

AMENDED IN SENATE AUGUST 6, 1996
AMENDED IN SENATE JULY 7, 1996
AMENDED IN SENATE JUNE 20, 1996
AMENDED IN ASSEMBLY MARCH 30, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1721

Introduced by Assembly Member Ducheny

February 24, 1995

An act to amend Section 1985.3 of the Code of Civil Procedure and to amend Sections 49077, 49078, 76244, and 76245 of the Education Code, relating to ~~education~~ records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, as amended, Ducheny. Student and consumer records.

(1) Existing law authorizes any consumer whose personal records are sought by a subpoena duces tecum to quash or modify it by a motion filed with the court prior to the date specified for production on the subpoena.

This bill would limit the applicability of this authorization to a consumer who is a party to the civil action in which the subpoena duces tecum is served and would authorize other consumers to serve on the requesting party and witness a written objection to the subpoena duces tecum. The bill would authorize the requesting party to bring a motion to

enforce the subpoena within 20 days of the service of the written objection, as specified.

(2) Existing law provides that no witness shall be required to produce personal records after receipt of notice that this motion has been brought, except as specified.

This bill would provide that no witness shall be required, except as specified, to produce personal records after receipt of this notice or service of the written objection described in (1).

(3) Existing law requires school districts and community college districts to make a reasonable effort to notify students prior to complying with a court order requesting information concerning the student.

This bill would provide that information concerning a student shall be furnished in compliance with a court order, or pursuant to any lawfully issued subpoena, upon the condition that, in the case of school districts, the school district makes a reasonable effort to notify the parent or legal guardian and the pupil and, in the case of community college districts, the community college district makes a reasonable effort to notify the student, of a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the order, in advance of compliance therewith by the school district or community college district. Because this requirement would impose additional duties and responsibilities upon local school districts and community college districts, the bill would impose a state-mandated local program.

(2)

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by



the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. *Section 1985.3 of the Code of Civil*
2 *Procedure is amended to read:*

3 1985.3. (a) For purposes of this section, the following
4 definitions apply:

5 (1) "Personal records" means the original or any copy
6 of books, documents, or other writings pertaining to a
7 consumer and which are maintained by any "witness"
8 which is a physician, chiropractor, veterinarian,
9 veterinary hospital, veterinary clinic, pharmacist,
10 pharmacy, hospital, state or national bank, state or federal
11 association (as defined in Section 5102 of the Financial
12 Code), state or federal credit union, trust company,
13 anyone authorized by this state to make or arrange loans
14 that are secured by real property, security brokerage
15 firm, insurance company, title insurance company,
16 underwritten title company, escrow agent licensed
17 pursuant to Division 6 (commencing with Section 17000)
18 of the Financial Code or exempt from licensure pursuant
19 to Section 17006 of the Financial Code, attorney,
20 accountant, institution of the Farm Credit System, as
21 specified in Section 2002 of Title 12 of the United States
22 Code, or telephone corporation which is a public utility,
23 as defined in Section 216 of the Public Utilities Code, or
24 psychotherapist, as defined in Section 1010 of the
25 Evidence Code, or a private or public preschool,
26 elementary school, or secondary school.

27 (2) "Consumer" means any individual, partnership of
28 five or fewer persons, association, or trust which has
29 transacted business with, or has used the services of, the
30 witness or for whom the witness has acted as agent or
31 fiduciary.

32 (3) "Subpoenaing party" means the person or persons
33 causing a subpoena duces tecum to be issued or served in



1 connection with any civil action or proceeding pursuant
 2 to this code, but shall not include the state or local
 3 agencies described in Section 7465 of the Government
 4 Code, or any entity provided for under Article VI of the
 5 California Constitution in any proceeding maintained
 6 before an adjudicative body of that entity pursuant to
 7 Chapter 4 (commencing with Section 6000) of Division
 8 3 of the Business and Professions Code.

9 (b) The date specified in a subpoena duces tecum for
 10 the production of personal records shall not be less than
 11 15 days from the date the subpoena is issued. Prior to the
 12 date called for in the subpoena duces tecum for the
 13 production of personal records, the subpoenaing party
 14 shall serve or cause to be served on the consumer whose
 15 records are being sought a copy of the subpoena duces
 16 tecum, of the affidavit supporting the issuance of the
 17 subpoena, and of the notice described in subdivision (e).
 18 This service shall be made as follows:

19 (1) To the consumer personally, or at his or her last
 20 known address, or in accordance with Chapter 5
 21 (commencing with Section 1010) of Title 14 of Part 3, or,
 22 if he or she is a party, to his or her attorney of record. If
 23 the consumer is a minor, service shall be made on the
 24 minor's parent, guardian, conservator, or similar
 25 fiduciary, or if one of them cannot be located with
 26 reasonable diligence, then service shall be made on any
 27 person having the care or control of the minor or with
 28 whom the minor resides or by whom the minor is
 29 employed, and on the minor if the minor is at least 12
 30 years of age.

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

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

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



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

4 (2) Furnish the witness a written authorization to
5 release the records signed by the consumer or by his or
6 her attorney of record. The witness may presume that any
7 attorney purporting to sign the authorization on behalf of
8 the consumer acted with the consent of the consumer.

9 (d) A subpoena duces tecum for the production of
10 personal records shall be served in sufficient time to allow
11 the witness a reasonable time to locate and produce the
12 records or copies thereof.

13 Except as to records subpoenaed for a criminal
14 proceeding or records subpoenaed during trial, a
15 subpoena duces tecum served upon a witness with
16 records in more than one location shall be served no less
17 than 10 days prior to the date specified for production,
18 unless good cause is shown pursuant to subdivision (h).

