

AMENDED IN SENATE JUNE 24, 2008

AMENDED IN SENATE JUNE 17, 2008

AMENDED IN SENATE JUNE 2, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2193

Introduced by Assembly Member Tran

February 20, 2008

An act to amend the heading of Chapter 12 (commencing with Section 2029.010) of Title 4 of Part 4 of, to add Article 1 (commencing with Section 2029.100) to Chapter 12 of Title 4 of Part 4 of, and to repeal Section 2029.010 of, the Code of Civil Procedure, and to amend Section 70626 of the Government Code, relating to civil discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 2193, as amended, Tran. Civil discovery: out-of-state proceedings.

Existing law permits a California court, by subpoena, to compel a natural person to submit to oral or written deposition, and to produce documents and things, in connection with actions pending outside of California. Existing law specifies the circumstances pursuant to which this power will be exercised, including when the out-of-state court has issued a mandate, a writ, and a letter of request.

This bill would repeal these provisions and would enact the Interstate and International Depositions and Discovery Act. The provisions of the bill, beginning January 1, 2010, would apply to an organization as well as a natural person, and would apply to depositions for the production of tangible items and inspection of premises, in addition to those requiring testimony. The bill would broaden the range of documents issued by an out-of-state court pursuant to which a California court

would be authorized to issue a subpoena in this regard. The bill would establish a process for obtaining a subpoena, which would require payment of a fee, to be deposited in the Trial Court Trust Fund, and submitting the subpoena of the out-of-state court with a specified application. The bill would establish a specified fee to be paid related to disputes that arise under its provisions. The bill would provide that a party is not required to retain a local attorney to depose a witness in these circumstances. The bill would permit an active member of the California State Bar who is retained by a party to an out-of-state proceeding to issue a deposition subpoena, as specified. The bill would provide a process for the resolution of a dispute regarding discovery conducted in California in connection with an out-of-state proceeding, and a request for relief in this regard would be filed in the superior court in which the discovery is sought with payment of specified fees. The bill would permit a party to appeal court orders in connection with a dispute by extraordinary writ to the appropriate court of appeal. The bill, beginning January 1, 2009, would require the Judicial Council to prepare an application form, and to either create subpoena forms, or modify existing subpoena forms, for issuance pursuant to its provisions.

The bill would also provide an alternative definition of a subpoena in connection with the proposed Interstate and International Depositions and Discovery Act that would be operative only if AB 926 and this bill are both enacted and become effective on or before January 1, 2009, and AB 926 makes a specified amendment to the Code of Civil Procedure.

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

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

1 SECTION 1. The heading of Chapter 12 (commencing with
 2 Section 2029.010) of Title 4 of Part 4 of the Code of Civil
 3 Procedure is amended to read:

4
 5 CHAPTER 12. DISCOVERY IN ACTION PENDING OUTSIDE
 6 CALIFORNIA
 7

8 SEC. 2. Section 2029.010 of the Code of Civil Procedure is
 9 repealed.

1 SEC. 3. Article 1 (commencing with Section 2029.100) is
2 added to Chapter 12 of Title 4 of Part 4 of the Code of Civil
3 Procedure, to read:

4
5 Article 1. Interstate and International Depositions and Discovery
6 Act

7
8 2029.100. This article may be cited as the Interstate and
9 International Depositions and Discovery Act.

10 2029.200. In this article:

11 (a) "Foreign jurisdiction" means either of the following:

12 (1) A state other than this state.

13 (2) A foreign nation.

14 (b) "Foreign subpoena" means a subpoena issued under authority
15 of a court of record of a foreign jurisdiction.

16 (c) "Person" means an individual, corporation, business trust,
17 estate, trust, partnership, limited liability company, association,
18 joint venture, public corporation, government, or governmental
19 subdivision, agency, or instrumentality, or any other legal or
20 commercial entity.

21 (d) "State" means a state of the United States, the District of
22 Columbia, Puerto Rico, the Virgin Islands, a federally recognized
23 Indian tribe, or any territory or insular possession subject to the
24 jurisdiction of the United States.

25 (e) "Subpoena" means a document, however denominated,
26 issued under authority of a court of record requiring a person to
27 do any of the following:

28 (1) Attend and give testimony at a deposition.

29 (2) Produce and permit inspection and copying of designated
30 books, documents, records, electronically stored information, or
31 tangible things in the possession, custody, or control of the person.

32 (3) Permit inspection of premises under the control of the person.

33 2029.300. (a) To request issuance of a subpoena under this
34 section, a party shall submit the original or a true and correct copy
35 of a foreign subpoena to the clerk of the superior court in the
36 county in which discovery is sought to be conducted in this state.
37 A request for the issuance of a subpoena under this section does
38 not constitute making an appearance in the courts of this state.

