

AMENDED IN SENATE JUNE 24, 1998
AMENDED IN SENATE APRIL 29, 1998
AMENDED IN ASSEMBLY MAY 21, 1997
AMENDED IN ASSEMBLY MAY 5, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 976

**Introduced by Assembly Member Papan
(Coauthors: Assembly Members Cardoza, Lempert, and
Scott)**

February 27, 1997

An act to ~~amend Section 1221 of the Evidence Code, to~~ amend Sections 7471, 7476, and 7480 of the Government Code, to amend ~~Sections 939.2, 939.6, and 1326~~ *Section 939.6* of, and to add Sections 1326.1 and 1326.2 to, the Penal Code, and to amend ~~Sections 18645 and~~ *Section 19545* of the Revenue and Taxation Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 976, as amended, Papan. Money laundering.

(1) ~~Existing law provides that evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one that the party, with knowledge of its content, has by words or other conduct manifested his or her adoption or his or her belief in its truth.~~

~~This bill would provide that a statement deemed adopted by a party includes, but is not limited to, receipts, invoices;~~

~~contracts, and like documents if the party's name or alias appears on the document as the purchaser or seller, or one of the purchasers or sellers of an asset, item, or service, and the party is found to knowingly be in possession of the receipt, invoice, contract, or like document, or found to have knowingly exercised dominion and control over the receipt, invoice, contract, or like document. The bill would also prohibit the admission into evidence of a receipt, invoice, contract, or like document as an adoptive admission unless the proponent of it makes known to the adverse party the proponent's intention to offer the document as an adoptive admission, as well as a description of the document, 30 days in advance of the trial in order to provide the adverse party with a fair opportunity to meet it.~~

~~(2) The California Right to Financial Privacy Act generally provides for the confidentiality of customer information in connection with financial institutions except as specified. The act also contains procedures with respect to the acquisition by a state or local agency of financial records pursuant to a judicial subpoena duces tecum. A knowing violation of the act is a misdemeanor.~~

~~This bill would except from the confidentiality provisions of the act the dissemination of financial information and records pursuant to an order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing felony criminal investigation, and would revise the procedures that a state or local agency must follow in order to obtain a judicial subpoena duces tecum. The imposition of new requirements on a local entity would create a state-mandated local program. By revising provisions of the act, this bill would change the definition of certain crimes, thereby imposing a state-mandated local program.~~

~~(3) Existing law authorizes a subpoena requiring the attendance of a witness before the grand jury to be signed and issued by the district attorney, his or her investigator or, upon request of the grand jury, by any judge of the superior court, for witnesses in the state, in support of the prosecution, for those witnesses whose testimony, in his or her opinion is~~



~~material in an investigation before the grand jury, and for any other witnesses as the grand jury, upon an investigation pending before them, may direct.~~

~~This bill would expand this authorization to include subpoena duces tecums except those for telephone records, unless certain requirements are met, and those for financial records to be produced in connection with a criminal investigation pending before a grand jury.~~

~~(4) Existing law authorizes a subpoena to be signed and issued by certain individuals including the district attorney or his or her investigator, the public defender or his or her investigator, or the attorney of record for the defendant.~~

~~This bill would require the court, prior to turning over any records to the above persons, to make a finding that the affidavit in support of the subpoena duces tecum complies with certain procedures relating to a subpoena duces tecum.~~

~~(5)~~

~~(2) Existing law contains provisions relating to the conduct of investigations in grand jury proceedings. In accordance with these provisions, the grand jury is prohibited from receiving any evidence except that which would be admissible over objection at the trial of a criminal action, but the fact that the evidence that would have been excluded at trial was received by the grand jury does not render the indictment void where sufficient competent evidence to support the indictment was received by the grand jury.~~

~~This bill would provide that, notwithstanding the hearsay rule, the evidence to support the indictment may be based in whole or in part upon the sworn testimony of a law enforcement officer relating the statement of a declarant made out of court and offered for the truth of the matter asserted, provided that the law enforcement officer has either 5 years of law enforcement experience or has completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings. The bill would also establish procedures for the issuance to a peace officer of an order for the production of utility records and escrow and title company records upon a written ex parte application and would affirm~~



the right of holders of these records to voluntarily disclose them to law enforcement.

~~(6) Existing law requires the Attorney General, upon court order following a showing ex parte to a magistrate of an articulable suspicion that an individual or entity has committed a felony offense to which a federal information return is related, to be provided a copy of a federal information return filed with the Franchise Tax Board if this return was required under federal law relating to cash received in trade or business.~~

~~This bill would delete the requirement that the Attorney General obtain a court order prior to being provided a copy of the federal information return, and would require the Attorney General to analyze copies of the federal information returns obtained and report any possible violations indicated by this analysis to the appropriate criminal justice agency. The~~

~~(3) The bill would also allow the Attorney General to provide a *federal* return, or information therefrom, to a district attorney or deputy district attorney, as specified.~~

~~(7)~~

~~(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~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 1221 of the Evidence Code is~~
2 ~~amended to read:~~

3 ~~1221. (a) Evidence of a statement offered against a~~
4 ~~party is not made inadmissible by the hearsay rule if the~~
5 ~~statement is one which the party, with knowledge of the~~
6 ~~content thereof, has by words or other conduct~~
7 ~~manifested his or her adoption of, or his or her belief in,~~
8 ~~its truth.~~

