

Introduced by Senator EmmersonFebruary 22, 2013

An act to amend Sections 1158 and 1563 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as introduced, Emmerson. Medical records: reproduction fees.

(1) Existing law requires certain enumerated health care providers to make all of a patient's records under their custody or control available for inspection and copying by an attorney at law, or his or her representative, who presents a written authorization therefor, as specified. Existing law authorizes any person or enumerated health care provider to charge all reasonable costs incurred in making the patient records available against the person whose written authorization required the availability of the records, as specified. Where the medical records are delivered to the attorney or the attorney's representative for inspection or photocopying at the record custodian's place of business, existing law prohibits the fee for complying with the authorization from exceeding \$15 dollars, plus actual costs, as specified.

This bill would delete the provision that authorizes all reasonable costs to be charged against the person whose written authorization required the availability of the records, and would instead require certain fees for producing paper or electronic copies of medical records, including a search and retrieval fee of \$30 dollars; a fee of 50 cents per page for the first 25 pages and 25 cents for each additional page, as specified; a fee of 50 cents per page for reproduction of documents stored on microfilm, oversize documents, or documents requiring special processing; actual postage charges, as specified; and the actual cost, if

any, charged to the witness by a third party for the retrieval and return of records held offsite by that third party. The bill also would delete the provision that prohibits the fee from exceeding \$15 dollars, plus actual costs, as specified, where the records are delivered to the attorney or the attorney’s representative for inspection or photocopying at the record custodian’s place of business. The bill would provide that an electronic copy of a patient’s medical record is required only under specified conditions.

This bill would, no later than December 1 of each year, require the Director of the California Department of Health Care Services to examine the need to increase or decrease the specified fees by making a calculation based on the Consumer Price Index for All Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics, as specified, and would authorize the Director to increase or decrease the fees at his or her sole discretion. The bill would prohibit the fees from remaining unchanged for 3 consecutive years unless the Consumer Price Index does not change during that 3-year period. The bill would require any changes to the rates to be effective on January 1 following the December 1 calculation and to be published on the Department of Health Care Services Internet Web site on or before that date.

(2) Existing law provides for procedures for the production of business records pursuant to a subpoena duces tecum. Existing law authorizes all reasonable costs, as specified, incurred by a nonparty witness to be charged against the party serving the subpoena duces tecum.

This bill would clarify that the reasonable costs incurred by a nonparty witness do not apply to fees incurred in response to a subpoena for the production of medical records. Instead, the fees established for the production of medical records pursuant to an authorization would apply to the production of medical records in response to a subpoena.

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

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

- 1 SECTION 1. Section 1158 of the Evidence Code is amended
- 2 to read:
- 3 1158. ~~Whenever, prior to~~ (a) *Before* the filing of any action
- 4 or the appearance of a defendant in an action, *if* an attorney at law

1 or his or her representative presents a written authorization therefor
2 signed by an adult patient, by the guardian or conservator of his
3 or her person or estate, or, in the case of a minor, by a parent or
4 guardian of the minor, or by the personal representative or an heir
5 of a deceased patient, or a copy thereof, a physician and surgeon,
6 dentist, registered nurse, dispensing optician, registered physical
7 therapist, podiatrist, licensed psychologist, osteopathic physician
8 and surgeon, chiropractor, clinical laboratory bioanalyst, clinical
9 laboratory technologist, or pharmacist or pharmacy, duly licensed
10 as such under the laws of the state, or a licensed hospital, shall
11 make all of the patient's records under ~~his, hers or its~~ *that person*
12 *or entity's* custody or control available for inspection and copying
13 by the attorney at law or ~~his, or her,~~ *his or her* representative,
14 promptly upon the presentation of the written authorization.

