

ASSEMBLY BILL

No. 881

Introduced by Assembly Member Simitian

February 22, 2001

An act to amend Section 2031 of the Code of Civil Procedure, relating to discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 881, as introduced, Simitian. Discovery.

Existing law provides that any party may obtain discovery, as specified, by inspecting documents, tangible things, and land or other property that are in the possession, custody, or control of any other party to the action.

This bill would make a technical, nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2031 of the Code of Civil Procedure is
2 amended to read:

3 2031. (a) Any party may obtain discovery within the scope
4 delimited by Section 2017, and subject to the restrictions set forth
5 in Section 2019, by inspecting documents, tangible things, and
6 land or other property that are in the possession, custody, or control
7 of any other party to the action.

8 (1) A party may demand that any other party produce and
9 permit the party making the demand, or someone acting on that

1 party’s behalf, to inspect and to copy a document that is in the
2 possession, custody, or control of the party on whom the demand
3 is made.

4 (2) A party may demand that any other party produce and
5 permit the party making the demand, or someone acting on that
6 party’s behalf, to inspect and to photograph, test, or sample any
7 tangible things that are in the possession, custody, or control of the
8 party on whom the demand is made.

9 (3) A party may demand that any other party allow the party
10 making the demand, or someone acting on that party’s behalf, to
11 enter on any land or other property that is in the possession,
12 custody, or control of the party on whom the demand is made, and
13 to inspect and to measure, survey, photograph, test, or sample the
14 land or other property, or any designated object or operation on it.

15 (b) A defendant may make a demand for inspection without
16 leave of court at any time. A plaintiff may make a demand for
17 inspection without leave of court at any time that is 10 days after
18 the service of the summons on, or in unlawful detainer actions
19 within five days after service of the summons on or appearance by,
20 the party to whom the demand is directed, whichever occurs first.
21 However, on motion with or without notice, the court, for good
22 cause shown, may grant leave to a plaintiff to make an inspection
23 demand at an earlier time.

24 (c) A party demanding an inspection shall number each set of
25 demands consecutively. In the first paragraph immediately below
26 the title of the case, there shall appear the identity of the demanding
27 party, the set number, and the identity of the responding party.
28 Each demand in a set shall be separately set forth, identified by
29 number or letter, and shall do all of the following:

30 (1) Designate the documents, tangible things, or land or other
31 property to be inspected either by specifically describing each
32 individual item or by reasonably particularizing each category of
33 item.

34 (2) Specify a reasonable time for the inspection that is at least
35 30 days after service of the demand, or in unlawful detainer actions
36 at least five days after service of the demand, unless the court for
37 good cause shown has granted leave to specify an earlier date.

38 (3) Specify a reasonable place for making the inspection,
39 copying, and performing any related activity.



1 (4) Specify any related activity that is being demanded in
2 addition to an inspection and copying, ~~as well as~~ *and* the manner
3 in which that related activity will be performed, and whether that
4 activity will permanently alter or destroy the item involved.

5 (d) The party demanding an inspection shall serve a copy of the
6 inspection demand on the party to whom it is directed and on all
7 other parties who have appeared in the action.

8 (e) In addition to the inspection demands permitted by this
9 section, a party may propound a supplemental demand to inspect
10 any later acquired or discovered documents, tangible things, or
11 land or other property that are in the possession, custody, or control
12 of the party on whom the demand is made (1) twice prior to the
13 initial setting of a trial date, and (2) subject to the time limits on
14 discovery proceedings and motions provided in Section 2024,
15 once after the initial setting of a trial date. However, on motion, for
16 good cause shown, the court may grant leave to a party to propound
17 an additional number of supplemental demands for inspection.

18 (f) When an inspection of documents, tangible things or places
19 has been demanded, the party to whom the demand has been
20 directed, and any other party or affected person or organization,
21 may promptly move for a protective order. This motion shall be
22 accompanied by a declaration stating facts showing a reasonable
23 and good faith attempt at an informal resolution of each issue
24 presented by the motion.

25 The court, for good cause shown, may make any order that
26 justice requires to protect any party or other natural person or
27 organization from unwarranted annoyance, embarrassment, or
28 oppression, or undue burden and expense. This protective order
29 may include, but is not limited to, one or more of the following
30 directions:

31 (1) That all or some of the items or categories of items in the
32 inspection demand need not be produced or made available at all.

33 (2) That the time specified in subdivision (i) to respond to the
34 set of inspection demands, or to a particular item or category in the
35 set, be extended.

