

FIRST REGULAR SESSION

SENATE BILL NO. 52

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

0471S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To amend supreme court rule 56.01, relating to discovery.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Supreme court rule 56.01 is amended, to read
2 as follows:

56.01. General Provisions Governing Discovery

2 (a) Discovery Methods. Parties may obtain discovery by
3 one or more of the following methods: depositions upon oral
4 examination or written questions; written interrogatories;
5 production of documents, **electronically stored information**,
6 or things or permission to enter upon land or other
7 property, for inspection and other purposes; physical and
8 mental examinations; and requests for admission.

9 (b) Scope of Discovery. Unless otherwise limited by
10 order of the court in accordance with these rules, the scope
11 of discovery is as follows:

12 (1) In General. Parties may obtain discovery regarding
13 any matter, not privileged, that is relevant to the subject
14 matter involved in the pending action, whether it relates to
15 the claim or defense of the party seeking discovery or to
16 the claim or defense of any other party, including the
17 existence, description, nature, custody, condition and
18 location of any books, documents or other tangible things
19 and the identity and location of persons having knowledge of
20 any discoverable matter, **provided the discovery is**

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

21 proportional to the needs of the case considering the
22 totality of the circumstances, including but not limited to,
23 the importance of the issues at stake in the action, the
24 amount in controversy, the parties' relative access to
25 relevant information, the parties' resources, the importance
26 of the discovery in resolving the issues, and whether the
27 burden or expenses of the proposed discovery outweighs its
28 likely benefit.

29 [It is not ground for objection that the information
30 sought will be inadmissible at the trial] **Information within**
31 **the scope of discovery need not be admissible in evidence to**
32 **be discoverable** if the information sought appears reasonably
33 calculated to lead to the discovery of admissible evidence.

34 The party seeking discovery shall bear the burden of
35 establishing relevance.

36 (2) **Limitations.** Upon the motion of any party or on its
37 own, the court must limit the frequency or extent of
38 discovery if it determines that:

39 (A) The discovery sought is cumulative or duplicative,
40 or can be obtained from some other source that is more
41 convenient, less burdensome, or less expensive;

42 (B) The party seeking discovery has had ample
43 opportunity to obtain the information by discovery in the
44 action; or

45 (C) The proposed discovery is outside the scope
46 permitted by this Rule 56.01(b)(1).

47 (3) **Specific Limitations on Electronically Stored**
48 **Information.** A party need not provide discovery of
49 electronically stored information from sources that the
50 party identifies as not reasonably accessible because of
51 undue burden or cost. On motion to compel discovery or for a
52 protective order, the party from whom discovery is sought

53 must show that the information is not reasonably accessible
54 because of undue burden or cost. If that showing is made,
55 the court may nonetheless order discovery from such sources
56 if the requesting party shows good cause, considering the
57 limitations of Rule 56.01(b) (2). The court may specify
58 conditions for the discovery.

59 (4) Insurance Agreements. A party may obtain discovery
60 of the existence and contents, including production of the
61 policy and declaration page, of any insurance agreement
62 under which any person carrying on an insurance business may
63 be liable to satisfy part or all of a judgment that may be
64 entered in the action or to indemnify or reimburse for
65 payments made to satisfy the judgment. Information
66 concerning the insurance agreement is not by reason of
67 disclosure admissible in evidence at trial. For purposes of
68 this Rule [56.01(b) (2)] **56.01 (b) (4)**, an application for
69 insurance shall not be treated as part of an insurance
70 agreement.

71 [(3)] (5) Trial Preparation: Materials. Subject to the
72 provisions of Rule [56.01(b) (4)] **56.01 (b) (6)**, a party may
73 obtain discovery of documents and tangible things otherwise
74 discoverable under Rule 56.01(b) (1) and prepared in
75 anticipation of litigation or for trial by or for another
76 party or by or for that other party's representative,
77 including an attorney, consultant, surety, indemnitor,
78 insurer, or agent, only upon a showing that the party
79 seeking discovery has substantial need of the materials in
80 the preparation of the case and that the adverse party is
81 unable without undue hardship to obtain the substantial
82 equivalent of the materials by other means. In ordering
83 discovery of such materials when the required showing has
84 been made, the court shall protect against disclosure of the

85 mental impressions, conclusions, opinions, or legal theories
86 of an attorney or other representative of a party concerning
87 the litigation.