9 ~~(b) For purposes of a criminal trial, a statement~~
10 ~~deemed adopted by a defendant includes, but is not~~
11 ~~limited to, receipts, invoices, contracts, and like~~
12 ~~documents where the defendant's name or alias appears~~
13 ~~on the document as the purchaser or seller, or one of the~~
14 ~~purchasers or sellers of an asset, item, or service, and the~~
15 ~~defendant is found to knowingly be in possession of the~~
16 ~~receipt, invoice, contract, or like document, or found to~~
17 ~~have knowingly exercised dominion and control over the~~
18 ~~receipt, invoice, contract, or like document. A receipt,~~
19 ~~invoice, contract, or like document may not be admitted~~
20 ~~into evidence in a criminal proceeding as an adoptive~~
21 ~~admission under this subdivision unless the prosecutor~~
22 ~~makes known to the defendant the prosecutor's intention~~
23 ~~to offer the document as an adoptive admission, as well as~~
24 ~~a description of the document, 30 days in advance of the~~
25 ~~trial in order to provide the defendant with a fair~~
26 ~~opportunity to meet it.~~

27 ~~SEC. 2.~~

28 ~~SECTION 1. Section 7471 of the Government Code is~~
29 ~~amended to read:~~

30 ~~7471. (a) Except in accordance with requirements of~~
31 ~~Title 11 (commencing with Section 14160) of Part 4 of the~~
32 ~~Penal Code or Section 7473, 7474, 7475, or 7476, no~~
33 ~~financial institution, or any director, officer, employee, or~~
34 ~~agent of a financial institution, may provide or authorize~~
35 ~~another to provide to an officer, employee, or agent of a~~
36 ~~state or local agency or department thereof, any financial~~
37 ~~records, copies thereof, or the information contained~~
38 ~~therein, if the director, officer, employee, or agent of the~~



1 financial institution knows or has reasonable cause to
 2 believe that the financial records or information are
 3 being requested in connection with a civil or criminal
 4 investigation of the customer, whether or not an
 5 investigation is being conducted pursuant to formal
 6 judicial or administrative proceedings.

7 (b) This section is not intended to prohibit disclosure
 8 of the financial records of a customer or the information
 9 contained therein incidental to a transaction in the
 10 normal course of business of a financial institution if the
 11 director, officer, employee, or agent thereof making or
 12 authorizing the disclosure has no reasonable cause to
 13 believe that the financial records or the information
 14 contained in the financial records so disclosed will be used
 15 by a state or local agency or department thereof in
 16 connection with an investigation of the customer,
 17 whether or not an investigation is being conducted
 18 pursuant to formal judicial or administrative proceedings.

19 (c) This section shall not preclude a financial
 20 institution, in its discretion, from initiating contact with,
 21 and thereafter communicating with and disclosing
 22 customer financial records to, appropriate state or local
 23 agencies concerning suspected violation of any law.

24 (d) A financial institution that refuses to disclose the
 25 financial records of a customer, copies thereof, or the
 26 information contained therein, in reliance in good faith
 27 upon the prohibitions of subdivision (a), or discloses the
 28 financial records of a customer, copies thereof, or the
 29 information contained therein, in reliance in good faith
 30 upon subdivision (c), subdivision (d) of Section 7470, or
 31 subdivision (b) of Section 14164 of the Penal Code, shall
 32 not be liable to its customer, to a state or local agency, or
 33 to any other person for any loss or damage caused in
 34 whole or in part by the refusal or the disclosure.

35 ~~SEC. 3.~~

36 *SEC. 2.* Section 7476 of the Government Code is
 37 amended to read:

38 ~~7476. (a) Except as provided in subdivisions (b) and~~
 39 ~~(c), an officer, employee, or agent of a state or local~~
 40 ~~agency or department thereof, may obtain financial~~



1 records under paragraph (4) of subdivision (a) of Section
2 7470 pursuant to a judicial subpoena duces tecum only if:

3 (1) The subpoena duces tecum is issued and served
4 upon the financial institution and the customer in
5 compliance with Chapter 2 (commencing with Section
6 1985) of Title 3 of Part 4 of the Code of Civil Procedure
7 and the requirements of either paragraph (1), (2), or (3)
8 have been met. The court shall, prior to turning over any
9 records to the agency, make a finding that the affidavit in
10 support of the subpoena duces tecum complies with
11 subdivision (b) of Section 1985 of the Code of Civil
12 Procedure.

13 (2) Ten days after service have passed, or five days in
14 the case of records to be produced at a preliminary
15 examination, without the customer giving notice to the
16 financial institution that the customer has moved to quash
17 the subpoena. If testimony is to be taken, or financial
18 records produced, before a court, either the 10-day period
19 or the five-day period provided for in this subdivision may
20 be shortened by the court upon a showing of good cause.
21 The court shall direct that all reasonable measures be
22 taken to notify the customer within the time so shortened.
23 The motion to quash the subpoena must be made,
24 whenever practicable, in the judicial proceeding pending
25 before the court.

26 (3) A judge or magistrate in a judicial proceeding to
27 which the customer is a party rules that the subpoena
28 should not be quashed. Nothing in this paragraph is
29 intended to preclude appellate remedies that may be
30 available under existing law.

31 (4) In the event actual service on the customer has not
32 been made prior to the time the financial records are
33 required to be produced in response to a subpoena duces
34 tecum, the court shall, prior to turning over any records
35 to the agency, and upon good cause shown, make a
36 finding that due diligence has been exercised by the
37 agency in its attempt to affect this service.

