



1-1-1982

Consumer Protection

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>



Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Consumer Protection*, 13 PAC. L. J. 629 (1982).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol13/iss2/19>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Consumer Protection

Consumer Protection; subpoenas of business and consumer records

Code of Civil Procedure §1987.4 (repealed); §1985.3 (amended); Evidence Code §1563 (amended).

AB 812 (Moore); STATS. 1981, Ch 227

(Effective July 1, 1981 to January 1, 1982)

SB 57 (Rains); STATS. 1981, Ch 1014

Support: California Bankers Association; Department of Economic and Business Development

Prior to the enactment of Chapter 1014, all reasonable costs incurred by a custodian or witness of a non-party business other than a health care institution¹ in the production of business records pursuant to a subpoena duces tecum² could be charged against the requesting party.³ Upon the custodian's demand, the requesting party was required to pay the reasonable costs of production before the records had to be delivered.⁴ Reasonable costs included the actual copying costs and clerical costs computed by the time spent locating and making the records available multiplied by the employee's hourly wage.⁵

Chapter 1014 allows all reasonable costs incurred in the production of business records in compliance with a subpoena duces tecum by *any* non-party witness to be charged against the requesting party.⁶ Reasonable costs may include the actual costs for the reproduction of oversize or specially processed documents, ten cents per page for standard reproduction, and clerical costs incurred in locating and making the records available.⁷ Clerical costs are computed at the rate of ten dollars per hour and include any actual costs paid to a third party by the non-party witness for the retrieval and return of records held by the

1. See CAL. STATS. 1972, c. 396, §1, at 719 (amending CAL. EVID. CODE §1563) (The sole fee for complying with a subpoena for patient records of a public or licensed hospital or of a physician, surgeon, osteopath, or dentist licensed to practice in the state when the custodian of the records or a qualified witness was not required to attend was \$12.00.).

2. CAL. CIV. PROC. CODE §1985; BLACK'S LAW DICTIONARY 1279 (5th ed. 1979) (definition of subpoena duces tecum).

3. See CAL. STATS. 1980, c. 830, §1, at — (enacting CAL. CIV. PROC. CODE §1987.4).

4. *Id.*

5. *Id.*

6. CAL. EVID. CODE §1563(b).

7. *Id.* §1563(b)(1).

third party.⁸ Chapter 1014 does not require payment by the requesting party before the business records are delivered, although the non-party witness may demand payment upon the actual delivery of the business records and, until paid, is not required to deliver.⁹

Chapter 1014 requires the non-party witness to submit an itemized statement of any reproduction or clerical costs to the requesting party.¹⁰ If the costs are excessive, the requesting party may petition the court to recover or reduce the costs.¹¹ At the hearing on an order to show cause issued after the petition is filed, the court may order the non-party witness to repay or reduce the costs charged to the requesting party.¹² If the court determines that the costs are excessive and charged in bad faith by the witness, the requesting party may be excused from any payment or the non-party witness ordered to remit the full payment and pay the requesting party's attorneys' fees and reasonable expenses for the petition.¹³ If the court determines at the hearing that the costs are not excessive, the requesting party must pay the non-party witness' reasonable expenses in defending the petition including attorneys' fees.¹⁴

Furthermore, Chapter 1014 authorizes payment to the non-party witness for any costs incurred in compliance with the subpoena duces tecum up to the point of notification when the subpoena has been quashed, withdrawn, modified, or limited on a motion made by a party other than the non-party witness.¹⁵ If the subpoena has been withdrawn or quashed and payment is not made by the requesting party within thirty days of demand for payment, a motion may be filed for a court order requiring payment.¹⁶

Under existing law, when the personal records¹⁷ of a consumer¹⁸ maintained by a physician, hospital, bank, savings and loan, credit union, trust or insurance company, accountant, or attorney are subpoenaed,

8. *Id.*

9. *Id.* §1563(b)(2). In addition to these costs, existing law entitles the custodian of the records to 20¢ a mile one way in addition to \$12.00 per day when personal attendance is required. Chapter 1014 permits the custodian to be reimbursed for any additional reasonable costs. Reasonable costs recoverable by the custodian of records will be determined using the same standard employed for the determination of reasonable costs of a non-party witness.

10. *Id.* §1563(b)(3).

11. *See id.* §1563(b)(4).

12. *See id.*

13. *Id.*

14. *Id.*

15. *Id.* §1563(b)(5).

16. *Id.*

17. CAL. CIV. PROC. CODE §1985.3(a)(1) (definition of personal records).

18. *Id.* §1985.3(a)(2) (definition of consumer).

naed, the subpoenaing party¹⁹ is required to give constructive notice²⁰ to the consumer that the records are being sought.²¹ In an attempt to clarify that the State Bar is exempt from this provision when acting in an adjudicative capacity pursuant to the Business and Professions Code,²² Chapters 227 and 1014 narrow the definition of “subpoenaing party.”²³ Under Chapters 227 and 1014, all entities of the Judicial Department, including the State Bar,²⁴ and all parties not bringing an action under the Code of Civil Procedure will not be considered a “subpoenaing party” for constructive notice purposes.²⁵

In addition, Chapters 227 and 1014 modify the time period for bringing a motion to quash or modify a subpoena duces tecum dealing with production of personal records.²⁶ Under prior law, any consumer whose personal records were subpoenaed could bring a motion to quash or modify the subpoena at *any time* prior to the date for production.²⁷ Chapters 227 and 1014 allow the consumer ten days from the receipt of the subpoena to bring a motion to quash or modify the subpoena.²⁸ Finally, Chapter 1014 exempts any proceedings dealing with the Department of Industrial Relations,²⁹ Workers’ Compensation and Insurance,³⁰ and retraining and rehabilitation of full time public employees³¹ from these provisions.³²

19. *Id.* §1985.3(a)(3) (definition of subpoenaing party).

