

AMENDED IN ASSEMBLY APRIL 26, 2005  
AMENDED IN ASSEMBLY MARCH 30, 2005  
CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## ASSEMBLY BILL

**No. 496**

**Introduced by Assembly Member Aghazarian**

February 16, 2005

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An act to amend Section 22350 of the Business and Professions Code, to amend Sections 412.10, ~~685.090~~, 1985.3, and 1985.6 of the Code of Civil Procedure, and to amend Section 4013 of the Penal Code, relating to service of process.

### LEGISLATIVE COUNSEL'S DIGEST

AB 496, as amended, Aghazarian. Service of process.

(1) Existing law requires every person who makes service of process in this state for compensation more than 10 times a year to register as a process server with the county clerk, with specified exceptions, including attorneys and their employees ~~and licensed private investigators and their employees~~.

This bill would limit the latter exceptions to persons when serving process related to cases for which the attorney ~~or private investigator~~ is providing legal ~~or investigative~~ services, ~~and would specify that those persons excepted from the registration requirement shall not be deemed registered process servers~~.

(2) Existing law provides that a plaintiff may have the clerk issue one or more summons for any defendant.

This bill would require the clerk, in that connection, to keep each original summons in the court records and provide a copy of each summons issued to the plaintiff who requested issuance of the summons.

~~(3) Existing law specifies the costs that are added to and become part of a judgment.~~

~~This bill would add to those costs, the anticipated cost of levy to be imposed, as specified.~~

~~(4) Existing law requires the service of a subpoena duces tecum upon a consumer or an employee to be made, among other requirements, with a copy of the subpoena duces tecum, the affidavit supporting the issuance of the subpoena, if any, specified notice, and proof of service.~~

~~This bill would provide that if the subpoenaing party is the consumer or the employee, and the consumer or the employee is the only subject of the subpoenaed records, notice to the consumer or the employee, and delivery of the other documents, are not required.~~

~~(5)~~

~~(4) Existing law requires a sheriff or jailer upon whom a paper in a judicial proceeding is served, to forthwith deliver it to the prisoner with a note thereon of the time of its service. Existing law provides that if he or she neglects to do so, he or she is liable to the prisoner for all resulting damages.~~

~~This bill would instead require a sheriff or jailer, when served with judicial process directed to a person in his or her custody, to deliver it to the prisoner. The bill would specify that service in this manner constitutes personal service unless the sheriff or jailer notifies, within 2 days, the party requesting service of the reason for not delivering the judicial process to the prisoner. The sheriff or jailer would be liable for any damages to any aggrieved party for failing to comply provide that those provisions do not limit or restrict any person who may lawfully serve process from serving that process.~~

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 22350 of the Business and Professions
- 2 Code is amended to read:
- 3 22350. (a) Any natural person who makes more than 10
- 4 services of process within this state during one calendar year, for
- 5 specific compensation or in expectation of specific
- 6 compensation, where that compensation is directly attributable to
- 7 the service of process, shall file and maintain a verified

1 certificate of registration as a process server with the county  
2 clerk of the county in which he or she resides or has his or her  
3 principal place of business. Any corporation or partnership that  
4 derives or expects to derive compensation from service of  
5 process within this state shall also file and maintain a verified  
6 certificate of registration as a process server with the county  
7 clerk of the county in which the corporation or partnership has its  
8 principal place of business.

9 (b) This chapter shall not apply to any of the following:

10 (1) Any sheriff, marshal, or government employee who is  
11 acting within the course and scope of his or her employment.

12 (2) An attorney or his or her employees, when serving process  
13 related to cases for which the attorney is providing legal services.

14 (3) Any person who is specially appointed by a court to serve  
15 its process.

16 (4) A licensed private investigator or his or her employees;  
17 ~~when serving process related to cases for which the private~~  
18 ~~investigator is providing investigative services..~~

19 (5) A professional photocopier registered under Section  
20 22450, or an employee thereof, whose only service of process  
21 relates to subpoenas for the production of records, which  
22 subpoenas specify that the records be copied by that registered  
23 professional photocopier.

24 ~~(c) Persons listed in subdivision (b) shall not be deemed~~  
25 ~~registered process servers, and have none of the rights or~~  
26 ~~privileges of registered process servers.~~

27 SEC. 2. Section 412.10 of the Code of Civil Procedure is  
28 amended to read:

29 412.10. After payment of all applicable fees, the plaintiff may  
30 have the clerk issue one or more summons for any defendant.  
31 The clerk shall keep each original summons in the court records  
32 and provide a copy of each summons issued to the plaintiff who  
33 requested issuance of the summons.