38 7476. (a) Except as provided in subdivisions (b) and
39 (c), an officer, employee, or agent of a state or local
40 agency or department thereof, may obtain financial



1 records under paragraph (4) of subdivision (a) of Section
2 7470 pursuant to a judicial subpoena or subpoena duces
3 tecum only if:

4 (1) The subpoena or subpoena duces tecum is issued
5 and served upon the financial institution and the
6 customer in compliance with Chapter 2 (commencing
7 with Section 1985) of Title 3 of Part 4 of the Code of Civil
8 Procedure and the requirements of paragraph (2) or (3)
9 have been met. In the event actual service on the
10 customer has not been made prior to the time the
11 financial records are required to be produced in response
12 to a subpoena or subpoena duces tecum the court shall,
13 prior to turning over any records to the agency, and upon
14 good cause shown, make a finding that due diligence has
15 been exercised by the agency in its attempt to effect such
16 service; and

17 (2) Ten days after service has passed without the
18 customer giving notice to the financial institution that the
19 customer has moved to quash the subpoena. If testimony
20 is to be taken, or financial records produced, before a
21 court, the 10-day period provided for in this subdivision
22 may be shortened by the court upon a showing of good
23 cause. The court shall direct that all reasonable measures
24 be taken to notify the customer within the time so
25 shortened. The motion to quash the subpoena must be
26 made, whenever practicable, in the judicial proceeding
27 pending before the court; or

28 (3) A judge or magistrate in a judicial proceeding to
29 which the customer is a party rules that the subpoena
30 should not be quashed. Nothing in this paragraph is
31 intended to preclude appellate remedies which may be
32 available under existing law.

33 (b) (1) A deputy district attorney, deputy attorney
34 general, or other person authorized to present evidence
35 to a grand jury in a criminal investigation before a grand
36 jury, or scheduled to be presented to a grand jury, may
37 obtain financial records for return to the grand jury
38 pursuant to a judicial subpoena duces tecum which, upon
39 a written showing to a judge of the superior court that
40 there exists a reasonable inference that a crime within the



1 jurisdiction of the grand jury has been committed and
2 that the financial records sought are reasonably necessary
3 to the jury's investigation of that crime, is personally
4 signed and issued by a judge of the superior court, and
5 meets one of the following:

6 (A) The subpoena is issued and served upon the
7 financial institution and the customer and 10 days after
8 service—~~pass~~ *has passed* without the customer giving
9 notice to the financial institution that the customer has
10 moved to quash the subpoena. In the event actual service
11 on the customer has not been made prior to the time the
12 financial records are required to be produced in response
13 to a subpoena duces tecum the court shall, prior to
14 turning over any records to the grand jury, and upon good
15 cause shown, make a finding that due diligence has been
16 exercised by the grand jury in its attempt to effect this
17 service. The 10-day period provided for in this
18 subparagraph may be shortened by the court upon a
19 showing of good cause. The court shall direct that all
20 reasonable measures be taken to notify the customer
21 within the time so shortened. The motion to quash the
22 subpoena must be made wherever practicable before the
23 judge who issued the subpoena.

24 (B) A judge rules in a judicial proceeding to which the
25 customer is a party that the subpoena should not be
26 quashed. Nothing in this subparagraph is intended to
27 preclude appellate remedies that may be available under
28 existing law.

29 (C) A court orders the financial institution and the
30 grand jury to withhold notification to the customer for 30
31 days from the date of receipt of the judicial subpoena
32 duces tecum after making a finding upon a written
33 showing that notice to the customer by the financial
34 institution and the grand jury would impede the
35 investigation by the grand jury. The withholding of this
36 notification may be extended for additional 30-day
37 periods up to the end of the term of the grand jury or the
38 filing of a criminal complaint if a court makes a finding
39 upon a written showing, at the time of each extension,
40 that notice to the customer by the financial institution



1 and the grand jury would impede the investigation by the
2 grand jury. Whenever practicable, any application for an
3 extension of time shall be made to the judge who issued
4 the subpoena duces tecum.

5 (2) For the purpose of this subdivision, an “inference”
6 is a deduction that may be reasonably drawn by the judge
7 of the superior court from facts relevant to the
8 investigation.

9 (3) If notification was withheld from the customer
10 pursuant to subparagraph (C) of paragraph (1), the state
11 or local agency that made the presentation to the grand
12 jury shall notify the customer in writing after the criminal
13 investigation is terminated without the return of an
14 indictment, or a filing of a criminal complaint. The notice
15 shall specify the financial records that were examined and
16 the reason for this examination. At the time of the
17 notification to the customer, the state or local agency shall
18 notify the financial institution of the notification to its
19 customer. The financial institution shall not have a
20 further obligation to notify its customer of the judicial
21 subpoena duces tecum and the disclosure of records
22 pursuant to the subpoena duces tecum.

23 (4) Any showing that is required to be made pursuant
24 to this subdivision, as well as the court record of any
25 finding made pursuant to this showing, shall be sealed
26 until one person named in the indictment or the criminal
27 complaint to which the showing related has been
28 arrested, or until the termination of the criminal
29 investigation without the return of an indictment or the
30 filing of a criminal complaint. However, a court may
31 unseal a showing and court record relating thereto on a
32 written showing of good cause and upon service of that
33 showing upon the grand jury and the expiration of 10 days
34 after service without the grand jury giving notice to the
35 court that the jury moves for an in camera hearing
36 regarding the existence of good cause. If notice is given
37 by the grand jury the court shall conduct an in camera
38 hearing upon any terms and with any persons present
39 that the court deems proper. At the conclusion of the in
40 camera hearing, the court, if it finds that good cause



1 exists, may order the showing and court record relating
2 thereto to be unsealed upon any terms that it deems
3 proper.