88 A party may obtain without the required showing a
89 statement concerning the action or its subject matter
90 previously made by that party. For purposes of this
91 paragraph, a statement previously made is: (a) a written
92 statement signed or otherwise adopted or approved by the
93 person making it, or (b) a stenographic, mechanical,
94 electrical, audio, video, motion picture or other recording,
95 or a transcription thereof, of the party or of a statement
96 made by the party and contemporaneously recorded.

97 **[(4)] (6) Trial Preparation: Experts.** Discovery of
98 facts known and opinions held by experts, otherwise
99 discoverable under the provisions of Rule 56.01(b)(1) and
100 acquired or developed in anticipation of litigation or for
101 trial, may be obtained only as follows:

102 (A) A party may through interrogatories require any
103 other party to identify each person whom the other party
104 expects to call as an expert witness at trial by providing
105 such expert's name, address, occupation, place of employment
106 and qualifications to give an opinion, or if such
107 information is available on the expert's curriculum vitae,
108 such curriculum vitae may be attached to the interrogatory
109 answers as a full response to such interrogatory, and to
110 state the general nature of the subject matter on which the
111 expert is expected to testify, and the expert's hourly
112 deposition fee.

113 (B) A party may discover by a deposition the facts and
114 opinions to which the expert is expected to testify. Unless
115 manifest injustice would result, the court shall require
116 that the party seeking discovery from an expert pay the

117 expert a reasonable hourly fee for the time such expert is
118 deposed.

119 **[(5)] (7) Trial Preparations: Non-retained Experts.** A
120 party, through interrogatories, may require any other party
121 to identify each non-retained expert witness, including a
122 party, whom the other party expects to call at trial who may
123 provide expert witness opinion testimony by providing the
124 expert's name, address, and field of expertise. For the
125 purpose of this Rule **[56.01(b) (5)] 56.01(b) (7)**, an expert
126 witness is a witness qualified as an expert by knowledge,
127 experience, training, or education giving testimony relative
128 to scientific, technical or other specialized knowledge that
129 will assist the trier of fact to understand the evidence.
130 Discovery of the facts known and opinions held by such an
131 expert shall be discoverable in the same manner as for lay
132 witnesses.

133 **[(6)] (8) Approved Interrogatories and Request for**
134 **Production.** A circuit court by local court rule may
135 promulgate 'approved' interrogatories and requests for
136 production for use in specified types of litigation. Each
137 such approved interrogatory and request for production
138 submitted to a party shall be denominated as having been
139 approved by reference to the local court rule and paragraph
140 number containing the interrogatory or request for
141 production.

142 **(9) Claiming Privilege or Protecting Trial Preparation**
143 **Materials.**

144 **(A) Information Produced.**

145 **(i) If information produced in discovery is subject to**
146 **a claim of privilege or of protection as trial preparation**
147 **material, the party making the claim may notify any party**
148 **that received the information of the claim and the basis for**

149 it. After being notified, a party must promptly return,
150 sequester, or destroy the specified information and any
151 copies it has; must not use or disclose the information
152 until the claim is resolved; must take reasonable steps to
153 retrieve the information if the party disclosed it before
154 being notified; and may promptly present the information to
155 the court under seal for a determination of the claim. The
156 producing party must preserve the information until the
157 claim is resolved.

158 (ii) An attorney who receives information that contains
159 privileged communications involving an adverse or third
160 party and who has reasonable cause to believe that the
161 information was wrongfully obtained shall not read the
162 information or, if he or she has begun to do so, shall stop
163 reading it. The attorney shall promptly notify the attorney
164 whose communications are contained in the information to
165 return the information to the other attorney and, if in
166 electronic form, delete it and take reasonable measures to
167 assure that the information is inaccessible. An attorney who
168 has been notified about information containing privileged
169 communications has the obligation to preserve the
170 information.