34 ~~SEC. 3. Section 685.090 of the Code of Civil Procedure is~~  
35 ~~amended to read:~~

36 ~~685.090. (a) Costs are added to and become a part of the~~  
37 ~~judgment:~~

38 ~~(1) Upon the filing of an order allowing the costs pursuant to~~  
39 ~~this chapter.~~

~~(2) If a memorandum of costs is filed pursuant to Section 685.070 and no motion to tax is made, upon the expiration of the time for making the motion.~~

~~(3) As specified in Section 685.095.~~

~~(b) The costs added to the judgment pursuant to this section are included in the principal amount of the judgment remaining unsatisfied.~~

~~(c) The anticipated cost of levy to be imposed pursuant to Section 685.095, may be designated on the notice of levy form as a recoverable cost based upon the judgment creditor's memorandum of costs filed during the pendency of the levy, subject to limitation by a judgment debtor's motion to tax costs.~~

~~(d) If a writ or earnings withholding order is outstanding at the time the costs are added to the judgment pursuant to this section, the levying officer shall add the amount of those costs to the amount to be collected pursuant to the writ or earnings withholding order if the levying officer receives either of the following before the writ or earnings withholding order is returned:~~

~~(1) A certified copy of the court order allowing the costs.~~

~~(2) A certificate from the clerk of the court that the costs have been added to the judgment where the costs have been added to the judgment after a memorandum of costs has been filed pursuant to Section 685.070 and no motion to tax has been made within the time allowed for making the motion.~~

~~(e) The levying officer shall include the costs described in subdivision (d) in the amount of the sale or collection distributed to the judgment creditor only if the levying officer receives the certified copy of the court order or the clerk's certificate before the distribution is made.~~

~~SEC. 4.~~

~~SEC. 3. Section 1985.3 of the Code of Civil Procedure is amended to read:~~

~~1985.3. (a) For purposes of this section, the following definitions apply:~~

~~(1) "Personal records" means the original, any copy of books, documents, other writings, or electronic data pertaining to a consumer and which are maintained by any "witness" which is a physician, dentist, ophthalmologist, optometrist, chiropractor, physical therapist, acupuncturist, podiatrist, veterinarian,~~

1 veterinary hospital, veterinary clinic, pharmacist, pharmacy,  
 2 hospital, medical center, clinic, radiology or MRI center, clinical  
 3 or diagnostic laboratory, state or national bank, state or federal  
 4 association (as defined in Section 5102 of the Financial Code),  
 5 state or federal credit union, trust company, anyone authorized by  
 6 this state to make or arrange loans that are secured by real  
 7 property, security brokerage firm, insurance company, title  
 8 insurance company, underwritten title company, escrow agent  
 9 licensed pursuant to Division 6 (commencing with Section  
 10 17000) of the Financial Code or exempt from licensure pursuant  
 11 to Section 17006 of the Financial Code, attorney, accountant,  
 12 institution of the Farm Credit System, as specified in Section  
 13 2002 of Title 12 of the United States Code, or telephone  
 14 corporation which is a public utility, as defined in Section 216 of  
 15 the Public Utilities Code, or psychotherapist, as defined in  
 16 Section 1010 of the Evidence Code, or a private or public  
 17 preschool, elementary school, secondary school, or  
 18 postsecondary school as described in Section 76244 of the  
 19 Education Code.

20 (2) “Consumer” means any individual, partnership of five or  
 21 fewer persons, association, or trust which has transacted business  
 22 with, or has used the services of, the witness or for whom the  
 23 witness has acted as agent or fiduciary.

24 (3) “Subpoenaing party” means the person or persons causing  
 25 a subpoena duces tecum to be issued or served in connection with  
 26 any civil action or proceeding pursuant to this code, but shall not  
 27 include the state or local agencies described in Section 7465 of  
 28 the Government Code, or any entity provided for under Article  
 29 VI of the California Constitution in any proceeding maintained  
 30 before an adjudicative body of that entity pursuant to Chapter 4  
 31 (commencing with Section 6000) of Division 3 of the Business  
 32 and Professions Code.

33 (4) “Deposition officer” means a person who meets the  
 34 qualifications specified in Section 2020.420.