4 ~~(e) In any criminal case in which an accusatory~~
5 ~~pleading is on file, an officer, employee, or agent of a state~~
6 ~~or local agency or department thereof, may obtain~~
7 ~~financial records under paragraph (4) of subdivision (a)~~
8 ~~of Section 7470 pursuant to a judicial subpoena duces~~
9 ~~tecum to be returned to the court issuing the subpoena~~
10 ~~duces tecum only if all of the following requirements are~~
11 ~~met:~~

12 ~~(1) The financial records to be produced meet either~~
13 ~~of the following:~~

14 ~~(A) Are of the bank account or accounts as to which~~
15 ~~the defendant is alleged to have violated Section 476a of~~
16 ~~the Penal Code.~~

17 ~~(B) Constitute an account or file in the name of the~~
18 ~~defendant. For purposes of this subparagraph, “in the~~
19 ~~name of the defendant” means any account or file in the~~
20 ~~defendant’s name, or an alias of the defendant, as~~
21 ~~described in the subpoena duces tecum, or where the~~
22 ~~defendant is a signatory on any account or an applicant~~
23 ~~on any file.~~

24 ~~(2) The subpoena duces tecum is issued and served~~
25 ~~upon the financial institution in compliance with Chapter~~
26 ~~2 (commencing with Section 1985) of Title 3 of Part 4 of~~
27 ~~the Code of Civil Procedure, and the court, prior to~~
28 ~~turning over any records to the agency, makes a finding~~
29 ~~that the affidavit in support of the subpoena duces tecum~~
30 ~~complies with subdivision (b) of Section 1985 of the Code~~
31 ~~of Civil Procedure.~~

32 ~~(3) The records are to be produced at a preliminary~~
33 ~~hearing or trial at which the defendant will have the~~
34 ~~opportunity to move to quash the subpoena duces tecum~~
35 ~~prior to the disclosure of any information contained~~
36 ~~within these records, and to move to suppress any portion~~
37 ~~of the records that the court finds irrelevant to the~~
38 ~~charges.~~

39 ~~(c) In any criminal case in which an accusatory~~
40 ~~pleading is on file charging a violation of Section 476a of~~



1 *the Penal Code, an officer, employee, or agent of a state*
 2 *or local agency or department thereof, may obtain*
 3 *financial records under paragraph (4) of subdivision (a)*
 4 *of Section 7470 pursuant to a judicial subpoena or*
 5 *subpoena duces tecum to be returned to the court issuing*
 6 *the subpoena or the subpoena duces tecum only if:*

7 *(1) The financial records to be produced are of the*
 8 *bank account or accounts as to which the defendant is*
 9 *alleged to have violated Section 476a of the Penal Code;*

10 *(2) The subpoena or subpoena duces tecum is issued*
 11 *and served upon the financial institution in compliance*
 12 *with Chapter 2 (commencing with Section 1985) of Title*
 13 *3 of Part 4 of the Code of Civil Procedure; and*

14 *(3) The records are to be produced at a preliminary*
 15 *hearing or trial at which the defendant will have the*
 16 *opportunity to move to quash the subpoena or subpoena*
 17 *duces tecum prior to the disclosure of any information*
 18 *contained within said records, and to move to suppress*
 19 *any portion of the records which the court finds*
 20 *irrelevant to the charges.*

21 ~~SEC. 4.~~

22 *SEC. 3.* Section 7480 of the Government Code is
 23 amended to read:

24 7480. Nothing in this chapter prohibits any of the
 25 following:

26 (a) The dissemination of any financial information
 27 that is not identified with, or identifiable as being derived
 28 from, the financial records of a particular customer.

29 (b) When any police or sheriff's department or district
 30 attorney in this state certifies to a bank, credit union, or
 31 savings association in writing that a crime report has been
 32 filed which involves the alleged fraudulent use of drafts,
 33 checks, or other orders drawn upon any bank, credit
 34 union, or savings association in this state, the police or
 35 sheriff's department or district attorney may request a
 36 bank, credit union, or savings association to furnish, and
 37 a bank, credit union, or savings association shall supply, a
 38 statement setting forth the following information with
 39 respect to a customer account specified by the police or
 40 sheriff's department or district attorney for a period 30



1 days prior to, and up to 30 days following, the date of
2 occurrence of the alleged illegal act involving the
3 account:

4 (1) The number of items dishonored.

5 (2) The number of items paid that created overdrafts.

6 (3) The dollar volume of the dishonored items and
7 items paid that created overdrafts and a statement
8 explaining any credit arrangement between the bank,
9 credit union, or savings association and customer to pay
10 overdrafts.

11 (4) The dates and amounts of deposits and debits and
12 the account balance on these dates.

13 (5) A copy of the signature and any addresses
14 appearing on a customer's signature card.

15 (6) The date the account opened and, if applicable, the
16 date the account closed.

17 (c) The Attorney General, a supervisory agency, the
18 Franchise Tax Board, the State Board of Equalization, the
19 Employment Development Department, the Controller
20 or an inheritance tax referee when administering the
21 Prohibition of Gift and Death Taxes (Part 8
22 commencing with Section 13301) of Division 2 of the
23 Revenue and Taxation Code), a police or sheriff's
24 department or district attorney, a county welfare
25 department when investigating welfare fraud, a county
26 auditor-controller or director of finance when
27 investigating fraud against the county, or the
28 Department of Corporations when conducting
29 investigations in connection with the enforcement of
30 laws administered by the Commissioner of Corporations,
31 from requesting of an office or branch of a financial
32 institution, and the office or branch from responding to
33 a request, as to whether a person has an account or
34 accounts at that office or branch and, if so, any identifying
35 numbers of the account or accounts.

36 No additional information beyond that specified in this
37 section shall be released to a county welfare department
38 without either the accountholder's written consent or a
39 judicial writ, search warrant, subpoena, or other judicial
40 order.