15 ~~(1) No copying may~~ *Copying of medical records stored on*
16 *paper shall not* be performed by any medical provider or employer
17 ~~enumerated above,~~ *described in subdivision (a),* or by an agent
18 thereof, when the requesting attorney has employed a professional
19 photocopier or anyone identified in Section 22451 of the Business
20 and Professions Code as his or her representative to obtain or
21 review the records on his or her behalf. The presentation of the
22 authorization by the agent on behalf of the attorney shall be
23 sufficient proof that the agent is the attorney's representative.

24 *(2) An electronic copy of a patient's medical record shall be*
25 *required only if all of the following conditions are met:*

26 *(A) The entire request can be reproduced from an electronic*
27 *health record system.*

28 *(B) The medical record is specifically requested to be delivered*
29 *in electronic format.*

30 *(C) The medical record can be delivered electronically.*

31 ~~(3) Failure to make the records available,~~ *available* during
32 business hours, within five days after the presentation of the written
33 authorization, may subject the person or entity having custody or
34 control of the records to liability for all reasonable expenses,
35 including attorney's fees, incurred in any proceeding to enforce
36 this section.

37 ~~All reasonable costs incurred by any person or entity enumerated~~
38 ~~above in making patient records available pursuant to this section~~
39 ~~may be charged against the person whose written authorization~~
40 ~~required the availability of the records.~~

1 “Reasonable cost,” as used in this section, shall include, but not
2 be limited to, the following specific costs: ten cents (\$0.10) per
3 page for standard reproduction of documents of a size 8 ½ by 14
4 inches or less; twenty cents (\$0.20) per page for copying of
5 documents from microfilm; actual costs for the reproduction of
6 oversize documents or the reproduction of documents requiring
7 special processing which are made in response to an authorization;
8 reasonable clerical costs incurred in locating and making the
9 records available to be billed at the maximum rate of sixteen dollars
10 (\$16) per hour per person, computed on the basis of four dollars
11 (\$4) per quarter hour or fraction thereof; actual postage charges;
12 and actual costs, if any, charged to the witness by a third person
13 for the retrieval and return of records held by that third person.

14 Where the records are delivered to the attorney or the attorney’s
15 representative for inspection or photocopying at the record
16 custodian’s place of business, the only fee for complying with the
17 authorization shall not exceed fifteen dollars (\$15), plus actual
18 costs, if any, charged to the record custodian by a third person for
19 retrieval and return of records held offsite by the third person.

20 (b) (1) Fees may be charged for paper or electronic copies of
21 medical records that are requested pursuant to this section, as
22 follows:

23 (A) A search and retrieval fee of thirty dollars (\$30), plus a fee
24 of fifty cents (\$0.50) per page for the first 25 pages and twenty-five
25 cents (\$0.25) for each additional page.

26 (B) Fifty cents (\$0.50) per page for reproduction of oversize
27 documents, diagnostic test results, or documents stored on
28 microfilm.

29 (C) If any portion of the medical record is stored in an electronic
30 health record, and the medical provider or employer described in
31 subdivision (a), or an agent thereof, elects, in its sole discretion,
32 to print the records, a fee of fifty cents (\$0.50) per page for the
33 first 25 pages and twenty-five cents (\$0.25) for each additional
34 page for the labor involved in ensuring compliance with the federal
35 Health Insurance Portability and Accountability Act of 1996 (42
36 U.S.C. Sec. 300gg).

37 (D) Actual postage charges. If the requesting party receives the
38 records electronically, postage shall not be charged, but a fee for
39 actual delivery costs, if any, shall apply.

1 (E) The actual cost, if any, charged to the record custodian by
2 a third party for retrieval and return of records held offsite by that
3 third party.

4 (2) Medical records requested pursuant to Section 1563 are
5 subject to the fees described in this section and are not subject to
6 the reasonable costs described in paragraph (1) of subdivision (b)
7 of Section 1563. Notwithstanding paragraph (1) of subdivision (b)
8 of Section 1563, Section 1563 applies to subpoena requests for
9 medical records.