171 (B) The production of privileged or work-product
172 protected documents, electronically stored information or
173 other information, whether inadvertent or otherwise, is not
174 a waiver of the privilege or protection from discovery in
175 the proceeding.

176 (c) Protective Orders. Upon motion by a party or by the
177 person from whom discovery is sought, including e-discovery,
178 and for good cause shown, the court may make any order which
179 justice requires to protect a party or person from

180 annoyance, embarrassment, oppression, or undue burden or
181 expense, including one or more of the following:

182 (1) that the discovery not be had;

183 (2) that the discovery may be had only on specified
184 terms and conditions, including a designation of the time
185 and place **or the allocation of expenses;**

186 (3) that the discovery may be had only by a method of
187 discovery other than that selected by the party seeking
188 discovery;

189 (4) that certain matters not be inquired into, or that
190 the scope of the discovery be limited to certain matters;

191 (5) that discovery be conducted with no one present
192 except persons designated by the court;

193 (6) that a deposition after being sealed be opened only
194 by order of the court;

195 (7) that a trade secret or other confidential research,
196 development, or commercial information not be disclosed or
197 be disclosed only in a designated way;

198 (8) that the parties simultaneously file specified
199 documents or information enclosed in sealed envelopes to be
200 opened as directed by the court.

201 If a motion for a protective order is denied in whole
202 or in part, the court may, on such terms and conditions as
203 are just, order that any party or person provide or permit
204 discovery. The provisions of Rule 61.01 apply to the award
205 of expenses incurred in relation to the motion.

206 In ruling on an objection that the discovery request
207 creates an undue burden or expense, the court shall consider
208 the issues in the case and the serving party's need for such
209 information to prosecute or defend the case and may
210 consider, among other things, the amount in controversy and

211 the parties' relative resources in determining whether the
212 proposed discovery burden or expense outweighs its benefit.

213 (d) Sequence and Timing of Discovery. Unless **the**
214 **parties stipulate or** the court upon motion, for the
215 convenience of parties and witnesses and in the interests of
216 justice, orders otherwise, methods of discovery may be used
217 in any sequence and the fact that a party is conducting
218 discovery, whether by deposition or otherwise, shall not
219 operate to delay any other party's discovery.

220 (e) Supplementation of Responses. A party is under a
221 duty seasonably to amend a prior response to an
222 interrogatory, request for production, or request for
223 admission if the party learns that the response is in some
224 material respect incomplete or incorrect and if the
225 additional or corrective information has not otherwise been
226 made known to the other parties during the discovery process
227 or in writing.

228 (f) Stipulations Regarding Discovery Procedure. Unless
229 the court orders otherwise, the parties may by written
230 stipulation (1) provide that depositions may be taken before
231 any person at any time or place, upon any notice, and in any
232 manner and when so taken may be used like other depositions,
233 and (2) modify the procedures provided by these Rules for
234 other methods of discovery. Any stipulation under
235 subdivision (2) shall be filed.

236 (g) Cooperation in Discovery. All parties shall make
237 reasonable efforts to cooperate for the purpose of
238 minimizing the burden or expense of discovery.

239 (h) **Interrogatories to Parties - Scope. Unless**
240 **otherwise stipulated or ordered by the court, any party may**
241 **serve upon any other party no more than 25 written**
242 **interrogatories, including all discrete subparts.**

243 (i) Depositions Upon Oral Examination.

244 (1) After commencement of the action, any party may
245 take the testimony of any person, including a party, by
246 deposition upon oral examination without leave of the court,
247 except as specified in paragraph (2) of this subdivision.
248 The attendance of witnesses may be compelled by subpoena as
249 provided in Rule 57.09.

250 (2) Leave of court, granted with or without notice,
251 must be obtained only if:

252 (A) the parties have not stipulated to the deposition
253 and:

254 (i) the deposition would result in more than 10
255 depositions being taken under this rule, Rule 57.03, or Rule
256 57.04 by the plaintiffs, or by the defendants, or by the
257 third-party defendants;

258 (ii) the deponent has already been deposed in the case;
259 or

260 (iii) the plaintiff seeks to take a deposition prior to
261 the expiration of 30 days after service of the summons and
262 petition upon any defendant, except that leave is not
263 required if a defendant has served a notice of taking
264 deposition or otherwise sought discovery; or

265 (B) the deponent is confined in prison.

