

AMENDED IN SENATE JUNE 17, 2004

AMENDED IN SENATE JUNE 10, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1776

**Introduced by Committee on Banking and Finance (Wiggins
(Chair), *Bogh*, Calderon, Chan, Chavez, Correa, *Houston*,
Montanez, and Vargas)**

March 18, 2003

An act to amend Section 2105 of the Corporations Code, and to amend Section 7480 of the Government Code, relating to production of records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1776, as amended, Committee on Banking and Finance. Foreign corporations and financial institutions: production of records.

(1) Existing law prohibits a foreign corporation from transacting intrastate business without first obtaining a certificate of qualification from the Secretary of State. To obtain that certificate, the foreign corporation must file a signed statement with specified information regarding the corporation, including the name of an agent who may be served with process within this state, and an irrevocable consent to service of process as specified. Existing law provides that this irrevocable consent applies to service of a search warrant issued pursuant to a specific provision for records or documents related to communications that are located outside of this state whether or not the foreign corporation is a party or a nonparty to the matter in which the

search warrant is sought. The law authorizing a warrant for records and documents relating to communications has a provision defining proper service as delivery by hand, or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a corporate agent, as specified.

Existing law also provides for the production of records in response to other types of search warrants, and in response to subpoenas, and provides for a victim of identity theft to receive information concerning any applications or accounts in the victim's name on a specified showing.

This bill would specify that a foreign corporation's irrevocable consent to service of process includes service of search warrants in addition to those already specified for information concerning applications or accounts in the name of a victim of identity theft. This bill would also state that the irrevocable consent to service of process for all these specified means of gathering records extends to records located both inside and outside of the state.

In addition, this bill would explicitly permit the same means of serving a foreign corporation as are authorized in the provisions authorizing special communications warrants to apply to any search warrant for identity theft records.

(2) Existing law authorizes a financial institution to furnish a police or sheriff's department or district attorney a statement containing certain customer account information relative to a crime report that has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon the financial institution.

This bill, with respect to a financial institution doing business in this state, would add similar provisions applicable to a situation in which the accountholder consents to the release of information.

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 2105 of the Corporations Code is
2 amended to read:
3 2105. (a) A foreign corporation shall not transact intrastate
4 business without having first obtained from the Secretary of State
5 a certificate of qualification. To obtain that certificate it shall file,



1 on a form prescribed by the Secretary of State, a statement and
2 designation signed by a corporate officer stating:

3 (1) Its name and the state or place of its incorporation or
4 organization.

5 (2) The address of its principal executive office.

6 (3) The address of its principal office within this state, if any.

7 (4) The name of an agent upon whom process directed to the
8 corporation may be served within this state. Such designation shall
9 comply with the provisions of subdivision (b) of Section 1502.

10 (5) (A) Its irrevocable consent to service of process directed to
11 it upon the agent designated and to service of process on the
12 Secretary of State if the agent so designated or the agent's
13 successor is no longer authorized to act or cannot be found at the
14 address given.

15 (B) Consent under this paragraph extends to service of process
16 directed to the foreign corporation's agent in California for a
17 search warrant issued pursuant to Section 1524.2 of the Penal
18 Code, or for any other validly issued and properly served search
19 warrant, for records or documents that are in the possession of the
20 foreign corporation and are located inside or outside of this state.
21 This subparagraph shall apply to a foreign corporation that is a
22 party or a nonparty to the matter for which the search warrant is
23 sought. For purposes of this subparagraph, "properly served"
24 means delivered by hand, or in a manner reasonably allowing for
25 proof of delivery if delivered by United States mail, overnight
26 delivery service, or facsimile to a person or entity listed in Section
27 2110 of the Corporations Code.

28 (6) If it is a corporation which will be subject to the Insurance
29 Code as an insurer, it shall so state that fact.

30 (b) Annexed to that statement and designation shall be a
31 certificate by an authorized public official of the state or place of
32 incorporation of the corporation to the effect that such corporation
33 is an existing corporation in good standing in that state or place or,
34 in the case of an association, an officers' certificate stating that it
35 is a validly organized and existing business association under the
36 laws of a specified foreign jurisdiction.

