

Assembly Bill No. 3001

CHAPTER 146

An act to amend Sections 1561 and 1562 of the Evidence Code, relating to evidence.

[Approved by Governor July 11, 1996. Filed with Secretary of State July 12, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3001, Napolitano. Evidence: business records.

(1) Existing law requires business records produced pursuant to a subpoena duces tecum and by a business that is neither a party nor the place where any cause of action is alleged to have arisen to be accompanied by the affidavit of the custodian or other qualified witness, stating prescribed items.

This bill would require the affidavit to include identity of the records and a description of the mode of preparation of the records.

(2) Existing law provides that a copy of business records is admissible in evidence if certain requirements are met, including the requirement that the originals would be admissible if the custodian had been present and testified to the matters in the affidavit.

This bill would revise that requirement to include situations where the original would be admissible if another qualified witness had been present and so testified.

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

SECTION 1. Section 1561 of the Evidence Code is amended to read:

1561. (a) The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:

(1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records.

(2) The copy is a true copy of all the records described in the subpoena duces tecum, or pursuant to subdivision (e) of Section 1560 the records were delivered to the attorney or the attorney's representative for copying at the custodian's or witness' place of business, as the case may be.

(3) The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event.

(4) The identity of the records.

(5) A description of the mode of preparation of the records.



(b) If the business has none of the records described, or only part thereof, the custodian or other qualified witness shall so state in the affidavit, and deliver the affidavit and such records as are available in the manner provided in Section 1560.

(c) Where the records described in the subpoena were delivered to the attorney or his or her representative for copying at the custodian's or witness' place of business, in addition to the affidavit required by subdivision (a), the records shall be accompanied by an affidavit by the attorney or his or her representative stating that the copy is a true copy of all the records delivered to the attorney or his or her representative for copying.

SEC. 2. Section 1562 of the Evidence Code is amended to read:

1562. If the original records would be admissible in evidence if the custodian or other qualified witness had been present and testified to the matters stated in the affidavit, and if the requirements of Section 1271 have been met, the copy of the records is admissible in evidence. The affidavit is admissible as evidence of the matters stated therein pursuant to Section 1561 and the matters so stated are presumed true. When more than one person has knowledge of the facts, more than one affidavit may be made. The presumption established by this section is a presumption affecting the burden of producing evidence.