266 (3) (A) Duration. Unless otherwise stipulated or
267 ordered by the court, a deposition shall be limited to 1 day
268 of 7 hours. The court may allow additional time consistent
269 with this Rule 56.01 if needed to fairly examine the
270 deponent or if the deponent, another person, or any other
271 circumstance impedes or delays the examination.

272 (B) Sanction. The court may impose an appropriate
273 sanction, including the reasonable expenses and attorney's

274 fees incurred by any party, on a person who impedes, delays,
275 or frustrates the fair examination of the deponent.

276 (j) Depositions Upon Written Examination.

277 (1) After commencement of the action, any party may
278 take the testimony of any person, including a party, by
279 deposition upon written questions without leave of the
280 court, except as specified in paragraph (2) of this
281 subdivision.

282 (2) Leave of court, granted with or without notice,
283 must be obtained only if:

284 (A) the parties have not stipulated to the deposition
285 and:

286 (i) the deposition would result in more than 10
287 depositions being taken under this rule, Rule 57.03, or Rule
288 57.04 by the plaintiffs, or by the defendants, or by the
289 third-party defendants;

290 (ii) the deponent has already been deposed in the case;
291 or

292 (iii) the plaintiff seeks to take a deposition prior to
293 the expiration of 30 days after service of the summons and
294 petition upon any defendant, except that leave is not
295 required if a defendant has served a notice of taking
296 deposition or otherwise sought discovery; or

297 (B) the deponent is confined in prison.

298 (k) Production of Documents and Things and Entry Upon
299 Land for Inspection and Other Purposes.

300 (1) Scope. Any party may serve on any other party a
301 request to:

302 (A) Produce and permit the requesting party or its
303 representative to inspect, copy, test or sample the
304 following items in the responding party's possession,
305 custody, or control:

306 (i) Any designated documents or electronically stored
307 information including writings, drawings, graphs, charts,
308 photographs, sound recordings, images, electronic records,
309 and other data or compilations from which information can be
310 obtained either directly or indirectly or, if necessary,
311 after translation by the responding party into a reasonably
312 usable form; or

313 (ii) Any designated tangible things; or

314 (B) Permit entry upon designated land or other property
315 in the possession or control of the party upon whom the
316 request is served for the purpose of inspection and
317 measuring, surveying, and photographing, testing, or
318 sampling the property or any designated object or operation
319 thereon, within the scope of Rule 56.01(b).

320 (2) Form. In consecutively numbered paragraphs the
321 request shall:

322 (A) Set forth with reasonably particularity each item
323 or category of items to be inspected;

324 (B) Specify a reasonable time, place and manner of
325 making the inspection and performing the related acts; and

326 (C) May specify that electronically stored information
327 be produced in native format.

328 (3) Response - Objections and Privileges. An objection
329 to part of a request must specify the part and permit
330 inspection of the rest.

331 (1) Request for and Effect of Admissions - Scope. After
332 commencement of an action, a party may serve upon any other
333 party no more than 25 written requests for the admission
334 without leave of court or stipulation of the parties, for
335 purposes of the pending action only, of the truth of any
336 matters within the scope of Rule 56.01(b) set forth in the
337 request that relate to statements or opinions of fact or of

338 the application of law to fact, including the genuineness of
339 any documents described in the request. However, the
340 limitation on the number of requests for admission specified
341 by this Rule 56.01 shall not apply to requests for admission
342 regarding the genuineness of documents.

343 (m) This Rule 56.01 is amended pursuant to the
344 authority granted by Section 5 of Article V of the
345 constitution of Missouri and supersedes all court rules to
346 the extent inconsistent therewith, including the provisions
347 of Rule 57.01, Rule 57.03, Rule 57.04, Rule 58.01, Rule
348 59.01, and Rule 61.01.

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