37 (c) Before it may be designated by any foreign corporation as
38 its agent for service of process, any corporate agent must comply
39 with Section 1505.



1 SEC. 2. Section 7480 of the Government Code is amended to
2 read:

3 7480. Nothing in this chapter prohibits any of the following:
4 (a) The dissemination of any financial information that is not
5 identified with, or identifiable as being derived from, the financial
6 records of a particular customer.

7 (b) When any police or sheriff's department or district attorney
8 in this state certifies to a bank, credit union, or savings association
9 in writing that a crime report has been filed that involves the
10 alleged fraudulent use of drafts, checks, or other orders drawn
11 upon any bank, credit union, or savings association in this state, the
12 police or sheriff's department or district attorney may request a
13 bank, credit union, or savings association to furnish, and a bank,
14 credit union, or savings association shall furnish, a statement
15 setting forth the following information with respect to a customer
16 account specified by the police or sheriff's department or district
17 attorney for a period 30 days prior to, and up to 30 days following,
18 the date of occurrence of the alleged illegal act involving the
19 account:

20 (1) The number of items dishonored.

21 (2) The number of items paid that created overdrafts.

22 (3) The dollar volume of the dishonored items and items paid
23 which created overdrafts and a statement explaining any credit
24 arrangement between the bank, credit union, or savings
25 association and customer to pay overdrafts.

26 (4) The dates and amounts of deposits and debits and the
27 account balance on these dates.

28 (5) A copy of the signature card, including the signature and
29 any addresses appearing on a customer's signature card.

30 (6) The date the account opened and, if applicable, the date the
31 account closed.

32 (7) A bank, credit union, or savings association that provides
33 the requesting party with copies of one or more complete account
34 statements prepared in the regular course of business shall be
35 deemed to be in compliance with paragraphs (1), (2), (3), and (4).

36 (c) When any police or sheriff's department or district attorney
37 in this state certifies to a bank, credit union, or savings association
38 in writing that a crime report has been filed that involves the
39 alleged fraudulent use of drafts, checks, or other orders drawn
40 upon any bank, credit union, or savings association doing business



1 in this state, the police or sheriff's department or district attorney
2 may request, with the consent of the accountholder, the bank,
3 credit union, or savings association to furnish, and the bank, credit
4 union, or savings association shall furnish, a statement setting
5 forth the following information with respect to a customer account
6 specified by the police or sheriff's department or district attorney
7 for a period 30 days prior to, and up to 30 days following, the date
8 of occurrence of the alleged illegal act involving the account:

9 (1) The number of items dishonored.

10 (2) The number of items paid that created overdrafts.

11 (3) The dollar volume of the dishonored items and items paid
12 which created overdrafts and a statement explaining any credit
13 arrangement between the bank, credit union, or savings
14 association and customer to pay overdrafts.

15 (4) The dates and amounts of deposits and debits and the
16 account balance on these dates.

17 (5) A copy of the signature card, including the signature and
18 any addresses appearing on a customer's signature card.

19 (6) The date the account opened and, if applicable, the date the
20 account closed.

21 (7) A bank, credit union, or savings association doing business
22 in this state that provides the requesting party with copies of one
23 or more complete account statements prepared in the regular
24 course of business shall be deemed to be in compliance with
25 paragraphs (1), (2), (3), and (4).

26 ~~(d) A customer may consent to disclosure under subdivision (c)~~
27 ~~by furnishing to the financial institution a signed and dated~~
28 ~~statement by which the customer (1) authorizes the disclosure, (2)~~
29 ~~specifies the name of the agency or department to which disclosure~~
30 ~~is authorized, and if applicable, the statutory purpose for which the~~
31 ~~information is to be obtained, and (3) identifies the financial~~
32 ~~records that are authorized to be disclosed.~~

33 *(d) For purposes of subdivision (c), consent of the*
34 *accountholder shall be satisfied if an accountholder provides to*
35 *the financial institution and the person or entity seeking*
36 *disclosure, a signed and dated statement containing all of the*
37 *following:*