1 A county auditor-controller or director of finance who
2 unlawfully discloses information he or she is authorized to
3 request under this subdivision is guilty of the unlawful
4 disclosure of confidential data, a misdemeanor, which
5 shall be punishable as set forth in Section 7485.

6 (d) The examination by, or disclosure to, any
7 supervisory agency of financial records that relate solely
8 to the exercise of its supervisory function. The scope of an
9 agency’s supervisory function shall be determined by
10 reference to statutes that grant authority to examine,
11 audit, or require reports of financial records or financial
12 institutions as follows:

13 (1) With respect to the Commissioner of Financial
14 Institutions by reference to Division 1 (commencing with
15 Section 99), Division 1.5 (commencing with Section
16 4800), Division 2 (commencing with Section 5000),
17 Division 5 (commencing with Section 14000), Division 7
18 (commencing with Section 18000), Division 15
19 (commencing with Section 31000), and Division 16
20 (commencing with Section 33000) of the Financial Code.

21 (2) With respect to the Controller by reference to
22 Title 10 (commencing with Section 1300) of Part 3 of the
23 Code of Civil Procedure.

24 (3) With respect to the Administrator of Local Agency
25 Security by reference to Article 2 (commencing with
26 Section 53630) of Chapter 4 of Part 1 of Division 2 of Title
27 5 of the Government Code.

28 (e) The disclosure to the Franchise Tax Board of (1)
29 the amount of any security interest a financial institution
30 has in a specified asset of a customer or (2) financial
31 records in connection with the filing or audit of a tax
32 return or tax information return required to be filed by
33 the financial institution pursuant to Part 10 (commencing
34 with Section 17001), Part 11 (commencing with Section
35 23001), or Part 18 (commencing with Section 38001) of
36 the Revenue and Taxation Code.

37 (f) The disclosure to the State Board of Equalization of
38 any of the following:

39 (1) The information required by Sections 6702, 6703,
40 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153,



1 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605,
2 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407
3 of the Revenue and Taxation Code.

4 (2) The financial records in connection with the filing
5 or audit of a tax return required to be filed by the financial
6 institution pursuant to Part 1 (commencing with Section
7 6001), Part 2 (commencing with Section 7301), Part 3
8 (commencing with Section 8601), Part 13 (commencing
9 with Section 30001), Part 14 (commencing with Section
10 32001), and Part 17 (commencing with Section 37001) of
11 Division 2 of the Revenue and Taxation Code.

12 (3) The amount of any security interest a financial
13 institution has in a specified asset of a customer, if the
14 inquiry is directed to the branch or office where the
15 interest is held.

16 (g) The disclosure to the Controller of the information
17 required by Section 7853 of the Revenue and Taxation
18 Code.

19 (h) The disclosure to the Employment Development
20 Department of the amount of any security interest a
21 financial institution has in a specified asset of a customer,
22 if the inquiry is directed to the branch or office where the
23 interest is held.

24 (i) The disclosure by a construction lender, as defined
25 in Section 3087 of the Civil Code, to the Registrar of
26 Contractors, of information concerning the making of
27 progress payments to a prime contractor requested by
28 the registrar in connection with an investigation under
29 Section 7108.5 of the Business and Professions Code.

30 (j) Upon receipt of a written request from a district
31 attorney referring to a support order pursuant to Section
32 11475.1 of the Welfare and Institutions Code, a financial
33 institution shall disclose the following information
34 concerning the account or the person named in the
35 request, whom the district attorney shall identify,
36 whenever possible, by social security number:

37 (1) If the request states the identifying number of an
38 account at a financial institution, the name of each owner
39 of the account.



1 (2) Each account maintained by the person at the
2 branch to which the request is delivered, and, if the
3 branch is able to make a computerized search, each
4 account maintained by the person at any other branch of
5 the financial institution located in this state.

6 (3) For each account disclosed pursuant to paragraphs
7 (1) and (2), the account number, current balance, street
8 address of the branch where the account is maintained,
9 and, to the extent available through the branch's
10 computerized search, the name and address of any other
11 person listed as an owner.

12 Whenever the request prohibits the disclosure, a
13 financial institution shall not disclose either the request or
14 its response, to an owner of the account or to any other
15 person, except the officers and employees of the financial
16 institution who are involved in responding to the request
17 and to attorneys, auditors, and regulatory authorities who
18 have a need to know in order to perform their duties, and
19 except as disclosure may be required by legal process.

20 No financial institution, or any officer, employee, or
21 agent thereof, shall be liable to any person for (A)
22 disclosing information in response to a request pursuant
23 to this subdivision, (B) failing to notify the owner of an
24 account, or complying with a request under this
25 paragraph not to disclose to the owner, the request or
26 disclosure under this subdivision, or (C) failing to
27 discover any account owned by the person named in the
28 request pursuant to a computerized search of the records
29 of the financial institution.

30 The district attorney may request information
31 pursuant to this subdivision only when the district
32 attorney has received at least one of the following types
33 of physical evidence:

34 (A) Any of the following, dated within the last three
35 years:

- 36 (i) Form 599.
- 37 (ii) Form 1099.
- 38 (iii) A bank statement.
- 39 (iv) A check.
- 40 (v) A bank passbook.



