

**ASSEMBLY BILL**

**No. 2483**

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**Introduced by Assembly Member Firestone**

February 21, 1996

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An act to amend Sections 1235 and 1290 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2483, as introduced, Firestone. Evidence: hearsay.

(1) Under existing law, the hearsay rule, hearsay evidence is inadmissible except as provided by law. Existing law provides that evidence of a statement made by a witness is not made inadmissible by the hearsay rule if the statement is inconsistent with his or her testimony at the hearing and meets other requirements.

This bill would provide that the statement of a witness is inconsistent for purposes of this provision if the witness refuses to answer a question when he or she has been duly sworn, the court finds the witness to be deliberately evasive, the witness has no legal privilege to refuse to answer, and both parties are permitted an opportunity to confront the witness, as specified.

(2) Existing law specifies the conditions under which former testimony, as defined, is not made inadmissible by the hearsay rule.

This bill would define prior testimony to include prior inconsistent statements of a witness properly admitted in a former hearing or trial pursuant to (1) above.

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 1235 of the Evidence Code is  
2 amended to read:

3 1235. (a) Evidence of a statement made by a witness  
4 is not made inadmissible by the hearsay rule if the  
5 statement is inconsistent with his or her testimony at the  
6 hearing and is offered in compliance with Section 770.

7 (b) *The statement of a witness is inconsistent for the*  
8 *purposes of subdivision (a) if the witness refuses to*  
9 *answer a question when all of the following are true:*

10 (1) *The witness has been duly sworn.*

11 (2) *The court finds the witness to be deliberately*  
12 *evasive in his or her refusal.*

13 (3) *The witness has no legal privilege to refuse to*  
14 *answer.*

15 (4) *Both parties are permitted an opportunity to*  
16 *confront the witness with the prior statement in the*  
17 *presence of the trier of fact.*

18 (c) (1) *“Deliberately evasive,” for the purposes of*  
19 *subdivision (b), means a deliberate attempt to avoid*  
20 *giving a truthful response.*

21 (2) *In deciding if a witness in his or her refusal to*  
22 *answer is deliberately evasive, the court may consider all*  
23 *relevant circumstances, including, but not limited to, the*  
24 *demeanor of the witness, any motive of the witness to*  
25 *avoid testifying, the witness’s fear of testifying, prior*  
26 *threats made against the witness or his or her relatives,*  
27 *the witness’s relationship to the defendant, the*  
28 *circumstances surrounding the witness’s prior statement,*  
29 *and, in the case of a criminal proceeding, the witness’s*  
30 *connection to the crime charged and the nature of the*  
31 *crime charged.*

32 (3) *Upon the request of either party, prior to the*  
33 *admission of any prior statement pursuant to subdivision*  
34 *(b), the court shall hold a hearing to determine whether*  
35 *the requirements of subdivision (b) are met. At the*



1 *hearing, the proponent of admission of the prior*  
2 *statement has the burden of proving that these*  
3 *requirements are met by a preponderance of the*  
4 *evidence.*

5 SEC. 2. Section 1290 of the Evidence Code is  
6 amended to read:

7 1290. As used in this article, “former testimony”  
8 means ~~testimony~~:

9 (a) *Testimony* given under oath in *any of the*  
10 *following*:

11 ~~(a)~~

12 (1) Another action or in a former hearing or trial of the  
13 same action;

14 ~~(b)~~

15 (2) A proceeding to determine a controversy  
16 conducted by or under the supervision of an agency that  
17 has the power to determine such a controversy and is an  
18 agency of the United States or a public entity in the  
19 United States;

20 ~~(c)~~

21 (3) A deposition taken in compliance with law in  
22 another action;

23 ~~(d)~~

24 (4) An arbitration proceeding if the evidence of ~~such~~  
25 *the former testimony* is a verbatim transcript thereof.

26 (b) *Prior inconsistent statements of a witness properly*  
27 *admitted in a former hearing or trial pursuant to Section*  
28 *1235.*