1 (b) In addition to submitting a foreign subpoena under
2 subdivision (a), a party seeking discovery shall do both of the
3 following:

4 (1) Submit an application requesting that the superior court issue
5 a subpoena with the same terms as the foreign subpoena. The
6 application shall be on a form prescribed by the Judicial Council
7 pursuant to Section 2029.390. No civil case cover sheet is required.

8 (2) Pay the fee specified in Section 70626 of the Government
9 Code.

10 (c) When a party submits a foreign subpoena to the clerk of the
11 superior court in accordance with subdivision (a), and satisfies the
12 requirements of subdivision (b), the clerk shall promptly issue a
13 subpoena for service upon the person to which the foreign subpoena
14 is directed.

15 (d) A subpoena issued under this section shall satisfy all of the
16 following conditions:

17 (1) It shall incorporate the terms used in the foreign subpoena.

18 (2) It shall contain or be accompanied by the names, addresses,
19 and telephone numbers of all counsel of record in the proceeding
20 to which the subpoena relates and of any party not represented by
21 counsel.

22 (3) It shall bear the caption and case number of the out-of-state
23 case to which it relates.

24 (4) It shall state the name of the court that issues it.

25 (5) It shall be on a form prescribed by the Judicial Council
26 pursuant to Section 2029.390.

27 2029.350. (a) Notwithstanding Sections 1986 and 2029.300,
28 if a party to a proceeding pending in a foreign jurisdiction retains
29 an attorney licensed to practice in this state, who is an active
30 member of the State Bar, and that attorney receives the original
31 or a true and correct copy of a foreign subpoena, the attorney may
32 issue a subpoena under this article.

33 (b) A subpoena issued under this section shall satisfy all of the
34 following conditions:

35 (1) It shall incorporate the terms used in the foreign subpoena.

36 (2) It shall contain or be accompanied by the names, addresses,
37 and telephone numbers of all counsel of record in the proceeding
38 to which the subpoena relates and of any party not represented by
39 counsel.

1 (3) It shall bear the caption and case number of the out-of-state
2 case to which it relates.

3 (4) It shall state the name of the superior court of the county in
4 which the discovery is to be conducted.

5 (5) It shall be on a form prescribed by the Judicial Council
6 pursuant to Section 2029.390.

7 2029.390. On or before January 1, 2010, the Judicial Council
8 shall do all of the following:

9 (a) Prepare an application form to be used for purposes of
10 Section 2029.300.

11 (b) Prepare one or more new subpoena forms that include clear
12 instructions for use in issuance of a subpoena under Section
13 2029.300 or 2029.350. Alternatively, the Judicial Council may
14 modify one or more existing subpoena forms to include clear
15 instructions for use in issuance of a subpoena under Section
16 2029.300 or 2029.350.

17 2029.400. A subpoena issued under this article shall be
18 personally served in compliance with the law of this state,
19 including, without limitation, Section 1985.

20 2029.500. Titles 3 (commencing with Section 1985) and 4
21 (commencing with Section 2016.010) of Part 4, and any other law
22 or court rule of this state governing a deposition, a production of
23 documents or other tangible items, or an inspection of premises,
24 including any law or court rule governing payment of court costs
25 or sanctions, apply to discovery under this article.

26 2029.600. (a) If a dispute arises relating to discovery under
27 this article, any request for a protective order or to enforce, quash,
28 or modify a subpoena, or for other relief may be filed in the
29 superior court in the county in which discovery is to be conducted
30 and, if so filed, shall comply with the applicable rules or statutes
31 of this state.

32 (b) A request for relief pursuant to this section shall be referred
33 to as a petition notwithstanding any statute under which a request
34 for the same relief would be referred to as a motion or by another
35 term if it was brought in a proceeding pending in this state.

36 (c) A petition for relief pursuant to this section shall be
37 accompanied by a civil case cover sheet.

38 2029.610. (a) On filing a petition under Section 2029.600, a
39 petitioner who is a party to the out-of-state proceeding shall pay
40 a first appearance fee as specified in Section 70611 of the

1 Government Code. A petitioner who is not a party to the
2 out-of-state proceeding shall pay the fee specified in subdivision
3 (c) of Section 70626 of the Government Code.

4 (b) The court in which the petition is filed shall assign it a case
5 number.

6 (c) On responding to a petition under Section 2029.600, a party
7 to the out-of-state proceeding shall pay a first appearance fee as
8 specified in Section 70612 of the Government Code. A person
9 who is not a party to the out-of-state proceeding may file a response
10 without paying a fee.

