

AMENDED IN SENATE JUNE 9, 2004
AMENDED IN ASSEMBLY APRIL 22, 2003
AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1249

Introduced by Assembly Member Pacheco

February 21, 2003

An act to amend Section 1560 of the Evidence Code and Section 1326 of the Penal Code, relating to subpoenas.

LEGISLATIVE COUNSEL'S DIGEST

AB 1249, as amended, Pacheco. Criminal procedure: subpoenas.

Existing law provides that when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in a criminal action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness, within five days after the receipt of the subpoena or within a time otherwise agreed upon, delivers a copy of all the records described in the subpoena to the clerk of the court, the judge, or to another person, as specified. Existing law further provides that, as an alternative to these procedures, the subpoenaing party may direct the witness to make the records available for inspection or copying at the witness' business address under reasonable conditions during normal business hours, as defined.

This bill would preclude use of this alternative procedure in criminal actions. It would further preclude a party or attorney or representative of a party to a criminal action from making an oral or written request that a custodian of records or other qualified witness of a business provide books, papers, documents, or records directly to the person serving the subpoena. *It would provide to a defendant’s attorney an ex parte review of subpoenaed records if the court finds that disclosure of the subpoena or the records would violate the attorney-client privilege.*

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 1560 of the Evidence Code is amended
2 to read:
3 1560. (a) As used in this article:
4 (1) “Business” includes every kind of business described in
5 Section 1270.
6 (2) “Record” includes every kind of record maintained by a
7 business.
8 (b) Except as provided in Section 1564, when a subpoena duces
9 tecum is served upon the custodian of records or other qualified
10 witness of a business in an action in which the business is neither
11 a party nor the place where any cause of action is alleged to have
12 arisen, and the subpoena requires the production of all or any part
13 of the records of the business, it is sufficient compliance therewith
14 if the custodian or other qualified witness, within five days after
15 the receipt of the subpoena in any criminal action or within the
16 time agreed upon by the party who served the subpoena and the
17 custodian or other qualified witness, or within 15 days after the
18 receipt of the subpoena in any civil action or within the time agreed
19 upon by the party who served the subpoena and the custodian or
20 other qualified witness, delivers by mail or otherwise a true,
21 legible, and durable copy of all the records described in the
22 subpoena to the clerk of the court or to the judge if there be no clerk
23 or to another person described in subdivision (c) of Section 2026
24 of the Code of Civil Procedure, together with the affidavit
25 described in Section 1561.
26 (c) The copy of the records shall be separately enclosed in an
27 inner envelope or wrapper, sealed, with the title and number of the



1 action, name of witness, and date of subpoena clearly inscribed
2 thereon; the sealed envelope or wrapper shall then be enclosed in
3 an outer envelope or wrapper, sealed, and directed as follows:

4 (1) If the subpoena directs attendance in court, to the clerk of
5 the court, or to the judge thereof if there be no clerk.

6 (2) If the subpoena directs attendance at a deposition, to the
7 officer before whom the deposition is to be taken, at the place
8 designated in the subpoena for the taking of the deposition or at the
9 officer's place of business.

10 (3) In other cases, to the officer, body, or tribunal conducting
11 the hearing, at a like address.

12 (d) Unless the parties to the proceeding otherwise agree, or
13 unless the sealed envelope or wrapper is returned to a witness who
14 is to appear personally, the copy of the records shall remain sealed
15 and shall be opened only at the time of trial, deposition, or other
16 hearing, upon the direction of the judge, officer, body, or tribunal
17 conducting the proceeding, in the presence of all parties who have
18 appeared in person or by counsel at the trial, deposition, or hearing.
19 Records which are original documents and which are not
20 introduced in evidence or required as part of the record shall be
21 returned to the person or entity from whom received. Records
22 which are copies may be destroyed.

23 (e) As an alternative to the procedures described in
24 subdivisions (b), (c), and (d), the subpoenaing party in a civil
25 action may direct the witness to make the records available for
26 inspection or copying by the party's attorney, the attorney's
27 representative, or deposition officer as described in paragraph (3)
28 of subdivision (d) of Section 2020 of the Code of Civil Procedure,
29 at the witness' business address under reasonable conditions
30 during normal business hours. Normal business hours, as used in
31 this subdivision, means those hours that the business of the witness
32 is normally open for business to the public. When provided with
33 at least five business days' advance notice by the party's attorney,
34 attorney's representative, or deposition officer, the witness shall
35 designate a time period of not less than six continuous hours on a
36 date certain for copying of records subject to the subpoena by the
37 party's attorney, attorney's representative or deposition officer. It
38 shall be the responsibility of the attorney's representative to
39 deliver any copy of the records as directed in the subpoena.
40 Disobedience to the deposition subpoena issued pursuant to this



1 subdivision is punishable as provided in subdivision (h) of Section
2 2020 of the Code of Civil Procedure.

3 SEC. 2. Section 1326 of the Penal Code is amended to read:

4 1326. (a) The process by which the attendance of a witness
5 before a court or magistrate is required is a subpoena. It may be
6 signed and issued by any of the following:

7 (1) A magistrate before whom a complaint is laid or his or her
8 clerk, the district attorney or his or her investigator, or the public
9 defender or his or her investigator, for witnesses in the state.

10 (2) The district attorney, his or her investigator, or, upon
11 request of the grand jury, any judge of the superior court, for
12 witnesses in the state, in support of an indictment or information,
13 to appear before the court in which it is to be tried.

14 (3) The district attorney or his or her investigator, the public
15 defender or his or her investigator, the clerk of the court in which
16 a criminal action is to be tried, or, if there is no clerk, the judge of
17 the court. The clerk or judge shall, at any time, upon application
18 of the defendant, and without charge, issue as many blank
19 subpoenas, subscribed by him or her, for witnesses in the state, as
20 the defendant may require.

21 (4) The attorney of record for the defendant.

22 (b) A subpoena issued in a criminal action that commands the
23 custodian of records or other qualified witness of a business to
24 produce books, papers, documents, or records shall direct that
25 those items be delivered by the custodian or qualified witness in
26 the manner specified in subdivision (b) of Section 1560 of the
27 Evidence Code. Subdivision (e) of Section 1560 of the Evidence
28 Code shall not apply to criminal cases.

29 (c) In a criminal action, no party, or attorney or representative
30 of a party, may issue a subpoena commanding the custodian of
31 records or other qualified witness of a business to provide books,
32 papers, documents, or records, or copies thereof, relating to a
33 person or entity other than the subpoenaed person or entity in any
34 manner other than that specified in subdivision (b) of Section 1560
35 of the Evidence Code. In a criminal action, no party, or attorney
36 or representative of a party, may make an oral or written request
37 that a custodian of records or other qualified witness of a business
38 provide books, papers, documents, or records, or copies thereof,
39 directly to the party, attorney, or representative serving the
40 subpoena. *The attorney of record for the defendant shall be*



1 *provided an ex parte opportunity to review the subpoenaed records*
2 *if the court finds that disclosure of the subpoena or the records*
3 *would violate the attorney-client privilege.*

4 (d) This section shall not be construed to prohibit obtaining
5 books, papers, documents, or records with the consent of the
6 person to whom the books, papers, documents, or records relate.