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

37 (f) A subpoena duces tecum for personal records
38 maintained by a telephone corporation which is a public
39 utility, as defined in Section 216 of the Public Utilities
40 Code, shall not be valid or effective unless it includes a



1 consent to release, signed by the consumer whose records
2 are requested, as required by Section 2891 of the Public
3 Utilities Code.

4 (g) Any consumer whose personal records are sought
5 by a subpoena duces tecum *and who is a party to the civil*
6 *action in which this subpoena duces tecum is served* may,
7 prior to the date for production, bring a motion under
8 Section 1987.1 to quash or modify the subpoena duces
9 tecum. Notice of the bringing of that motion shall be
10 given to the witness prior to production.

11 *Any other consumer whose personal records are sought*
12 *by a subpoena duces tecum may, prior to the date of*
13 *production, serve on the requesting party and the witness*
14 *a written objection that specifies the specific grounds on*
15 *which production of the personal records should be*
16 *prohibited.*

17 No witness shall be required to produce personal
18 records after receipt of notice that such a motion has been
19 brought, except upon order of the court in which the
20 action is pending or by agreement of the parties,
21 witnesses, and consumers affected. *No witness shall be*
22 *required to produce personal records after service of a*
23 *written objection by a nonparty consumer, except upon*
24 *order of the court in which the action is pending or by*
25 *agreement of the parties, witnesses, and consumers*
26 *affected.*

27 *The party requesting a consumer's personal records*
28 *may bring a motion under Section 1987.1 to enforce the*
29 *subpoena within 20 days of service of the written*
30 *objection. The motion shall be accompanied by a*
31 *declaration showing a reasonable and good faith attempt*
32 *at informal resolution of the dispute between the party*
33 *requesting the personal records and the consumer or the*
34 *consumer's attorney.*

35 (h) Upon good cause shown and provided that the
36 rights of witnesses and consumers are preserved, a
37 subpoenaing party shall be entitled to obtain an order
38 shortening the time for service of a subpoena duces
39 tecum or waiving the requirements of subdivision (b)



1 where due diligence by the subpoenaing party has been
2 shown.

3 (i) Nothing contained in this section shall be construed
4 to apply to any subpoena duces tecum which does not
5 request the records of any particular consumer or
6 consumers and which requires a custodian of records to
7 delete all information which would in any way identify
8 any consumer whose records are to be produced.

9 (j) This section shall not apply to proceedings
10 conducted under Division 1 (commencing with Section
11 50), Division 4 (commencing with Section 3200), Division
12 4.5 (commencing with Section 6100), or Division 4.7
13 (commencing with Section 6200) of the Labor Code.

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

17 *SEC. 2.* Section 49077 of the Education Code is
18 amended to read:

19 49077. Information concerning a student shall be
20 furnished in compliance with a court order or a lawfully
21 issued subpoena. The school district shall make a
22 reasonable effort to notify the parent or legal guardian
23 and the pupil in advance of compliance with a lawfully
24 issued subpoena and, in the case of compliance with a
25 court order, if lawfully possible within the requirements
26 of the order.

27 ~~SEC. 2.—~~

28 *SEC. 3.* Section 49078 of the Education Code is
29 amended to read:

30 49078. The service of a lawfully issued subpoena or a
31 court order upon a public school employee solely for the
32 purpose of causing him or her to produce a school record
33 pertaining to any pupil may be complied with by that
34 employee, in lieu of the personal appearance as a witness
35 in the proceeding, by submitting to the court, or other
36 agency, or person designated in the subpoena, at the time
37 and place required by the subpoena or court order, a copy
38 of that record, accompanied by an affidavit certifying that
39 the copy is a true copy of the original record on file in the
40 school or school office. The copy of the record shall be in



1 the form of a photostat, microfilm, microcard, or
2 miniature photograph or other photographic copy or
3 reproduction, or an enlargement thereof.

4 ~~SEC. 3.—~~

5 *SEC. 4.* Section 76244 of the Education Code is
6 amended to read:

7 76244. Information concerning a student shall be
8 furnished in compliance with a court order or a lawfully
9 issued subpoena. The community college district shall
10 make a reasonable effort to notify the student in advance
11 of compliance with a lawfully issued subpoena and, in the
12 case of compliance with a court order, if lawfully possible
13 within the requirements of the order.

14 ~~SEC. 4.—~~

15 *SEC. 5.* Section 76245 of the Education Code is
16 amended to read:

17 76245. The service of a lawfully issued subpoena or a
18 court order upon a community college employee solely
19 for the purpose of causing the employee to produce a
20 school record pertaining to any student may be complied
21 with by that employee, in lieu of the personal appearance
22 as a witness in the proceeding, by submitting to the court,
23 or other agency or person designated in the subpoena, at
24 the time and place required by the subpoena or court
25 order, a copy of that record, accompanied by an affidavit
26 certifying that the copy is a true copy of the original
27 record on file in the community college or community
28 college office. The copy of the record shall be in the form
29 of a photostat, microfilm, microcard, or miniature
30 photograph or other photographic copy or reproduction,
31 or an enlargement thereof.

32 ~~SEC. 5.—~~

33 *SEC. 6.* Notwithstanding Section 17610 of the
34 Government Code, if the Commission on State Mandates
35 determines that this act contains costs mandated by the
36 state, reimbursement to local agencies and school
37 districts for those costs shall be made pursuant to Part 7
38 (commencing with Section 17500) of Division 4 of Title
39 2 of the Government Code. If the statewide cost of the
40 claim for reimbursement does not exceed one million



1 dollars (\$1,000,000), reimbursement shall be made from
2 the State Mandates Claims Fund.
3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.

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