

AMENDED IN ASSEMBLY APRIL 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2427

Introduced by Assembly Member Chau

February 19, 2016

An act to amend Section 129 ~~of of, and to add Section 2034.415 to,~~
the Code of Civil Procedure, relating to ~~courts: civil procedure.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2427, as amended, Chau. ~~Postmortem photographs. Civil Procedure: discovery.~~

Existing law generally prohibits a copy, reproduction, or facsimile of any kind of a photograph, negative, or print, including instant photographs and video recordings, of the body, or any portion of the body, of a deceased person, taken by or for the coroner at the scene of death or in the course of a postmortem examination or autopsy, from being made or disseminated. This prohibition does not apply for use in a criminal action or proceeding in this state that relates to the death of that person, or as a court permits, by order after good cause has been shown and after written notification of the request for the court order has been served, at least 5 days before the order is made, upon the district attorney of the county in which the postmortem examination or autopsy has been made or caused to be made.

This bill would additionally authorize the making or dissemination of a copy, reproduction, or facsimile described above for use or potential use in a civil action or proceeding that relates to the death of the deceased person if the coroner receives written authorization from a legal heir or representative of the deceased person before the action is

filed or while the action is pending, or if a subpoena is issued in a pending civil action.

Existing law authorizes any party, after the setting of the initial trial date for an action, to demand the simultaneous exchange by all parties of lists containing the names and addresses of any persons expected to provide expert opinion testimony at the trial. Existing law also provides that a demand for an exchange of expert witness lists may include a demand for the production of discoverable reports and writings made by the listed expert witnesses. Existing law authorizes a party, to depose any expert disclosed in an expert witness list.

This bill would require that any materials or category of materials, including any electronically stored information, and any discoverable reports and writings of an expert trial witness, demanded to be produced in the deposition notice be produced no later than 3 business days before the deposition.

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 129 of the Code of Civil Procedure is
2 amended to read:

3 129. (a) Notwithstanding any other law, a copy, reproduction,
4 or facsimile of any kind of a photograph, negative, or print,
5 including instant photographs and video recordings, of the body,
6 or any portion of the body, of a deceased person, taken by or for
7 the coroner at the scene of death or in the course of a post mortem
8 examination or autopsy, shall not be made or disseminated except
9 as follows:

10 (1) For use in a criminal action or proceeding in this state that
11 relates to the death of that person.

12 (2) As a court of this state permits, by order after good cause
13 has been shown and after written notification of the request for
14 the court order has been served, at least five days before the order
15 is made, upon the district attorney of the county in which the post
16 mortem examination or autopsy has been made or caused to be
17 made.

18 (3) For use or potential use in a civil action or proceeding in
19 this state that relates to the death of that person, if either of the
20 following applies:

1 (A) The coroner receives written authorization from a legal heir
2 or representative of that person before the action is filed or while
3 the action is pending.

4 (B) A subpoena is issued in a pending civil action.

5 (b) This section shall not apply to the making or dissemination
6 of a copy, reproduction, or facsimile for use in the field of forensic
7 pathology, in medical or scientific education or research, or by a
8 coroner or any law enforcement agency in the United States for
9 investigative purposes, including identification and identification
10 confirmation.

11 (c) This section shall apply to a copy, reproduction, or facsimile,
12 and to a photograph, negative, or print, regardless of when it was
13 made.

14 (d) A coroner is not personally liable for monetary damages in
15 a civil action for any act or omission in compliance with this
16 section.

17 *SEC. 2. Section 2034.415 is added to the Code of Civil*
18 *Procedure, to read:*

19 *2034.415. Any materials or category of materials, including*
20 *any electronically stored information, and any discoverable reports*
21 *and writings of an expert trial witness, demanded to be produced*
22 *in the deposition notice shall be produced no later than three*
23 *business days before the deposition of the expert trial witness.*