- 1 (vi) A deposit slip.
- 2 (vii) A copy of a federal or state income tax return.
- 3 (viii) A debit or credit advice.
- 4 (ix) Correspondence that identifies the child support
- 5 obligor by name, the bank, and the account number.
- 6 (x) Correspondence that identifies the child support
- 7 obligor by name, the bank, and the banking services
- 8 related to the account of the obligor.
- 9 (xi) An asset identification report from a federal
- 10 agency.
- 11 (B) A sworn declaration of the custodial parent during
- 12 the 12 months immediately preceding the request that
- 13 the person named in the request has had or may have had
- 14 an account at an office or branch of the financial
- 15 institution to which the request is made.
- 16 Information obtained by a district attorney pursuant to
- 17 this subdivision shall be used only for purposes that are
- 18 directly connected within the administration of the
- 19 duties of the district attorney pursuant to Section 11475.1
- 20 of the Welfare and Institutions Code.
- 21 (k) The dissemination of financial information and
- 22 records pursuant to an order by a judge upon a written ex
- 23 parte application by a peace officer showing specific and
- 24 articulable facts that there are reasonable grounds to
- 25 believe that the records or information sought are
- 26 relevant and material to an ongoing felony criminal
- 27 investigation. The ex parte application shall specify with
- 28 particularity the records to be produced. The records
- 29 ordered to be produced shall be returned to the peace
- 30 officer applicant or his or her designee within a
- 31 reasonable time period after service of the order upon the
- 32 financial institution. Nothing in this subdivision shall
- 33 preclude the financial institution from notifying a
- 34 customer of the receipt of the order for production of
- 35 records unless a court orders the financial institution to
- 36 withhold notification to the customer upon a finding that
- 37 the notice would impede the investigation.
- 38 Where a court has made an order to withhold
- 39 notification to the customer under this paragraph, the
- 40 peace officer or law enforcement agency who obtained



1 the financial information shall notify the customer by
2 delivering a copy of the ex parte order to the customer
3 within 10 days of the termination of the investigation.

4 No financial institution, or any officer, employee, or
5 agent thereof, shall be liable to any person for (1)
6 disclosing information in response to an order pursuant to
7 this subdivision, or (2) complying with an order under
8 this subdivision not to disclose to the customer, the order,
9 or the dissemination of information pursuant to the order.

10 ~~SEC. 5. Section 939.2 of the Penal Code is amended to~~
11 ~~read:~~

12 ~~939.2. Except in the case of a subpoena duces tecum~~
13 ~~for telephone records, and for financial records pursuant~~
14 ~~to subdivision (b) of Section 7476 of the Government~~
15 ~~Code, a subpoena or subpoena duces tecum requiring the~~
16 ~~attendance of a witness or the production of documents~~
17 ~~before the grand jury may be signed and issued by the~~
18 ~~district attorney, his or her investigator or, upon request~~
19 ~~of the grand jury, by any judge of the superior court, for~~
20 ~~witnesses in the state, in support of the prosecution, for~~
21 ~~those witnesses whose testimony, in his or her opinion is~~
22 ~~material in an investigation before the grand jury, and for~~
23 ~~any other witnesses as the grand jury, upon an~~
24 ~~investigation pending before them, may direct. In the~~
25 ~~case of a subpoena duces tecum that orders the witness to~~
26 ~~produce telephone records, the subpoena duces tecum~~
27 ~~shall be personally signed and issued by a superior court~~
28 ~~judge after review of the affidavit in support of the~~
29 ~~subpoena duces tecum. All subpoena duces tecums shall~~
30 ~~be returned to the grand jury.~~

31 ~~SEC. 6.~~

32 ~~SEC. 4. Section 939.6 of the Penal Code is amended to~~
33 ~~read:~~

34 939.6. (a) Subject to subdivision (b), in the
35 investigation of a charge, the grand jury shall receive no
36 other evidence than what is:

37 (1) Given by witnesses produced and sworn before the
38 grand jury;

39 (2) Furnished by writings, material objects, or other
40 things presented to the senses; or



1 (3) Contained in a deposition that is admissible under
2 subdivision 3 of Section 686.

3 (b) Except as provided in subdivision (c), the grand
4 jury shall not receive any evidence except that which
5 would be admissible over objection at the trial of a
6 criminal action, but the fact that evidence that would
7 have been excluded at trial was received by the grand
8 jury does not render the indictment void where sufficient
9 competent evidence to support the indictment was
10 received by the grand jury.

11 (c) Notwithstanding Section 1200 of the Evidence
12 Code, as to the evidence relating to the foundation for
13 admissibility into evidence of documents, exhibits,
14 records, and other items of physical evidence, the
15 evidence to support the indictment may be based in
16 whole or in part upon the sworn testimony of a law
17 enforcement officer relating the statement of a declarant
18 made out of court and offered for the truth of the matter
19 asserted. Any law enforcement officer testifying as to a
20 hearsay statement pursuant to this subdivision shall have
21 either five years of law enforcement experience or have
22 completed a training course certified by the Commission
23 on Peace Officer Standards and Training that includes
24 training in the investigation and reporting of cases and
25 testifying at preliminary hearings.

26 ~~SEC. 7. Section 1326 of the Penal Code is amended to~~
27 ~~read:~~

28 ~~1326. (a) The process by which the attendance of a~~
29 ~~witness before a court or magistrate is required is a~~
30 ~~subpoena. Except as provided for the issuance of a~~
31 ~~subpoena duces tecum pursuant to Section 7476 of the~~
32 ~~Government Code or Section 939.2, a subpoena or~~
33 ~~subpoena duces tecum may be signed and issued by any~~
34 ~~of the following:~~

35 ~~(1) A magistrate before whom a complaint is laid or his~~
36 ~~or her clerk, the district attorney or his or her~~
37 ~~investigator, or the public defender or his or her~~
38 ~~investigator, for witnesses in the state.~~

39 ~~(2) The district attorney, his or her investigator, or,~~
40 ~~upon request of the grand jury, any judge of the superior~~



1 court, for witnesses in the state, in support of an
2 indictment or information, to appear before the court in
3 which it is to be tried.