38 *(1) Authorization of the disclosure for the period specified in*
39 *subdivision (c).*



1 (2) *The name of the agency or department to which disclosure*
2 *is authorized and, if applicable, the statutory purpose for which the*
3 *information is to be obtained.*

4 (3) *A description of the financial records that are authorized to*
5 *be disclosed.*

6 (e) (1) The Attorney General, a supervisory agency, the
7 Franchise Tax Board, the State Board of Equalization, the
8 Employment Development Department, the Controller or an
9 inheritance tax referee when administering the Prohibition of Gift
10 and Death Taxes (Part 8 (commencing with Section 13301) of
11 Division 2 of the Revenue and Taxation Code), a police or sheriff's
12 department or district attorney, a county welfare department when
13 investigating welfare fraud, a county auditor-controller or director
14 of finance when investigating fraud against the county, or the
15 Department of Corporations when conducting investigations in
16 connection with the enforcement of laws administered by the
17 Commissioner of Corporations, from requesting of an office or
18 branch of a financial institution, and the office or branch from
19 responding to a request, as to whether a person has an account or
20 accounts at that office or branch and, if so, any identifying
21 numbers of the account or accounts.

22 (2) No additional information beyond that specified in this
23 section shall be released to a county welfare department without
24 either the accountholder's written consent or a judicial writ, search
25 warrant, subpoena, or other judicial order.

26 (3) A county auditor-controller or director of finance who
27 unlawfully discloses information he or she is authorized to request
28 under this subdivision is guilty of the unlawful disclosure of
29 confidential data, a misdemeanor, which shall be punishable as set
30 forth in Section 7485.

31 (f) The examination by, or disclosure to, any supervisory
32 agency of financial records that relate solely to the exercise of its
33 supervisory function. The scope of an agency's supervisory
34 function shall be determined by reference to statutes that grant
35 authority to examine, audit, or require reports of financial records
36 or financial institutions as follows:

37 (1) With respect to the Commissioner of Financial Institutions
38 by reference to Division 1 (commencing with Section 99),
39 Division 1.5 (commencing with Section 4800), Division 2
40 (commencing with Section 5000), Division 5 (commencing with



1 Section 14000), Division 7 (commencing with Section 18000),
2 Division 15 (commencing with Section 31000), and Division 16
3 (commencing with Section 33000) of the Financial Code.

4 (2) With respect to the Controller by reference to Title 10
5 (commencing with Section 1300) of Part 3 of the Code of Civil
6 Procedure.

7 (3) With respect to the Administrator of Local Agency Security
8 by reference to Article 2 (commencing with Section 53630) of
9 Chapter 4 of Part 1 of Division 2 of Title 5 of the Government
10 Code.

11 (g) The disclosure to the Franchise Tax Board of (1) the amount
12 of any security interest that a financial institution has in a specified
13 asset of a customer or (2) financial records in connection with the
14 filing or audit of a tax return or tax information return that are
15 required to be filed by the financial institution pursuant to Part 10
16 (commencing with Section 17001), Part 11 (commencing with
17 Section 23001), or Part 18 (commencing with Section 38001) of
18 the Revenue and Taxation Code.

19 (h) The disclosure to the State Board of Equalization of any of
20 the following:

21 (1) The information required by Sections 6702, 6703, 8954,
22 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155,
23 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404,
24 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the
25 Revenue and Taxation Code.

26 (2) The financial records in connection with the filing or audit
27 of a tax return required to be filed by the financial institution
28 pursuant to Part 1 (commencing with Section 6001), Part 2
29 (commencing with Section 7301), Part 3 (commencing with
30 Section 8601), Part 13 (commencing with Section 30001), Part 14
31 (commencing with Section 32001), and Part 17 (commencing with
32 Section 37001) of Division 2 of the Revenue and Taxation Code.

33 (3) The amount of any security interest a financial institution
34 has in a specified asset of a customer, if the inquiry is directed to
35 the branch or office where the interest is held.

