

AMENDED IN ASSEMBLY APRIL 28, 2005

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1293

Introduced by Assembly Member Oropeza

February 22, 2005

An act to amend Section 2025.520 of the Code of Civil Procedure, relating to production of evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1293, as amended, Oropeza. Depositions.

Under existing law, when deposition testimony is stenographically recorded, the deposition officer is required to send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, except as specified.

This bill would, *if the deponent and attending parties agree on the record*, authorize the deposition officer to provide that notice electronically, via e-mail, *and to send the transcript electronically*. The bill would require any notice sent electronically to include a confidentiality notice, as specified. The bill also would authorize *any changes to, or approval of*, the transcript to be sent ~~and amended~~ electronically, ~~if approved the deponent and attending parties agree on the record as the form of communication between the attorneys, and to be approved electronically by electronic signature~~. The bill would require any transcript sent electronically to ~~include encryption language~~ *be encrypted, password protected, and electronically signed by the deposition officer* to prevent the document from being *altered or forwarded electronically to, or accessed by*, another recipient.

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 2025.520 of the Code of Civil
2 Procedure is amended to read:
3 2025.520. (a) If the deposition testimony is stenographically
4 recorded, the deposition officer shall send written notice ~~or~~
5 ~~electronic notice, via e-mail,~~ to the deponent and to all parties
6 attending the deposition when the original transcript of the
7 testimony for each session of the deposition is available for
8 reading, correcting, and signing, unless the deponent and the
9 attending parties agree on the record that the reading, correcting,
10 and signing of the transcript of the testimony will be waived or
11 that the reading, correcting, and signing of a transcript of the
12 testimony will take place after the entire deposition has been
13 concluded or at some other specific time.
14 (b) For 30 days following each notice under subdivision (a),
15 unless the attending parties and the deponent agree on the record
16 or otherwise in writing to a longer or shorter time period, the
17 deponent may change the form or the substance of the answer to
18 a question, and may either approve the transcript of the
19 deposition by signing it, or refuse to approve the transcript by not
20 signing it.
21 (c) Alternatively, within this same period, the deponent may
22 change the form or the substance of the answer to any question
23 and may approve or refuse to approve the transcript by means of
24 a letter to the deposition officer signed by the deponent which is
25 mailed by certified or registered mail with return receipt
26 requested. A copy of that letter shall be sent by first-class mail to
27 all parties attending the deposition.
28 (d) For good cause shown, the court may shorten the 30-day
29 period for making changes, approving, or refusing to approve the
30 transcript.
31 (e) The deposition officer shall indicate on the original of the
32 transcript, if the deponent has not already done so at the office of
33 the deposition officer, any action taken by the deponent and
34 indicate on the original of the transcript, the deponent's approval
35 of, or failure or refusal to approve, the transcript. The deposition

1 officer shall also notify in writing the parties attending the
2 deposition of any changes which the deponent timely made in
3 person.

4 (f) If the deponent fails or refuses to approve the transcript
5 within the allotted period, the deposition shall be given the same
6 effect as though it had been approved, subject to any changes
7 timely made by the deponent.

8 (g) Notwithstanding subdivision (f), on a reasonable motion to
9 suppress the deposition, accompanied by a meet and confer
10 declaration under Section 2016.040, the court may determine that
11 the reasons given for the failure or refusal to approve the
12 transcript require rejection of the deposition in whole or in part.

13 (h) The court shall impose a monetary sanction under Chapter
14 7 (commencing with Section 2023.010) against any party,
15 person, or attorney who unsuccessfully makes or opposes a
16 motion to suppress a deposition under this section, unless the
17 court finds that the one subject to the sanction acted with
18 substantial justification or that other circumstances make the
19 imposition of the sanction unjust.

20 ~~(i) For purposes of this section, all of the following apply:~~

21 ~~(1)~~

22 ~~(i) (1) If the deponent and the attending parties agree on the~~
23 ~~record, the notice required by subdivision (a) may be sent~~
24 ~~electronically, via e-mail, and the transcript may be sent by the~~
25 ~~deposition officer electronically.~~

26 ~~(2) Any notice sent electronically pursuant to subdivision (a)~~
27 ~~shall include a confidentiality notice in substantially the~~
28 ~~following form: "The information in this e-mail message and any~~
29 ~~document attached to this e-mail message is confidential and~~
30 ~~may be legally privileged. It is intended solely for the addressee.~~
31 ~~Access to this e-mail message and any attached documents by~~
32 ~~anyone else is unauthorized. If you are not the intended recipient,~~
33 ~~any disclosure, copying, distribution, or any action taken or~~
34 ~~omitted to be taken in reliance on it, disclosure of this~~
35 ~~information is prohibited and may be unlawful."~~

36 ~~(2) If approved on the record as the form of communication~~
37 ~~between the attorneys, the transcript may be sent and amended~~
38 ~~electronically.~~

1 ~~(3) A transcript may be approved electronically. An electronic~~
2 ~~signature has the same legal effect and enforceability as a written~~
3 ~~signature.~~

4 ~~(4) Any transcript sent electronically shall include encryption~~
5 ~~language to prevent the document from being forwarded~~
6 ~~electronically to another recipient.~~

7 *(3) Any transcript sent electronically shall be encrypted,*
8 *password protected, and electronically signed by the deposition*
9 *officer to prevent the transcript from being altered by the*
10 *recipient or forwarded electronically to, or accessed by, another*
11 *recipient.*

12 *(4) The deponent and the attending parties may also agree on*
13 *the record that any changes to, or approval of, the transcript by*
14 *the deponent may be transmitted electronically. An electronic*
15 *signature, as defined by Section 1633.2 of the Civil Code,*
16 *approving a transcript has the same legal effect and*
17 *enforceability as a written signature.*