20. *See id.* §1985.3(b)(1) (to give constructive notice the subpoenaing party must deliver copies of the subpoena, the affidavit, and the notice indicating what records are being sought to the consumer personally, to the consumer’s last known address, or to the consumer’s attorney).

21. *See id.* §1985.3(b)(1). *See generally* 12 PAC. L.J., REVIEW OF SELECTED 1980 CALIFORNIA LEGISLATION 300 (1981).

22. *See* CAL. STATS. 1981, c. 227, §2, at —; Letter from Terrance Flanigan, Legislative Representative for the State Bar of California, to Governor Edmund G. Brown, Jr., July 3, 1981 (copy on file at *Pacific Law Journal*). *See generally* CAL. BUS. & PROF. CODE §§6000-6301.5.

23. *Compare* CAL. CIV. PROC. CODE §1985.3(a)(3) with CAL. STATS. 1980, c. 976, §1, at — (adding CAL. CIV. PROC. CODE §1985.3(a)(3)).

24. *See* CAL. CONST. art. VI, §9.

25. *See* CAL. CIV. PROC. CODE §1985.3(a)(3), (b)(1).

26. *Compare id.* §1985.3(d) with CAL. STATS. 1980, c. 976, §1, at — (adding CAL. CIV. PROC. CODE §1985.3(d)).

27. CAL. STATS. 1980, c. 976, §1, at —. *See also* CAL. CIV. PROC. CODE §1987.1.

28. CAL. CIV. PROC. CODE §1985.3(d).

29. *See generally* CAL. LAB. CODE §§50-150.

30. *See generally id.* §§3200-5300, 6100-6149.

31. *See generally id.* §§6200-6208.

32. CAL. CIV. PROC. CODE §1985.3(g).

Consumer Protection; retail installment accounts

CAL. STATS. 1980, c. 1381, §8, at — (repealed); Civil Code §§1810.2, 1810.3, 1810.6, 1812.41 (amended).

AB 310 (Young); STATS. 1981, Ch 26
(Effective April 30, 1981)

Support: Department of Consumer Affairs; Department of Economic and Business Development
AB 1348 (Tanner); STATS. 1981, Ch 452
Support: Department of Consumer Affairs; Department of Finance

Existing law permits the buyer¹ and seller² of goods or services to enter into a retail installment account³ agreement allowing the seller to retain a security interest in the goods sold or services provided until full payment has been made.⁴ Prior law required that if a seller or holder⁵ retained a security interest in a retail installment account, each payment would be allocated to the various purchases in the same proportion as the cash sale prices bear to one another.⁶ In an apparent attempt to avoid unconscionable retail installment plans,⁷ Chapter 26 provides that when goods or services are purchased, the first purchased, if purchased on different dates, or the lowest in price, if purchased on the same date, will be the first released from any security interest.⁸

In a related change intended to protect the consumer from unnecessary delinquency payments and low credit ratings,⁹ Chapter 452 imposes a time limitation on sellers for mailing the buyer's retail installment account statement.¹⁰ Existing law requires these sellers to mail or deliver statements containing specified information on accounts that are determined to be collectible.¹¹ Chapter 452 establishes that the seller or holder of a retail installment account must mail or deliver each periodic billing statement at least fourteen days before any payments are due.¹² A seller or holder failing to meet this requirement cannot collect any finance or delinquency charges on that account.¹³

1. See CAL. CIV. CODE §1802.4 (definition of retail buyer).

2. See *id.* §1802.3 (definition of retail seller).

3. Compare *id.* §1802.7 (definition of retail installment account) with *id.* §1802.6 (definition of retail installment contract).

4. See *id.* §1810.6.

5. See *id.* §1802.13 (definition of holder).

6. See CAL. STATS. 1974, c. 563, §1, at 1392 (amending CAL. CIV. CODE §1810.6) (retention by seller of security interest in goods; allocation of payments).

7. See generally *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965) (similar method of allocating payments held unconscionable).

8. See CAL. CIV. CODE §1810.6.

9. See Assemblywoman Sally Tanner, Newsletter, July 2, 1981 (copy on file at the *Pacific Law Journal*).

10. See CAL. CIV. CODE §1810.3(b).

11. See *id.* §1810.3(a) (if the seller determines a retail installment account over one dollar to be collectible, the seller must deliver to the buyer at the end of each billing cycle a statement listing the previous balance, an itemized list of the debits, credits, and finance charges incurred during the billing cycle, a description of the method used to compute the finance charge, and the new balance). See generally *Seibert v. Sears, Roebuck and Co.*, 45 Cal. App. 3d 1, 120 Cal. Rptr. 233 (1975) (explanation of the methods used to compute finance charges).

12. See CAL. CIV. CODE §1810.3(b).

13. See *id.*