35 (b) Prior to the date called for in the subpoena duces tecum for  
 36 the production of personal records, the subpoenaing party shall  
 37 serve or cause to be served on the consumer whose records are  
 38 being sought a copy of the subpoena duces tecum, of the affidavit  
 39 supporting the issuance of the subpoena, if any, and of the notice  
 40 described in subdivision (e), and proof of service as indicated in

1 paragraph (1) of subdivision (c). This service shall be made as  
2 follows:

3 (1) To the consumer personally, or at his or her last known  
4 address, or in accordance with Chapter 5 (commencing with  
5 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to  
6 his or her attorney of record. If the consumer is a minor, service  
7 shall be made on the minor's parent, guardian, conservator, or  
8 similar fiduciary, or if one of them cannot be located with  
9 reasonable diligence, then service shall be made on any person  
10 having the care or control of the minor or with whom the minor  
11 resides or by whom the minor is employed, and on the minor if  
12 the minor is at least 12 years of age.

13 (2) Not less than 10 days prior to the date for production  
14 specified in the subpoena duces tecum, plus the additional time  
15 provided by Section 1013 if service is by mail.

16 (3) At least five days prior to service upon the custodian of the  
17 records, plus the additional time provided by Section 1013 if  
18 service is by mail.

19 (c) Prior to the production of the records, the subpoenaing  
20 party shall do either of the following:

21 (1) Serve or cause to be served upon the witness a proof of  
22 personal service or of service by mail attesting to compliance  
23 with subdivision (b).

24 (2) Furnish the witness a written authorization to release the  
25 records signed by the consumer or by his or her attorney of  
26 record. The witness may presume that any attorney purporting to  
27 sign the authorization on behalf of the consumer acted with the  
28 consent of the consumer, and that any objection to release of  
29 records is waived.

30 (d) A subpoena duces tecum for the production of personal  
31 records shall be served in sufficient time to allow the witness a  
32 reasonable time, as provided in Section 2020.410, to locate and  
33 produce the records or copies thereof.

34 (e) Every copy of the subpoena duces tecum and affidavit, if  
35 any, served on a consumer or his or her attorney in accordance  
36 with subdivision (b) shall be accompanied by a notice, in a  
37 typeface designed to call attention to the notice, indicating that  
38 (1) records about the consumer are being sought from the witness  
39 named on the subpoena; (2) if the consumer objects to the  
40 witness furnishing the records to the party seeking the records,

1 the consumer must file papers with the court or serve a written  
2 objection as provided in subdivision (g) prior to the date  
3 specified for production on the subpoena; and (3) if the party  
4 who is seeking the records will not agree in writing to cancel or  
5 limit the subpoena, an attorney should be consulted about the  
6 consumer's interest in protecting his or her rights of privacy. If a  
7 notice of taking of deposition is also served, that other notice  
8 may be set forth in a single document with the notice required by  
9 this subdivision.

10 (f) A subpoena duces tecum for personal records maintained  
11 by a telephone corporation which is a public utility, as defined in  
12 Section 216 of the Public Utilities Code, shall not be valid or  
13 effective unless it includes a consent to release, signed by the  
14 consumer whose records are requested, as required by Section  
15 2891 of the Public Utilities Code.

16 (g) Any consumer whose personal records are sought by a  
17 subpoena duces tecum and who is a party to the civil action in  
18 which this subpoena duces tecum is served may, prior to the date  
19 for production, bring a motion under Section 1987.1 to quash or  
20 modify the subpoena duces tecum. Notice of the bringing of that  
21 motion shall be given to the witness and deposition officer at  
22 least five days prior to production. The failure to provide notice  
23 to the deposition officer shall not invalidate the motion to quash  
24 or modify the subpoena duces tecum but may be raised by the  
25 deposition officer as an affirmative defense in any action for  
26 liability for improper release of records.

27 Any other consumer or nonparty whose personal records are  
28 sought by a subpoena duces tecum may, prior to the date of  
29 production, serve on the subpoenaing party, the witness, and the  
30 deposition officer, a written objection that cites the specific  
31 grounds on which production of the personal records should be  
32 prohibited.

33 No witness or deposition officer shall be required to produce  
34 personal records after receipt of notice that the motion has been  
35 brought by a consumer, or after receipt of a written objection  
36 from a nonparty consumer, except upon order of the court in  
37 which the action is pending or by agreement of the parties,  
38 witnesses, and consumers affected.

39 The party requesting a consumer's personal records may bring  
40 a motion under Section 1987.1 to enforce the subpoena within 20

1 days of service of the written objection. The motion shall be  
2 accompanied by a declaration showing a reasonable and good  
3 faith attempt at informal resolution of the dispute between the  
4 party requesting the personal records and the consumer or the  
5 consumer's attorney.