36 (i) The disclosure to the Controller of the information required
37 by Section 7853 of the Revenue and Taxation Code.

38 (j) The disclosure to the Employment Development
39 Department of the amount of any security interest a financial



1 institution has in a specified asset of a customer, if the inquiry is
2 directed to the branch or office where the interest is held.

3 (k) The disclosure by a construction lender, as defined in
4 Section 3087 of the Civil Code, to the Registrar of Contractors, of
5 information concerning the making of progress payments to a
6 prime contractor requested by the registrar in connection with an
7 investigation under Section 7108.5 of the Business and
8 Professions Code.

9 (l) Upon receipt of a written request from a local child support
10 agency referring to a support order pursuant to Section 17400 of
11 the Family Code, a financial institution shall disclose the
12 following information concerning the account or the person
13 named in the request, whom the local child support agency shall
14 identify, whenever possible, by social security number:

15 (1) If the request states the identifying number of an account at
16 a financial institution, the name of each owner of the account.

17 (2) Each account maintained by the person at the branch to
18 which the request is delivered, and, if the branch is able to make
19 a computerized search, each account maintained by the person at
20 any other branch of the financial institution located in this state.

21 (3) For each account disclosed pursuant to paragraphs (1) and
22 (2), the account number, current balance, street address of the
23 branch where the account is maintained, and, to the extent
24 available through the branch's computerized search, the name and
25 address of any other person listed as an owner.

26 (4) Whenever the request prohibits the disclosure, a financial
27 institution shall not disclose either the request or its response, to
28 an owner of the account or to any other person, except the officers
29 and employees of the financial institution who are involved in
30 responding to the request and to attorneys, employees of the local
31 child support agencies, auditors, and regulatory authorities who
32 have a need to know in order to perform their duties, and except
33 as disclosure may be required by legal process.

34 (5) No financial institution, or any officer, employee, or agent
35 thereof, shall be liable to any person for (A) disclosing information
36 in response to a request pursuant to this subdivision, (B) failing to
37 notify the owner of an account, or complying with a request under
38 this paragraph not to disclose to the owner, the request or
39 disclosure under this subdivision, or (C) failing to discover any



1 account owned by the person named in the request pursuant to a
2 computerized search of the records of the financial institution.

3 (6) The local child support agency may request information
4 pursuant to this subdivision only when the local child support
5 agency has received at least one of the following types of physical
6 evidence:

7 (A) Any of the following, dated within the last three years:

8 (i) Form 599.

9 (ii) Form 1099.

10 (iii) A bank statement.

11 (iv) A check.

12 (v) A bank passbook.

13 (vi) A deposit slip.

14 (vii) A copy of a federal or state income tax return.

15 (viii) A debit or credit advice.

16 (ix) Correspondence that identifies the child support obligor by
17 name, the bank, and the account number.

18 (x) Correspondence that identifies the child support obligor by
19 name, the bank, and the banking services related to the account of
20 the obligor.

21 (xi) An asset identification report from a federal agency.

22 (B) A sworn declaration of the custodial parent during the 12
23 months immediately preceding the request that the person named
24 in the request has had or may have had an account at an office or
25 branch of the financial institution to which the request is made.

26 (7) Information obtained by a local child support agency
27 pursuant to this subdivision shall be used only for purposes that are
28 directly connected within the administration of the duties of the
29 local child support agency pursuant to Section 17400 of the Family
30 Code.

31 (m) (1) As provided in paragraph (1) of subdivision (c) of
32 Section 666 of Title 42 of the United States Code, upon receipt of
33 an administrative subpoena on the current federally approved
34 interstate child support enforcement form, as approved by the
35 federal Office of Management and Budget, a financial institution
36 shall provide the information or documents requested by the
37 administrative subpoena.

38 (2) The administrative subpoena shall refer to the current
39 federal Office of Management and Budget control number and be
40 signed by a person who states that he or she is an authorized agent



1 of a state or county agency responsible for implementing the child
2 support enforcement program set forth in Part D (commencing
3 with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the
4 United States Code. A financial institution may rely on the
5 statements made in the subpoena and has no duty to inquire into
6 the truth of any statement in the subpoena.