4 (3) ~~The district attorney or his or her investigator, the~~
5 ~~public defender or his or her investigator, the clerk of the~~
6 ~~court in which a criminal action is to be tried, or, if there~~
7 ~~is no clerk, the judge of the court. The clerk or judge shall,~~
8 ~~at any time, upon application of the defendant, and~~
9 ~~without charge, issue as many blank subpoenas,~~
10 ~~subscribed by him or her, for witnesses in the state, as the~~
11 ~~defendant may require.~~

12 (4) ~~The attorney of record for the defendant.~~

13 (b) ~~Prior to turning over any records to the district~~
14 ~~attorney or his or her investigator, the public defender or~~
15 ~~his or her investigator, or the attorney of record as~~
16 ~~specified in subdivision (a), the court shall make a finding~~
17 ~~that the affidavit in support of the subpoena duces tecum~~
18 ~~complies with subdivision (b) of Section 1985 of the Code~~
19 ~~of Civil Procedure.~~

20 ~~SEC. 8.~~

21 *SEC. 5.* Section 1326.1 is added to the Penal Code, to
22 read:

23 1326.1. (a) An order for the production of utility
24 records in whatever form and however stored shall be
25 issued by a judge only upon a written ex parte application
26 by a peace officer showing specific and articulable facts
27 that there are reasonable grounds to believe that the
28 records or information sought are relevant and material
29 to an ongoing criminal investigation. The ex parte
30 application shall specify with particularity the records to
31 be produced. The records ordered to be produced shall
32 be returned to the peace officer applicant or his or her
33 designee within a reasonable time period after service of
34 the order upon the holder of the utility records.

35 (b) As used in subdivision (a), “utility records”
36 include, but are not limited to, subscriber information,
37 telephone or pager number information, toll call records,
38 call detail records, automated message accounting
39 records, billing statements, payment records, and
40 applications for service in the custody of companies



1 engaged in the business of providing telephone, pager,
2 electric, gas, propane, water, or other like services.
3 “Utility records” do not include the installation of, or the
4 data collected from the installation of pen registers or
5 trap-tracers, nor the contents of a wire or electronic
6 communication.

7 (c) Nothing in this section shall preclude the holder of
8 the utility records from notifying a customer of the
9 receipt of the order for production of records unless a
10 court orders the holder of the utility records to withhold
11 notification to the customer upon a finding that this
12 notice would impede the investigation. *Where a court has*
13 *made an order to withhold notification to the customer*
14 *under this subdivision, the peace officer or law*
15 *enforcement agency who obtained the utility records*
16 *shall notify the customer by delivering a copy of the ex*
17 *parte order to the customer within 10 days of the*
18 *termination of the investigation.*

19 (d) No holder of utility records, or any officer,
20 employee, or agent thereof, shall be liable to any person
21 for (A) disclosing information in response to an order
22 pursuant to this section, or (B) complying with an order
23 under this section not to disclose to the customer, the
24 order or the dissemination of information pursuant to the
25 order.

26 (e) Nothing in this section shall preclude the holder of
27 the utility records from voluntarily disclosing information
28 or providing records to law enforcement upon request.

29 ~~SEC. 9.~~

30 *SEC. 6.* Section 1326.2 is added to the Penal Code, to
31 read:

32 1326.2. (a) An order for the production of escrow or
33 title records in whatever form and however stored shall
34 be issued by a judge only upon a written ex parte
35 application by a peace officer showing specific and
36 articulable facts that there are reasonable grounds to
37 believe that the records or information sought are
38 relevant and material to an ongoing criminal
39 investigation. The ex parte application shall specify with
40 particularity the records to be produced. The records



1 ordered to be produced shall be returned to the peace
2 officer applicant or his or her designee within a
3 reasonable time period after service of the order upon the
4 holder of the escrow or title records.

5 (b) As used in subdivision (a), “holder of escrow or
6 title records” means a title insurer that engages in the
7 “business of title insurance,” as defined by Section 12340.3
8 of the Insurance Code, an underwritten title company, or
9 an escrow company.

10 (c) Nothing in this section shall preclude the holder of
11 the escrow or title records from notifying a customer of
12 the receipt of the order for production of records unless
13 a court orders the holder of the escrow or title records to
14 withhold notification to the customer upon a finding that
15 this notice would impede the investigation. *Where a*
16 *court has made an order to withhold notification to the*
17 *customer under this subdivision, the peace officer or law*
18 *enforcement agency who obtained the escrow or title*
19 *records shall notify the customer by delivering a copy of*
20 *the ex parte order to the customer within 10 days of the*
21 *termination of the investigation.*

22 (d) No holder of escrow or title records, or any officer,
23 employee, or agent thereof, shall be liable to any person
24 for (A) disclosing information in response to an order
25 pursuant to this section, or (B) complying with an order
26 under this section not to disclose to the customer, the
27 order or the dissemination of information pursuant to the
28 order.

29 (e) Nothing in this section shall preclude the holder of
30 the escrow or title records from voluntarily disclosing
31 information or providing records to law enforcement
32 upon request.