11 (d) Any petition, response, or other document filed under this
12 section shall satisfy all of the following conditions:

13 (1) It shall bear the caption and case number of the out-of-state
14 case to which it relates.

15 (2) The first page shall state the name of the court in which the
16 document is filed.

17 (3) The first page shall state the case number assigned by the
18 court under subdivision (b).

19 2029.620. (a) If a petition has been filed under Section
20 2029.600 and another dispute later arises relating to discovery
21 being conducted in the same county for purposes of the same
22 out-of-state proceeding, the deponent or other disputant may file
23 a petition for appropriate relief in the same superior court as the
24 previous petition.

25 (b) The first page of the petition shall clearly indicate that it is
26 not the first petition filed in that court that relates to the out-of-state
27 case.

28 (c) (1) If the petitioner in the new dispute is a party to the
29 out-of-state case who previously paid a first appearance fee under
30 this article, the petitioner shall pay a motion fee as specified in
31 subdivision (a) of Section 70617 of the Government Code. If the
32 petitioner in the new dispute is a party to the out-of-state case but
33 has not previously paid a first appearance fee under this article,
34 the petitioner shall pay a first appearance fee as specified in Section
35 70611 of the Government Code.

36 (2) If the petitioner in the new dispute is not a party to the
37 out-of-state case, the petitioner shall pay the fee specified in
38 subdivision (c) of Section 70626 of the Government Code, unless
39 the petitioner previously paid that fee. If the petitioner previously
40 paid the fee specified in subdivision (c) of Section 70626 of the

1 Government Code, the petitioner shall pay a motion fee as specified
2 in subdivision (a) of Section 70617 of the Government Code.

3 (d) If a person responding to the new petition is not a party to
4 the out-of-state case, or is a party who previously paid a first
5 appearance fee under this article, that person does not have to pay
6 a fee for responding. If a person responding to the new petition is
7 a party to the out-of-state case but has not previously paid a first
8 appearance fee under this article, that person shall pay a first
9 appearance fee as specified in Section 70612 of the Government
10 Code.

11 (e) Any petition, response, or other document filed under this
12 section shall satisfy all of the following conditions:

13 (1) It shall bear the caption and case number of the out-of-state
14 case to which it relates.

15 (2) The first page shall state the name of the court in which the
16 document is filed.

17 (3) The first page shall state the same case number that the court
18 assigned to the first petition relating to the out-of-state case.

19 (f) A petition for relief pursuant to this section shall be
20 accompanied by a civil case cover sheet.

21 2029.630. A petition under Section 2029.600 or Section
22 2029.620 is subject to the requirements of Section 1005 relating
23 to notice and to filing and service of papers.

24 2029.640. If a party to a proceeding pending in a foreign
25 jurisdiction seeks discovery from a witness in this state by properly
26 issued notice or by agreement, it is not necessary for that party to
27 obtain a subpoena under this article to be able to seek relief under
28 Section 2029.600 or 2029.620. The deponent or any other party
29 may also seek relief under Section 2029.600 or 2029.620 in those
30 circumstances, regardless of whether the deponent was subpoenaed
31 under this article.

32 2029.650. (a) If a superior court issues an order granting,
33 denying, or otherwise resolving a petition under Section 2029.600
34 or 2029.620, a person aggrieved by the order may petition the
35 appropriate court of appeal for an extraordinary writ. No order or
36 other action of a court under this article is appealable in this state.

37 (b) Pending its decision on the writ petition, the court of appeal
38 may stay the order of the superior court, the discovery that is the
39 subject of that order, or both.

1 2029.700. (a) Sections 2029.100, 2029.200, 2029.300,
2 2029.400, 2029.500, 2029.600, 2029.800, 2029.900, and this
3 section, collectively, constitute and may be referred to as the
4 “California version of the Uniform Interstate Depositions and
5 Discovery Act.”

6 (b) In applying and construing this uniform act, consideration
7 shall be given to the need to promote uniformity of the law with
8 respect to its subject matter among the states that enact it.

9 2029.800. This article applies to requests for discovery in cases
10 pending on or after the operative date of this section.

11 2029.900. Section 2029.390 is operative on January 1, 2009.
12 The remainder of this article is operative on January 1, 2010.

13 SEC. 3.5. Section 2029.200 is added to the Code of Civil
14 Procedure, to read:

15 2029.200. In this article:

16 (a) “Foreign jurisdiction” means either of the following:

- 17 (1) A state other than this state.
- 18 (2) A foreign nation.

19 (b) “Foreign subpoena” means a subpoena issued under authority
20 of a court of record of a foreign jurisdiction.

