCY AND EXTENT.

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

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

1 undue burden or cost. If that showing is made, the  
2 court may order discovery from such sources if the  
3 requesting party shows good cause, considering the  
4 limitations of subparagraph c of this paragraph. The  
5 court may specify conditions for the discovery.

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

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

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

16 (3) the proposed discovery is outside the scope  
17 permitted by subparagraph a of paragraph 1 of  
18 this subsection.

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



1           stating and identifying a person within the  
2           corporation or government entity who has knowledge of  
3           the subject matter involved in the pending action.  
4           Notwithstanding such affidavit, the noticing party may  
5           proceed with the deposition, subject to the noticed  
6           witness's right to seek a protective order.

7           3. TRIAL PREPARATION: MATERIALS.

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

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

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

22           b. If the court orders discovery of such materials, the  
23           court shall protect against disclosure of the mental  
24           impressions, conclusions, opinions or legal theories

1 of a party's attorney or other representative  
2 concerning the litigation.

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

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

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

18 4. TRIAL PREPARATION: EXPERTS.

19 a. Discovery of facts known and opinions held by experts,  
20 otherwise discoverable under the provisions of  
21 paragraph 1 of this subsection and acquired or  
22 developed in anticipation of litigation or for trial,  
23 may be obtained only as follows:  
24

- 1 (1) a party may, through interrogatories, require any  
2 other party to identify each person whom that  
3 other party expects to call as an expert witness  
4 at trial and give the address at which that  
5 expert witness may be located,
- 6 (2) after disclosure of the names and addresses of  
7 the expert witnesses, the other party expects to  
8 call as witnesses, the party, who has requested  
9 disclosure, may depose any such expert witnesses  
10 subject to scope of this section. Prior to  
11 taking the deposition the party must give notice  
12 as required in subsections A and C of Section  
13 3230 of this title, and
- 14 (3) in addition to taking the depositions of expert  
15 witnesses the party may, through interrogatories,  
16 require the party who expects to call the expert  
17 witnesses to state the subject matter on which  
18 each expert witness is expected to testify; the  
19 substance of the facts and opinions to which the  
20 expert is expected to testify and a summary of  
21 the grounds for each opinion; the qualifications  
22 of each expert witness, including a list of all  
23 publications authored by the expert witness  
24 within the preceding ten (10) years; the

1 compensation to be paid to the expert witness for  
2 the testimony and preparation for the testimony;  
3 and a listing of any other cases in which the  
4 expert witness has testified as an expert at  
5 trial or by deposition within the preceding four  
6 (4) years. An interrogatory seeking the  
7 information specified above shall be treated as a  
8 single interrogatory for purposes of the  
9 limitation on the number of interrogatories in  
10 Section 3233 of this title.

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

18 (1) relate to compensation for the expert's study or  
19 testimony,

20 (2) identify facts or data that the party's attorney  
21 provided and that the expert considered in  
22 forming the opinions to be expressed, or  
23  
24

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

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

14 d. Unless manifest injustice would result:

15 (1) the court shall require that the party seeking  
16 discovery pay the expert a reasonable fee for  
17 time spent in responding to discovery under  
18 division (2) of subparagraph a of this paragraph  
19 and subparagraph c of this paragraph, and

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

3 5. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION  
4 MATERIALS.

- 5 a. When a party withholds information otherwise  
6 discoverable under the Oklahoma Discovery Code by  
7 claiming that it is privileged or subject to  
8 protection as trial preparation material, the party  
9 shall make the claim expressly and shall describe the  
10 nature of the documents, communications, or things not  
11 produced or disclosed in a manner that, without  
12 revealing information itself privileged or protected,  
13 will enable other parties to assess the applicability  
14 of the privilege or protection.
- 15 b. If information produced in discovery is subject to a  
16 claim of privilege or of protection as trial  
17 preparation material, the party making the claim may  
18 notify any party that received the information of the  
19 claim and the basis for it. After being notified, a  
20 party shall promptly return, sequester, or destroy the  
21 specified information and any copies the party has;  
22 shall not use or disclose the information until the  
23 claim is resolved; shall take reasonable steps to  
24 retrieve the information if the party has disclosed it

1 before being notified; and may promptly present the  
2 information to the court under seal for a  
3 determination of the claim. The producing party shall  
4 preserve the information until the claim is resolved.  
5 This mechanism is procedural only and does not alter  
6 the standards governing whether the information is  
7 privileged or subject to protection as trial  
8 preparation material or whether such privilege or  
9 protection has been waived.

10 C. PROTECTIVE ORDERS.

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

22 a. that the discovery not be had,

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

20           2.    If the motion for a protective order is denied in whole or  
21 in part, the court may, on such terms and conditions as are just,  
22 order that any party or person provide or permit discovery. The  
23 provisions of paragraph 4 of subsection A of Section 3237 of this  
24 title apply to the award of expenses incurred in relation to the



1 motion. Any protective order of the court which has the effect of  
2 removing any material obtained by discovery from the public record  
3 shall contain the following:

4 a. a statement that the court has determined it is  
5 necessary in the interests of justice to remove the  
6 material from the public record,

7 b. specific identification of the material which is to be  
8 removed or withdrawn from the public record, or which  
9 is to be filed but not placed in the public record,  
10 and

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

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

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

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

7 6. Counsel for the respective parties shall be responsible for  
8 informing witnesses, as necessary, of the contents of the protective  
9 order.

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

20 D. SEQUENCE AND TIMING OF DISCOVERY. Unless the parties  
21 stipulate or the court orders otherwise for the convenience of  
22 parties and witnesses and in the interests of justice, methods of  
23 discovery may be used in any sequence. The fact that a party is  
24

1 conducting discovery, whether by deposition or otherwise, shall not  
2 operate to delay discovery by any other party.

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

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

9 a. the identity and location of persons having knowledge  
10 of discoverable matters, and

11 b. the identity of each person expected to be called as  
12 an expert witness at trial, the subject matter on  
13 which the person is expected to testify, and the  
14 substance of the testimony of the person;

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

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

20 (2) the party knows that the response, which was correct  
21 when made, is no longer true in some material respect,  
22 and  
23  
24

1           b.    the additional or corrective information has not  
2                    otherwise been made known to the other parties during  
3                    the discovery process or in writing; and

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

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

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

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

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

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

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

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

23       1. To the best of the party's knowledge, information and belief  
24 formed after a reasonable inquiry consistent with the Oklahoma

1 Discovery Code and warranted by existing law or a good faith  
2 argument for the extension, modification or reversal of existing  
3 law;

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

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

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

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

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20 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/02/2023 - DO PASS,  
21 As Amended.

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