10 (c) No later than December 1 of each year, the Director of the
11 California Department of Health Care Services shall examine the
12 need to increase or decrease the fees described in this section by
13 making a calculation based on the Consumer Price Index for All
14 Urban Consumers (United States city average, all items) published
15 by the United States Department of Labor, Bureau of Labor
16 Statistics, for the 12-calendar-month period commencing prior to
17 the first day of December. The Director may, in his or her sole
18 discretion, elect to increase or decrease the fees described in this
19 section based on this calculation. These fees shall not remain
20 unchanged for three consecutive years unless the Consumer Price
21 Index does not change for those three consecutive years. Any
22 changes to the rates shall be effective on January 1 following the
23 December 1 calculation and published on or before that date on
24 the Department of Health Care Services Internet Web site.

25 (d) A patient not represented by an attorney who wishes to
26 receive a copy, or examine all or part, of his or her medical record
27 shall submit a written request to the health care provider pursuant
28 to Section 123110 of the Health and Safety Code.

29 SEC. 2. Section 1563 of the Evidence Code is amended to read:

30 1563. (a) This article ~~shall does not be interpreted to~~ require
31 tender or payment of more than one witness fee and one mileage
32 fee or other charge; to a witness or witness' business, unless there
33 is an agreement to the contrary between the witness and the
34 requesting party.

35 (b) All reasonable costs incurred in a civil proceeding by ~~any~~
36 a witness ~~which~~ who is not a party with respect to the production
37 of all or any part of business records the production of which is
38 requested pursuant to a subpoena duces tecum ~~may~~ shall be charged
39 against the party serving the subpoena duces tecum.

1 (1) “~~Reasonable cost,~~” *costs,*” as used in this section, ~~shall~~
 2 ~~include, but not be limited to,~~ *includes* the following specific costs:
 3 ~~ten~~

4 (A) *Ten* cents (\$0.10) per page for standard reproduction of
 5 documents of a size 8 ½ by 14 inches or ~~less;~~ *twenty less.*

6 (B) *Twenty* cents (\$0.20) per page for copying of documents
 7 from microfilm; actual costs for the reproduction of oversize
 8 documents or the reproduction of documents requiring special
 9 processing which are made in response to a ~~subpoena;~~ *reasonable*
 10 *subpoena.*

11 (C) *Reasonable* clerical costs incurred in locating and making
 12 the records available to be billed at the maximum rate of
 13 twenty-four dollars (\$24) per hour per person, computed on the
 14 basis of six dollars (\$6) per quarter hour or fraction ~~thereof;~~ *actual*
 15 *thereof.*

16 (D) ~~Actual postage charges; and the charges.~~

17 (E) *The* actual cost, if any, charged to the witness by a third
 18 ~~person~~ *party* for the retrieval and return of records held offsite by
 19 ~~that third-person~~ *party.*

20 (2) *Notwithstanding paragraph (1), if records are delivered*
 21 *pursuant to a subpoena under this article to the attorney, the*
 22 *attorney’s representative, or the deposition officer for inspection*
 23 *or photocopying at the witness’ place of business, the cost for*
 24 *complying with the subpoena shall not exceed fifteen dollars (\$15),*
 25 *plus the actual cost, if any, charged to the witness by a third party*
 26 *for retrieval and return of records held offsite by that third party.*
 27 *If the records are retrieved from microfilm, the reasonable costs,*
 28 *as defined in paragraph (1), shall also apply.*

29 (3) *The fees described in paragraphs (1) and (2) do not apply*
 30 *to a subpoena for the production of medical records, the fees for*
 31 *which are governed by subdivision (b) of Section 1158.*

32 ~~(2)~~

33 (c) The requesting party, or the requesting party’s deposition
 34 officer, shall not be required to pay ~~those~~ *the reasonable* costs or
 35 any estimate thereof ~~prior to~~ *before* the time the records are
 36 available for delivery pursuant to the subpoena, but the witness
 37 may demand payment of costs pursuant to this section simultaneous
 38 with actual delivery of the subpoenaed records, and until payment
 39 is made, *the witness* is under no obligation to deliver the records.