7 (3) If the person who signs the administrative subpoena directs
8 a financial institution in writing not to disclose either the subpoena
9 or its response to any owner of an account covered by the
10 subpoena, the financial institution shall not disclose the subpoena
11 or its response to the owner.

12 (4) No financial institution, or any officer, employee, or agent
13 thereof, shall be liable to any person for (A) disclosing information
14 or providing documents in response to a subpoena pursuant to this
15 subdivision, (B) failing to notify any owner of an account covered
16 by the subpoena or complying with a request not to disclose to the
17 owner, the subpoena or disclosure under this subdivision, or (C)
18 failing to discover any account owned by the person named in the
19 subpoena pursuant to a computerized search of the records of the
20 financial institution.

21 (n) The dissemination of financial information and records
22 pursuant to any of the following:

23 (1) Compliance by a financial institution with the requirements
24 of Section 2892 of the Probate Code.

25 (2) Compliance by a financial institution with the requirements
26 of Section 2893 of the Probate Code.

27 (3) An order by a judge upon a written ex parte application by
28 a peace officer showing specific and articulable facts that there are
29 reasonable grounds to believe that the records or information
30 sought are relevant and material to an ongoing investigation of a
31 felony violation of Section 186.10 or of any felony subject to the
32 enhancement set forth in Section 186.11.

33 (A) The ex parte application shall specify with particularity the
34 records to be produced, which shall be only those of the individual
35 or individuals who are the subject of the criminal investigation.

36 (B) The ex parte application and any subsequent judicial order
37 shall be open to the public as a judicial record unless ordered sealed
38 by the court, for a period of 60 days. The sealing of these records
39 may be extended for 60-day periods upon a showing to the court
40 that it is necessary for the continuance of the investigation.



1 Sixty-day extensions may continue for up to one year or until
2 termination of the investigation of the individual or individuals,
3 whichever is sooner.

4 (C) The records ordered to be produced shall be returned to the
5 peace officer applicant or his or her designee within a reasonable
6 time period after service of the order upon the financial institution.

7 (D) Nothing in this subdivision shall preclude the financial
8 institution from notifying a customer of the receipt of the order for
9 production of records unless a court orders the financial institution
10 to withhold notification to the customer upon a finding that the
11 notice would impede the investigation.

12 (E) Where a court has made an order pursuant to this paragraph
13 to withhold notification to the customer under this paragraph, the
14 peace officer or law enforcement agency who obtained the
15 financial information shall notify the customer by delivering a
16 copy of the ex parte order to the customer within 10 days of the
17 termination of the investigation.

18 (4) No financial institution, or any officer, employee, or agent
19 thereof, shall be liable to any person for any of the following:

20 (A) Disclosing information to a probate court pursuant to
21 Sections 2892 and 2893.

22 (B) Disclosing information in response to a court order
23 pursuant to paragraph (3).

24 (C) Complying with a court order under this subdivision not to
25 disclose to the customer, the order, or the dissemination of
26 information pursuant to the court order.

27 (o) Disclosure by a financial institution to a peace officer, as
28 defined in Section 830.1 of the Penal Code, pursuant to the
29 following:

30 (1) Paragraph (1) of subdivision (a) of Section 1748.95 of the
31 Civil Code, provided that the financial institution has first
32 complied with the requirements of paragraph (2) of subdivision (a)
33 and subdivision (b) of Section 1748.95 of the Civil Code.

34 (2) Paragraph (1) of subdivision (a) of Section 4002 of the
35 Financial Code, provided that the financial institution has first
36 complied with the requirements of paragraph (2) of subdivision (a)
37 and subdivision (b) of Section 4002 of the Financial Code.

38 (3) Paragraph (1) of subdivision (a) of Section 22470 of the
39 Financial Code, provided that any financial institution that is a
40 finance lender has first complied with the requirements of



- 1 paragraph (2) of subdivision (a) and subdivision (b) of Section
- 2 22470 of the Financial Code.

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