21 (c) “Person” means an individual, corporation, business trust,
22 estate, trust, partnership, limited liability company, association,
23 joint venture, public corporation, government, or governmental
24 subdivision, agency, or instrumentality, or any other legal or
25 commercial entity.

26 (d) “State” means a state of the United States, the District of
27 Columbia, Puerto Rico, the Virgin Islands, a federally recognized
28 Indian tribe, or any territory or insular possession subject to the
29 jurisdiction of the United States.

30 (e) “Subpoena” means a document, however denominated,
31 issued under authority of a court of record requiring a person to
32 do any of the following:

- 33 (1) Attend and give testimony at a deposition.
- 34 (2) Produce and permit inspection, copying, testing, or sampling
35 of designated books, documents, records, electronically stored
36 information, or tangible things in the possession, custody, or control
37 of the person.
- 38 (3) Permit inspection of premises under the control of the person.

39 SEC. 4. Section 70626 of the Government Code is amended
40 to read:

1 70626. (a) The fee for each of the following services is fifteen
2 dollars (\$15). Amounts collected shall be distributed to the Trial
3 Court Trust Fund under Section 68085.1.

4 (1) Issuing a writ of attachment, a writ of mandate, a writ of
5 execution, a writ of sale, a writ of possession, a writ of prohibition,
6 or any other writ for the enforcement of any order or judgment.

7 (2) Issuing an abstract of judgment.

8 (3) Issuing a certificate of satisfaction of judgment under Section
9 724.100 of the Code of Civil Procedure.

10 (4) Certifying a copy of any paper, record, or proceeding on file
11 in the office of the clerk of any court.

12 (5) Taking an affidavit, except in criminal cases or adoption
13 proceedings.

14 (6) Acknowledgment of any deed or other instrument, including
15 the certificate.

16 (7) Recording or registering any license or certificate, or issuing
17 any certificate in connection with a license, required by law, for
18 which a charge is not otherwise prescribed.

19 (8) Issuing any certificate for which the fee is not otherwise
20 fixed.

21 (b) The fee for each of the following services is twenty dollars
22 (\$20). Amounts collected shall be distributed to the Trial Court
23 Trust Fund under Section 68085.1.

24 (1) Issuing an order of sale.

25 (2) Receiving and filing an abstract of judgment rendered by a
26 judge of another court and subsequent services based on it, unless
27 the abstract of judgment is filed under Section 704.750 or 708.160
28 of the Code of Civil Procedure.

29 (3) Filing a confession of judgment under Section 1134 of the
30 Code of Civil Procedure.

31 (4) Filing an application for renewal of judgment under Section
32 683.150 of the Code of Civil Procedure.

33 (5) Issuing a commission to take a deposition in another state
34 or place under Section 2026.010 of the Code of Civil Procedure,
35 or issuing a subpoena under Section 2029.300 to take a deposition
36 in this state for purposes of a proceeding pending in another
37 jurisdiction.

38 (6) Filing and entering an award under the Workers'
39 Compensation Law (Division 4 (commencing with Section 3200)
40 of the Labor Code).

1 (7) Filing an affidavit of publication of notice of dissolution of
2 partnership.

3 (8) Filing an appeal of a determination whether a dog is
4 potentially dangerous or vicious under Section 31622 of the Food
5 and Agricultural Code.

6 (9) Filing an affidavit under Section 13200 of the Probate Code,
7 together with the issuance of one certified copy of the affidavit
8 under Section 13202 of the Probate Code.

9 (10) Filing and indexing all papers for which a charge is not
10 elsewhere provided, other than papers filed in actions or special
11 proceedings, official bonds, or certificates of appointment.

12 (c) The fee for filing a first petition under Section 2029.600 or
13 2029.620 of the Code of Civil Procedure, if the ~~petition~~ *petitioner*
14 is not a party to the out-of-state case, is eighty dollars (\$80).
15 Amounts collected shall be distributed to the Trial Court Trust
16 Fund pursuant to Section 68085.1.

17 SEC. 5. Section 3.5 of this bill makes changes in Section
18 2029.200 of the Code of Civil Procedure, as it is proposed to be
19 added by Section 3 of this bill, to conform to changes proposed
20 by AB 926. Section 3.5 of this bill shall only become operative if
21 (1) AB 926 and this bill are both enacted and become effective on
22 or before January 1, 2009, and (2) AB 926 amends subdivision (a)
23 of Section 2031.010 of the Code of Civil Procedure to permit
24 discovery by “inspecting, copying, testing, or sampling” instead
25 of only by “inspecting,” in which case the version of Section
26 2029.200 of the Code of Civil Procedure to be added by Section
27 3 of this bill shall not become operative.

O