6 (h) Upon good cause shown and provided that the rights of  
7 witnesses and consumers are preserved, a subpoenaing party  
8 shall be entitled to obtain an order shortening the time for service  
9 of a subpoena duces tecum or waiving the requirements of  
10 subdivision (b) where due diligence by the subpoenaing party has  
11 been shown.

12 (i) Nothing contained in this section shall be construed to  
13 apply to any subpoena duces tecum which does not request the  
14 records of any particular consumer or consumers and which  
15 requires a custodian of records to delete all information which  
16 would in any way identify any consumer whose records are to be  
17 produced.

18 (j) This section shall not apply to proceedings conducted under  
19 Division 1 (commencing with Section 50), Division 4  
20 (commencing with Section 3200), Division 4.5 (commencing  
21 with Section 6100), or Division 4.7 (commencing with Section  
22 6200), of the Labor Code.

23 (k) Failure to comply with this section shall be sufficient basis  
24 for the witness to refuse to produce the personal records sought  
25 by a subpoena duces tecum.

26 (l) If the subpoenaing party is the consumer, and the consumer  
27 is the only subject of the subpoenaed records, notice to the  
28 consumer, and delivery of the other documents specified in  
29 subdivision (b) to the consumer, is not required under this  
30 section.

31 ~~SEC. 5.~~

32 *SEC. 4.* Section 1985.6 of the Code of Civil Procedure is  
33 amended to read:

34 1985.6. (a) For purposes of this section, the following  
35 definitions apply:

36 (1) "Deposition officer" means a person who meets the  
37 qualifications specified in paragraph (3) of subdivision (d) of  
38 Section 2020.

39 (2) "Employee" means any individual who is or has been  
40 employed by a witness subject to a subpoena duces tecum.



1 “Employee” also means any individual who is or has been  
2 represented by a labor organization that is a witness subject to a  
3 subpoena duces tecum.

4 (3) “Employment records” means the original or any copy of  
5 books, documents, other writings, or electronic data pertaining to  
6 the employment of any employee maintained by the current or  
7 former employer of the employee, or by any labor organization  
8 that has represented or currently represents the employee.

9 (4) “Labor organization” has the meaning set forth in Section  
10 1117 of the Labor Code.

11 (5) “Subpoenaing party” means the person or persons causing  
12 a subpoena duces tecum to be issued or served in connection with  
13 any civil action or proceeding, but does not include the state or  
14 local agencies described in Section 7465 of the Government  
15 Code, or any entity provided for under Article VI of the  
16 California Constitution in any proceeding maintained before an  
17 adjudicative body of that entity pursuant to Chapter 4  
18 (commencing with Section 6000) of Division 3 of the Business  
19 and Professions Code.

20 (b) Prior to the date called for in the subpoena duces tecum of  
21 the production of employment records, the subpoenaing party  
22 shall serve or cause to be served on the employee whose records  
23 are being sought a copy of: the subpoena duces tecum; the  
24 affidavit supporting the issuance of the subpoena, if any; and the  
25 notice described in subdivision (e), and proof of service as  
26 provided in paragraph (1) of subdivision (c). This service shall be  
27 made as follows:

28 (1) To the employee personally, or at his or her last known  
29 address, or in accordance with Chapter 5 (commencing with  
30 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to  
31 his or her attorney of record. If the employee is a minor, service  
32 shall be made on the minor’s parent, guardian, conservator, or  
33 similar fiduciary, or if one of them cannot be located with  
34 reasonable diligence, then service shall be made on any person  
35 having the care or control of the minor, or with whom the minor  
36 resides, and on the minor if the minor is at least 12 years of age.

37 (2) Not less than 10 days prior to the date for production  
38 specified in the subpoena duces tecum, plus the additional time  
39 provided by Section 1013 if service is by mail.

1 (3) At least five days prior to service upon the custodian of the  
2 employment records, plus the additional time provided by  
3 Section 1013 if service is by mail.

4 (c) Prior to the production of the records, the subpoenaing  
5 party shall either:

6 (1) Serve or cause to be served upon the witness a proof of  
7 personal service or of service by mail attesting to compliance  
8 with subdivision (b).

9 (2) Furnish the witness a written authorization to release the  
10 records signed by the employee or by his or her attorney of  
11 record. The witness may presume that the attorney purporting to  
12 sign the authorization on behalf of the employee acted with the  
13 consent of the employee, and that any objection to release of  
14 records is waived.