36 (3) That the place of production be other than that specified in
37 the inspection demand.

38 (4) That the inspection be made only on specified terms and
39 conditions.



1 (5) That a trade secret or other confidential research,
2 development, or commercial information not be disclosed, or be
3 disclosed only to specified persons or only in a specified way.

4 (6) That the items produced be sealed and thereafter opened
5 only on order of the court.

6 If the motion for a protective order is denied in whole or in part,
7 the court may order that the party to whom the demand was
8 directed provide or permit the discovery against which protection
9 was sought on terms and conditions that are just.

10 The court shall impose a monetary sanction under Section 2023
11 against any party, person, or attorney who unsuccessfully makes
12 or opposes a motion for a protective order, unless it finds that the
13 one subject to the sanction acted with substantial justification or
14 that other circumstances make the imposition of the sanction
15 unjust.

16 (g) The party to whom an inspection demand has been directed
17 shall respond separately to each item or category of item by a
18 statement that the party will comply with the particular demand for
19 inspection and any related activities, a representation that the party
20 lacks the ability to comply with the demand for inspection of a
21 particular item or category of item, or an objection to the particular
22 demand.

23 In the first paragraph of the response immediately below the title
24 of the case, there shall appear the identity of the responding party,
25 the set number, and the identity of the demanding party. Each
26 statement of compliance, each representation, and each objection
27 in the response shall bear the same number and be in the same
28 sequence as the corresponding item or category in the demand, but
29 the text of that item or category need not be repeated.

30 (1) A statement that the party to whom an inspection demand
31 has been directed will comply with the particular demand shall
32 state that the production, inspection, and related activity
33 demanded will be allowed either in whole or in part, and that all
34 documents or things in the demanded category that are in the
35 possession, custody, or control of that party and to which no
36 objection is being made will be included in the production.

37 Any documents demanded shall either be produced as they are
38 kept in the usual course of business, or be organized and labeled
39 to correspond with the categories in the demand. If necessary, the
40 responding party at the reasonable expense of the demanding party



1 shall, through detection devices, translate any data compilations
2 included in the demand into reasonably usable form.

3 (2) A representation of inability to comply with the particular
4 demand for inspection shall affirm that a diligent search and a
5 reasonable inquiry has been made in an effort to comply with that
6 demand. This statement shall also specify whether the inability to
7 comply is because the particular item or category has never
8 existed, has been destroyed, has been lost, misplaced, or stolen, or
9 has never been, or is no longer, in the possession, custody, or
10 control of the responding party. The statement shall set forth the
11 name and address of any natural person or organization known or
12 believed by that party to have possession, custody, or control of
13 that item or category of item.

14 (3) If only part of an item or category of item in an inspection
15 demand is objectionable, the response shall contain a statement of
16 compliance, or a representation of inability to comply with respect
17 to the remainder of that item or category. If the responding party
18 objects to the demand for inspection of an item or category of item,
19 the response shall (A) identify with particularity any document,
20 tangible thing, or land falling within any category of item in the
21 demand to which an objection is being made, and (B) set forth
22 clearly the extent of, and the specific ground for, the objection. If
23 an objection is based on a claim of privilege, the particular
24 privilege invoked shall be stated. If an objection is based on a claim
25 that the information sought is protected work product under
26 Section 2018, that claim shall be expressly asserted.

27 (h) The party to whom the demand for inspection is directed
28 shall sign the response under oath unless the response contains
29 only objections. If that party is a public or private corporation or
30 a partnership or association or governmental agency, one of its
31 officers or agents shall sign the response under oath on behalf of
32 that party. If the officer or agent signing the response on behalf of
33 that party is an attorney acting in that capacity for a party, that party
34 waives any lawyer-client privilege and any protection for work
35 product under Section 2018 during any subsequent discovery from
36 that attorney concerning the identity of the sources of the
37 information contained in the response. The attorney for the
38 responding party shall sign any responses that contain an
39 objection.



1 (i) Within 30 days after service of an inspection demand, or in
2 unlawful detainer actions within five days of an inspection
3 demand, the party to whom the demand is directed shall serve the
4 original of the response to it on the party making the demand, and
5 a copy of the response on all other parties who have appeared in
6 the action, unless on motion of the party making the demand the
7 court has shortened the time for response, or unless on motion of
8 the party to whom the demand has been directed, the court has
9 extended the time for response. In unlawful detainer actions, the
10 party to whom the demand is directed shall have at least five days
11 from the date of service of the demand to respond unless on motion
12 of the party making the demand the court has shortened the time
13 for the response.

