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AB-2427 Civil Procedure: discovery. (2015-2016)

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Assembly Bill No. 2427

CHAPTER 467

An act to amend Sections 129 and 2025.280 of, and to add Section 2034.415 to, the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 22, 2016. Filed with Secretary of State September 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2427, Chau. 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 post mortem 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 post mortem 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 (1) 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 and the legal heir or representative provides to the coroner a declaration under penalty of perjury, a valid form of identification, and a certified death certificate, or (2) if a subpoena is issued by a party who is a legal heir or representative of the deceased person in a pending civil action. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.

Existing law prescribes the procedure for taking oral depositions inside the state and 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 a deponent who is served with a deposition notice or subpoena calling for electronically stored information to provide a means of gaining direct access to, or a translation into a reasonably usable form of, any information that is password protected or otherwise inaccessible. The bill would also require an expert who is served with a deposition notice, as specified, to produce any materials or category of materials, including any electronically stored information, no later than 3 business days before his or her deposition.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 129 of the Code of Civil Procedure is amended to read:

129. (a) Notwithstanding any other law, 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 post mortem examination or autopsy, shall not be made or disseminated except as follows:

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

(2) As a court of this state 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 five days before the order is made, upon the district attorney of the county in which the post mortem examination or autopsy has been made or caused to be made.

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

(A) The coroner receives written authorization from a legal heir or representative of that person before the action is filed or while the action is pending. To verify the identity of the legal heir or representative, all of the following shall be provided to the coroner:

(i) A declaration under penalty of perjury that the individual is a legal heir or representative of the deceased person.

(ii) A valid form of identification.

(iii) A certified death certificate.

(B) A subpoena is issued by a party who is a legal heir or representative of the deceased person in a pending civil action.

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

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

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

SEC. 2. Section 2025.280 of the Code of Civil Procedure is amended to read:

2025.280. (a) The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection and copying.

(b) The attendance and testimony of any other deponent, as well as the production by the deponent of any document, electronically stored information, or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Chapter 6 (commencing with Section 2020.010).

(c) A deponent required by notice or subpoena to produce electronically stored information shall provide a means of gaining direct access to, or a translation into a reasonably usable form of, any electronically stored information that is password protected or otherwise inaccessible.

SEC. 3. Section 2034.415 is added to the Code of Civil Procedure, to read:

2034.415. An expert described in subdivision (b) of Section 2034.210 whose deposition is noticed pursuant to Section 2025.220 shall, no later than three business days before his or her deposition, produce any materials or category of materials, including any electronically stored information, called for by the deposition notice.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.