15 (d) A subpoena duces tecum for the production of employment  
16 records shall be served in sufficient time to allow the witness a  
17 reasonable time, as provided in paragraph (1) of subdivision (d)  
18 of Section 2020, to locate and produce the records or copies  
19 thereof.

20 (e) Every copy of the subpoena duces tecum and affidavit  
21 served on an employee or his or her attorney in accordance with  
22 subdivision (b) shall be accompanied by a notice, in a typeface  
23 designed to call attention to the notice, indicating that (1)  
24 employment records about the employee are being sought from  
25 the witness named on the subpoena; (2) the employment records  
26 may be protected by a right of privacy; (3) if the employee  
27 objects to the witness furnishing the records to the party seeking  
28 the records the employee shall file papers with the court prior to  
29 the date specified for production on the subpoena; and (4) if the  
30 subpoenaing party does not agree in writing to cancel or limit the  
31 subpoena, an attorney should be consulted about the employee's  
32 interest in protecting his or her rights of privacy. If a notice of  
33 taking of deposition is also served, that other notice may be set  
34 forth in a single document with the notice required by this  
35 subdivision.

36 (f) Any employee whose employment records are sought by a  
37 subpoena duces tecum may, prior to the date for production,  
38 bring a motion under Section 1987.1 to quash or modify the  
39 subpoena duces tecum. Notice of the bringing of that motion  
40 shall be given to the witness and the deposition officer at least

1 five days prior to production. The failure to provide notice to the  
2 deposition officer does not invalidate the motion to quash or  
3 modify the subpoena duces tecum but may be raised by the  
4 deposition officer as an affirmative defense in any action for  
5 liability for improper release of records.

6 Any nonparty employee whose employment records are sought  
7 by a subpoena duces tecum may, prior to the date of production,  
8 serve on the subpoenaing party, ~~and~~ the deposition officer, *and*  
9 the witness a written objection that cites the specific grounds on  
10 which production of the employment records should be  
11 prohibited.

12 No witness or deposition officer shall be required to produce  
13 employment records after receipt of notice that the motion has  
14 been brought by an employee, or after receipt of a written  
15 objection from a nonparty employee, except upon order of the  
16 court in which the action is pending or by agreement of the  
17 parties, witnesses, and employees affected.

18 The party requesting an employee's employment records may  
19 bring a motion under subdivision (c) of Section 1987 to enforce  
20 the subpoena within 20 days of service of the written objection.  
21 The motion shall be accompanied by a declaration showing a  
22 reasonable and good faith attempt at informal resolution of the  
23 dispute between the party requesting the employment records and  
24 the employee or the employee's attorney.

25 (g) Upon good cause shown and provided that the rights of  
26 witnesses and employees are preserved, a subpoenaing party  
27 shall be entitled to obtain an order shortening the time for service  
28 of a subpoena duces tecum or waiving the requirements of  
29 subdivision (b) where due diligence by the subpoenaing party has  
30 been shown.

31 (h) This section may not be construed to apply to any  
32 subpoena duces tecum which does not request the records of any  
33 particular employee or employees and which requires a custodian  
34 of records to delete all information which would in any way  
35 identify any employee whose records are to be produced.

36 (i) This section does not apply to proceedings conducted under  
37 Division 1 (commencing with Section 50), Division 4  
38 (commencing with Section 3200), Division 4.5 (commencing  
39 with Section 6100), or Division 4.7 (commencing with Section  
40 6200), of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

(k) If the subpoenaing party is the employee, and the employee is the only subject of the subpoenaed records, notice to the employee, and delivery of the other documents specified in subdivision (b) to the employee, is not required under this section.

~~SEC. 6.~~

SEC. 5. Section 4013 of the Penal Code is amended to read:

~~4013. A sheriff or jailer, when served with judicial process directed to a person in his or her custody, shall deliver it to the prisoner. Service in this manner shall constitute personal service unless the sheriff or jailer notifies, within two days, the party requesting service of the reason for not delivering the judicial process to the prisoner. The sheriff or jailer shall be liable for any damages to any aggrieved party for failing to comply with this section. Nothing~~ (a) *A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his or her custody, is served, shall forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so, he or she is liable to the prisoner for all damages occasioned thereby.*

(b) *Nothing in this section shall limit or restrict any person who may lawfully serve process from serving process pursuant to this section.*