

State of California

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<b>Legislative Change No.</b>	<b>09-05</b>
Bill Number: <u>AB 5</u>	Author: <u>Evans</u> Chapter Number: <u>09-5</u>
Laws Affecting Franchise Tax Board:	<u>Sections 1985.8, 2016.020, 2031.010, 2031.020, 2031.030, 2031.040, 2031.050, 2031.060, 2031.210, 2031.220, 2031.230, 2031.240, 2031.250, 2031.260, 2031.270, 2031.280, 2031.285, 2031.290, 2031.300, 2031.310, and 2031.320 of the Code of Civil Procedures</u>
Date Filed with the Secretary of State:	<u>June 29, 2009</u>

**SUBJECT:** Electronic Discovery Act

**Assembly Bill 5 (Evans), as enacted on June 29, 2009, made the following changes to laws impacting the Franchise Tax Board:**

Off code language in the act establishes this act as the Electronic Discovery Act.

Section 1985.8 of the Code of Civil Procedure is added.

This act provides that a subpoena in a civil proceeding may require that electronically stored information, as defined, be produced and that the party serving the subpoena or its designated representative be permitted to inspect, copy, test, or sample the information. The act also provides that the subpoenaing party may specify the form or forms in which information is produced and if unspecified in the discovery request, specifies the information is to be produced in the form in which it is ordinarily maintained or in a form that is reasonably usable. The act provides a process for objections to discovery of electronically stored information, and provides the court with authority to determine the appropriateness of the discovery request and subpoenaed party response.

Section 2016.020 of the Code of Civil Procedure is amended.

This act provides definitions for the terms "electronic" and "electronically stored information".

Section 2031.010 of the Code of Civil Procedure is amended.

This act allows any party to obtain discovery by copying, testing, or sampling documents of electronically stored information. The provision allows a party to demand that any other party produce and permit the party making the demand or their representative to inspect, copy, test, or sample electronically stored information in the possession, custody, or control of the party on whom demand is made.

Assistant Bureau Director	Date
Patrice Gau-Johnson	07/30/09

Section 2031.020 of the Code of Civil Procedure is amended.

This act expands a plaintiff's demand for inspection to include copying, testing, or sampling without leave of the court during specified periods.

Section 2031.030 of the Code of Civil Procedure is amended.

This act allows the party demanding inspection, copying, testing, or sampling of electronically stored information to specify the form or forms in which each type of electronically stored information is to be produced.

Section 2031.040 of the Code of Civil Procedure is amended.

This act expands the requirement for the party making the demand to serve a copy of the demand for inspection on the party to apply when making a demand for copying, testing, or sampling.

Section 2031.050 of the Code of Civil Procedure is amended.

This act authorizes supplemental demands to copy, test, or sample electronically stored information in addition to later acquired or discovered documents, tangible things, or other property in the possession, custody, or control of the party on whom the demand is made.

Section 2031.060 of the Code of Civil Procedure is amended.

This act authorizes a party to request and a court to order a protective order when an inspection, copying, testing, or sampling of documents, tangible things, places, or electronically stored information has been demanded. The act requires the party requesting the protective order to bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense. The court may order discovery if the demanding party shows good cause, or may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery. The act allows the court to limit the extent and frequency of discovery under specified circumstances. The act prohibits the court from imposing sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the good faith operation of an electronic information system.

Section 2031.210 of the Code of Civil Procedure is amended.

This act expands the requirement for a party that is served a demand for inspection to respond to each item separately to also apply to demands for copying, testing, or sampling. The act also specifies the manner in which the party must respond if it objects to the discovery of electronically stored information.

Section 2031.220 of the Code of Civil Procedure is amended.

This act expands the requirement to provide a statement in response to a demand for inspection to include demands for copying, testing, or sampling.

Section 2031.230 of the Code of Civil Procedure is amended.

This act expands the representation of inability to comply with a demand for inspection after a diligent search and reasonable inquiry to comply with the demand has been made to include demand for copying, testing, or sampling.

Section 2031.240 of the Code of Civil Procedure is amended.

This act expands the requirement that if only part of an item is objectionable, the response to a demand for inspection include a statement of compliance to include demands for copying, testing, or sampling.

Section 2031.250 of the Code of Civil Procedure is amended.

This act expands the requirement for a party that responds to a demand for inspection to sign the response under oath to also include demands for copying, testing, or sampling.

Section 2031.260 of the Code of Civil Procedure is amended.

This act expands the notice requirement for a demand for inspection to include demands for copying, testing, or sampling.

Section 2031.270 of the Code of Civil Procedure is amended.

This act expands the requirements that allow a party demanding an inspection and the party that receives the demand to agree to extend the time for a response to also include demands for copying, testing, or sampling.

Section 2031.280 of the Code of Civil Procedure is amended.

This act expands the requirement for documents produced in response for a demand for inspection to be produced in the manner in which they are kept in the usual course of business to also apply to demands for copying, testing, or sampling. The act allows the party responding to a demand for inspection, copying, testing, or sampling that objects to the form specified, or in the case when no form is specified in the demand, to state in its response the form in which it intends to produce each type of information.

Section 2031.285 of the Code of Civil Procedure is added.

This act provides that if the electronically stored information is subject to a demand for inspection, copying, testing, or sampling and is entitled to a claim of privilege or protection of attorney work product, the party making the claim may notify any party receiving the information of the claim of privilege or attorney client protection. The act requires the receiving party to sequester the information identified in the claim and either return the specified information or present the information to the court conditionally under seal. The act restricts the use of the information subject to the claim. The act requires the receiving party that contests the legitimacy of a claim of privilege or protection to seek a determination from the court.

Section 2031.290 of the Code of Civil Procedure is amended.

The act provides that a demand for inspection, copying, testing, or sampling of the response to a demand is not filed with the court but maintained by the respective parties.

Section 2031.300 of the Code of Civil Procedure is amended.

This act provides consequences for a party who fails to serve a timely response to a demand for inspection, copying, testing, or sampling. The act provides that absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as a result of the routine, good faith operation of an electronic information system.

Section 2031.310 of the Code of Civil Procedure is amended.

This act allows a party to move for an order compelling further response to the demand for inspection, copying, testing, or sampling if the original response is incomplete or inadequate and specifies the reasons such a motion can be filed. The act prescribes the process for the motion and the courts involvement in the motion.

Section 2031.320 of the Code of Civil Procedure is amended.

This act expands the authorization for a party to move for an order compelling compliance when no response to a demand for inspection is received to apply to a demand for copying, testing, or sampling. The act, absent exceptional circumstances, precludes the court from imposing sanctions on a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine good faith operation of an electronic information system.

As an urgency statute, this act is effective immediately upon enactment and operative as of that date.

This act will not require any reports by the department to the Legislature.