40 ~~(3)~~

1 (d) The witness shall submit an itemized statement for the costs
2 to the requesting party, or the requesting party's deposition officer,
3 setting forth the reproduction and clerical costs incurred by the
4 witness. ~~Should~~ If the costs exceed those authorized in paragraph
5 (1) of subdivision (b), or in subdivision (b) of Section 1158 for the
6 reproduction of medical records, or if the witness refuses to
7 produce an itemized statement of costs as required by paragraph
8 (3); this subdivision, upon demand by the requesting party, or the
9 requesting party's deposition officer, the witness shall furnish a
10 statement setting forth the actions taken by the witness in
11 justification of the costs.

12 ~~(4)~~

13 (e) The requesting party may petition the court in which the
14 action is pending to recover from the witness all or a part of the
15 costs paid to the witness, or to reduce all or a part of the costs
16 charged by the witness, pursuant to this subdivision, on the grounds
17 that those costs were excessive. Upon the filing of the petition the
18 court shall issue an order to show cause and from the time the
19 order is served on the witness the court has jurisdiction over the
20 witness. The court may hear testimony on the order to show cause
21 and if it finds that the costs demanded and collected, or charged
22 but not collected, exceed the amount authorized by this subdivision,
23 it shall order the witness to remit to the requesting party, or reduce
24 its charge to the requesting party by an amount equal to, the amount
25 of the excess. In the event that the court finds the costs excessive
26 and charged in bad faith by the witness, the court shall order the
27 witness to remit the full amount of the costs demanded and
28 collected, or excuse the requesting party from any payment of
29 costs charged but not collected, and the court shall also order the
30 witness to pay the requesting party the amount of the reasonable
31 expenses incurred in obtaining the order, including attorney's fees.
32 If the court finds the costs were not excessive, the court shall order
33 the requesting party to pay the witness the amount of the reasonable
34 expenses incurred in defending the petition, including attorney's
35 fees.

36 ~~(5)~~

37 (f) If a subpoena is served to compel the production of business
38 records and is subsequently withdrawn, or is quashed, modified
39 or limited on a motion made other than by the witness, the witness
40 shall be entitled to reimbursement pursuant to paragraph (1) of

1 *subdivision (b)* for all *reasonable* costs incurred in compliance
2 with the subpoena to the time that the requesting party has notified
3 the witness that the subpoena has been withdrawn or quashed,
4 modified or limited. In the event the subpoena is withdrawn or
5 quashed, if those costs are not paid within 30 days after demand
6 therefor, the witness may file a motion in the court in which the
7 action is pending for an order requiring payment, and the court
8 shall award the payment of expenses and attorney's fees in the
9 manner set forth in ~~paragraph (4)~~. *subdivision (e)*.

10 ~~(6) Where the records are delivered to the attorney, the~~
11 ~~attorney's representative, or the deposition officer for inspection~~
12 ~~or photocopying at the witness' place of business, the only fee for~~
13 ~~complying with the subpoena shall not exceed fifteen dollars (\$15);~~
14 ~~plus the actual cost, if any, charged to the witness by a third person~~
15 ~~for retrieval and return of records held offsite by that third person.~~
16 ~~If the records are retrieved from microfilm, the reasonable cost,~~
17 ~~as defined in paragraph (1), shall also apply.~~

18 (e)

19 (g) ~~When~~ If the personal attendance of the custodian of a record
20 or other qualified witness is required pursuant to Section 1564, in
21 a civil proceeding, he or she shall be entitled to the same witness
22 fees and mileage permitted in a case where the subpoena requires
23 the witness to attend and testify before a court in which the action
24 or proceeding is pending and to any additional costs incurred as
25 provided by subdivision (b).