14 (j) The party demanding an inspection and the responding party
15 may agree to extend the time for service of a response to a set of
16 inspection demands, or to particular items or categories of items
17 in a set, to a date beyond that provided in subdivision (i). This
18 agreement may be informal, but it shall be confirmed in a writing
19 that specifies the extended date for service of a response. Unless
20 this agreement expressly states otherwise, it is effective to preserve
21 to the responding party the right to respond to any item or category
22 of item in the demand to which the agreement applies in any
23 manner specified in subdivision (g).

24 (k) The inspection demand and the response to it shall not be
25 filed with the court. The party demanding an inspection shall retain
26 both the original of the inspection demand, with the original proof
27 of service affixed to it, and the original of the sworn response until
28 six months after final disposition of the action. At that time, both
29 originals may be destroyed, unless the court, on motion of any
30 party and for good cause shown, orders that the originals be
31 preserved for a longer period.

32 (l) If a party to whom an inspection demand has been directed
33 fails to serve a timely response to it, that party waives any
34 objection to the demand, including one based on privilege or on the
35 protection for work product under Section 2018. However, the
36 court, on motion, may relieve that party from this waiver on its
37 determination that (1) the party has subsequently served a response
38 that is in substantial compliance with subdivision (g), and (2) the
39 party's failure to serve a timely response was the result of mistake,
40 inadvertence, or excusable neglect.



1 The party making the demand may move for an order
2 compelling response to the inspection demand. The court shall
3 impose a monetary sanction under Section 2023 against any party,
4 person, or attorney who unsuccessfully makes or opposes a motion
5 to compel a response to an inspection demand, unless it finds that
6 the one subject to the sanction acted with substantial justification
7 or that other circumstances make the imposition of the sanction
8 unjust. If a party then fails to obey the order compelling a response,
9 the court may make those orders that are just, including the
10 imposition of an issue sanction, an evidence sanction, or a
11 terminating sanction under Section 2023. In lieu of or in addition
12 to that sanction, the court may impose a monetary sanction under
13 Section 2023.

14 (m) If the party demanding an inspection, on receipt of a
15 response to an inspection demand, deems that (1) a statement of
16 compliance with the demand is incomplete, (2) a representation of
17 inability to comply is inadequate, incomplete, or evasive, or (3) an
18 objection in the response is without merit or too general, that party
19 may move for an order compelling further response to the demand.
20 This motion (A) shall set forth specific facts showing good cause
21 justifying the discovery sought by the inspection demand, and (B)
22 shall be accompanied by a declaration stating facts showing a
23 reasonable and good faith attempt at an informal resolution of any
24 issue presented by it.

25 Unless notice of this motion is given within 45 days of the
26 service of the response, or any supplemental response, or on or
27 before any specific later date to which the demanding party and the
28 responding party have agreed in writing, the demanding party
29 waives any right to compel a further response to the inspection
30 demand.

31 The court shall impose a monetary sanction under Section 2023
32 against any party, person, or attorney who unsuccessfully makes
33 or opposes a motion to compel further response to an inspection
34 demand, unless it finds that the one subject to the sanction acted
35 with substantial justification or that other circumstances make the
36 imposition of the sanction unjust.

37 If a party fails to obey an order compelling further response, the
38 court may make those orders that are just, including the imposition
39 of an issue sanction, an evidence sanction, or a terminating
40 sanction under Section 2023. In lieu of or in addition to that



1 sanction, the court may impose a monetary sanction under Section
2 2023.

3 (n) If a party filing a response to a demand for inspection under
4 subdivision (g) thereafter fails to permit the inspection in
5 accordance with that party’s statement of compliance, the party
6 demanding the inspection may move for an order compelling
7 compliance.

8 The court shall impose a monetary sanction under Section 2023
9 against any party, person, or attorney who unsuccessfully makes
10 or opposes a motion to compel compliance with an inspection
11 demand, unless it finds that the one subject to the sanction acted
12 with substantial justification or that other circumstances make the
13 imposition of the sanction unjust.

14 If a party then fails to obey an order compelling inspection, the
15 court may make those orders that are just, including the imposition
16 of an issue sanction, an evidence sanction, or a terminating
17 sanction under Section 2023. In lieu of or in addition to that
18 sanction, the court may impose a monetary sanction under Section
19 2023.