33 ~~SEC. 10. Section 18645 of the Revenue and Taxation~~
34 ~~Code is amended to read:~~

35 ~~18645. (a) The Franchise Tax Board may require a~~
36 ~~copy of the federal information return to be filed with the~~
37 ~~Franchise Tax Board if a federal information return was~~
38 ~~required under any of the following:~~

39 ~~(1) Section 6039C of the Internal Revenue Code,~~
40 ~~relating to returns with respect to foreign persons holding~~



1 ~~direct investments in United States real property~~
2 ~~interests, if that person holds a direct investment in a~~
3 ~~California real property interest as defined in Section~~
4 ~~18662.~~

5 ~~(2) Section 6050H of the Internal Revenue Code,~~
6 ~~relating to mortgage interest received in trade or~~
7 ~~business from individuals.~~

8 ~~(3) Section 6050J of the Internal Revenue Code,~~
9 ~~relating to foreclosures and abandonments of security.~~

10 ~~(4) Section 6050K of the Internal Revenue Code,~~
11 ~~relating to exchanges of certain partnership interests.~~

12 ~~(5) Section 6050L of the Internal Revenue Code,~~
13 ~~relating to certain dispositions of donated property.~~

14 ~~(6) Section 6050N of the Internal Revenue Code,~~
15 ~~relating to returns regarding payments of royalties.~~

16 ~~(7) Section 6050P of the Internal Revenue Code,~~
17 ~~relating to returns relating to the cancellation of~~
18 ~~indebtedness by certain financial entities.~~

19 ~~(8) Section 6050Q of the Internal Revenue Code,~~
20 ~~relating to certain long-term care benefits.~~

21 ~~(9) Section 6050R of the Internal Revenue Code,~~
22 ~~relating to returns relating to certain purchases of fish.~~

23 ~~(b) Every person required to make a return under~~
24 ~~subdivision (a) shall also furnish a statement to each~~
25 ~~person whose name is required to be set forth in the~~
26 ~~return, as required to do so by the Internal Revenue~~
27 ~~Code.~~

28 ~~(c) A transferor of a partnership interest shall be~~
29 ~~required to notify the partnership of that exchange in~~
30 ~~accordance with Section 6050K(e) of the Internal~~
31 ~~Revenue Code.~~

32 ~~(d) The Franchise Tax Board shall require a copy of~~
33 ~~the federal information return to be filed with the~~
34 ~~Franchise Tax Board if a federal information return was~~
35 ~~required under Section 6050I(a) of the Internal Revenue~~
36 ~~Code, relating to cash received in trade or business.~~
37 ~~Section 6050I(g) of the Internal Revenue Code, relating~~
38 ~~to cash received by criminal court clerks, shall not apply.~~

39 ~~(e) (1) The Attorney General shall be provided a~~
40 ~~copy of a federal information return filed with the~~



1 ~~Franchise Tax Board under subdivision (d) upon request~~
2 ~~to the Franchise Tax Board. The Attorney General shall~~
3 ~~analyze copies of the federal information returns~~
4 ~~obtained under this section and shall report any possible~~
5 ~~violations indicated in the analysis to the appropriate~~
6 ~~criminal justice agency. The Attorney General may make~~
7 ~~a return or information therefrom available to a district~~
8 ~~attorney or deputy district attorney subject to regulations~~
9 ~~promulgated by the Attorney General. The regulations~~
10 ~~shall require the district attorney or deputy district~~
11 ~~attorney seeking the return or information to specify in~~
12 ~~writing the specific reasons for believing that a felony~~
13 ~~offense has been committed to which the return or~~
14 ~~information is related.~~

15 ~~(2) Any information or return obtained by the~~
16 ~~Attorney General, a district attorney, or a deputy district~~
17 ~~attorney pursuant to this section shall be confidential and~~
18 ~~used only for investigative or prosecutorial purposes.~~

19 ~~SEC. 11.~~

20 *SEC. 7.* Section 19545 of the Revenue and Taxation
21 Code is amended to read:

22 19545. A return or return information may be
23 disclosed in a judicial or administrative proceeding, if any
24 of the following apply:

25 (a) The taxpayer is a party to a proceeding pertaining
26 to tax administration, or the proceeding pertaining to tax
27 administration arose out of, or in connection with,
28 determining the taxpayer's civil or criminal liability, or
29 the collection of the taxpayer's civil liability with respect
30 to any tax imposed under this part.

31 (b) The treatment of an item reflected on the return
32 is directly related to the resolution of an issue in the
33 proceeding pertaining to tax administration.

34 (c) The return or return information directly relates
35 to a transactional relationship between a person who is a
36 party to the proceeding pertaining to the tax
37 administration and the taxpayer that directly affects the
38 resolution of an issue in the proceeding.

39 (d) The return or return information is material to an
40 issue in a criminal proceeding where the taxpayer is a



1 defendant or in a grand jury proceeding pertaining to a
2 criminal violation where the taxpayer is a named target.

3 ~~SEC. 12.~~

4 *SEC. 8.* No reimbursement is required by this act
5 pursuant to Section 6 of Article XIII B of the California
6 Constitution for certain costs that may be incurred by a
7 local agency or school district because in that regard this
8 act creates a new crime or infraction, eliminates a crime
9 or infraction, or changes the penalty for a crime or
10 infraction, within the meaning of Section 17556 of the
11 Government Code, or changes the definition of a crime
12 within the meaning of Section 6 of Article XIII B of the
13 California Constitution.

14 However, notwithstanding Section 17610 of the
15 Government Code, if the Commission on State Mandates
16 determines that this act contains other costs mandated by
17 the state, reimbursement to local agencies and school
18 districts for those costs shall be made pursuant to Part 7
19 (commencing with Section 17500) of Division 4 of Title
20 2 of the Government Code. If the statewide cost of the
21 claim for reimbursement does not exceed one million
22 dollars (\$1,000,000), reimbursement shall be made from
23 the State Mandates Claims Fund.

24 Notwithstanding Section 17580 of the Government
25 Code, unless otherwise specified, the provisions of this act
26 shall become operative on the same date that the act
27 takes effect pursuant to the California Constitution.

