

AMENDED IN SENATE AUGUST 24, 2004  
AMENDED IN SENATE JUNE 28, 2004  
AMENDED IN SENATE JUNE 23, 2004  
AMENDED IN ASSEMBLY JULY 3, 2003  
AMENDED IN ASSEMBLY MAY 12, 2003  
AMENDED IN ASSEMBLY MAY 5, 2003  
AMENDED IN ASSEMBLY MAY 1, 2003  
AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 578**

---

---

**Introduced by Assembly Member Leno**

February 18, 2003

---

---

An act to add Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3 of the Government Code, relating to county recorders, making an ~~appropriations~~ *appropriation* therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 578, as amended, Leno. County recorders: electronic recording.

(1) Existing law generally specifies that the recorder of any county may, in lieu of a written paper, accept for recording a digitized image of a recordable instrument, subject to specified conditions.

This bill would enact the Electronic Recording Delivery Act of 2004, to authorize a county recorder, upon approval by resolution of the board of supervisors and system certification by the Attorney General, to establish an electronic recording delivery system for the delivery ~~and~~ *for* recording of specified digitized and digital electronic records, subject to specified conditions, including system certification, regulation, and oversight by the Attorney General. *It would authorize a county recorder to include in its electronic recording delivery system a secure method for accepting for recording a digital or digitized electronic record that is an instrument of reconveyance, substitution of trustee, or assignment of deed of trust, subject to specified conditions.* It would require participating counties to pay for the direct cost of regulation and oversight by the Attorney General, and authorize those counties to impose fees to cover those costs. It would authorize the Attorney General to charge a fee directly to a vendor seeking approval of ~~hardware, software, firmware,~~ and other services as part of an electronic recording delivery system. Fees paid to the Attorney General under these provisions would be deposited in ~~an unspecified account~~ *the Electronic Recording Authorization Account*, which would be created in the Special Deposit Fund and continuously appropriated to the Attorney General for these purposes.

This bill would authorize the Attorney General or a district attorney or city prosecutor to seek specified civil remedies.

The Attorney General would be required to evaluate the electronic recording delivery systems, and report to both houses of the Legislature on or before June 30, 2009.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

- 1    ~~SECTION 1. (a) It is the intent of the Legislature to enact~~
- 2    ~~legislation to develop a system to permit the electronic delivery,~~
- 3    ~~recording, and return of records that are instruments of~~
- 4    ~~reconveyance, substitutions of trustees, or assignments of deeds of~~
- 5    ~~trust.~~
- 6    ~~(b) It is the further intent of the Legislature that electronic~~
- 7    ~~recording delivery systems be a voluntary county option subject~~



1 ~~to regulation to promote security and uniformity, reduce costs, and~~  
2 ~~deter real estate fraud.~~

3 SECTION 1. (a) *It is the intent of the Legislature to enact*  
4 *legislation to develop a system to permit the electronic delivery,*  
5 *recording, and return of instruments affecting right, title, or*  
6 *interest in real property.*

7 (b) *Except as set forth in subdivision (c), it is the intent of the*  
8 *Legislature that electronic recording be limited in its initial*  
9 *development to the digitized electronic delivery, recording, and*  
10 *return of instruments submitted by a title insurer, underwritten title*  
11 *company, institutional lender, as defined in paragraph (1), (2), or*  
12 *(4) of subdivision (j) of Section 50003 of the Financial Code, or*  
13 *an entity of local, state, or federal government. This will enable*  
14 *county recorders, county district attorneys, and the Attorney*  
15 *General to develop an electronic recording delivery system that*  
16 *will protect property owners and lenders from fraud and identity*  
17 *theft. It is the intent of the Legislature to consider expanding this*  
18 *system to cover additional submitting entities and digital*  
19 *electronic records based on experience with the system.*

20 (c) *It is further the intent of the Legislature to enact legislation*  
21 *to permit, upon certification, a title insurer, underwritten title*  
22 *company, entity of local, state, or federal government, or*  
23 *institutional lender, as defined in subdivision (j) of Section 50003*  
24 *of the Financial Code, to submit a digitized or digital electronic*  
25 *record that is an instrument of reconveyance, substitution of*  
26 *trustee, or assignment of deed of trust, without meeting specified*  
27 *requirements of this act because these instruments are less likely*  
28 *to result in consumer fraud.*

29 SEC. 2. Article 6 (commencing with Section 27390) is added  
30 to Chapter 6 of Division 2 of Title 3 of the Government Code, to  
31 read:

32

33 Article 6. Electronic Recording Delivery Act of 2004

34

35 27390. (a) This article shall be known and may be cited as the  
36 Electronic Recording Delivery Act of 2004.

37 (b) For the purposes of this article, the following definitions  
38 shall apply:

39 (1) “Authorized submitter” means a ~~title insurer, an~~  
40 ~~underwritten title company, an entity of local, state, or federal~~



1 ~~government, or an institutional lender, as defined in subdivision (j)~~  
 2 ~~of Section 50003 of the Financial Code, or the agents or employees~~  
 3 ~~of any of these, who has entered into a contract with a county~~  
 4 ~~recorder pursuant to subdivision (b) of Section 27391, and use~~  
 5 ~~hardware, software, or firmware approved by the Attorney~~  
 6 ~~General pursuant to subdivision (b) of Section 27392.~~ *party that*  
 7 *has entered into a contract with a county recorder pursuant to*  
 8 *subdivision (b) of Section 27391 and is not disqualified pursuant*  
 9 *to Section 27395.*

10 (2) “Computer security auditor” means computer security  
 11 personnel hired to perform an independent audit ~~on the electronic~~  
 12 ~~recording delivery system, approved pursuant to Section 27394~~  
 13 ~~and not disqualified pursuant to Section 27395.~~ *The computer of*  
 14 *the electronic recording delivery system. The computer security*  
 15 auditor shall be independent of the county recorder and the  
 16 authorized submitter and shall not be the same contractor hired to  
 17 establish or participate in a county’s electronic recording delivery  
 18 system or in the authorized submitter’s portion of that system.

19 (3) “Digital electronic record” means a record *containing*  
 20 *information* that is created, generated, sent, communicated,  
 21 *received*, or stored by electronic means, but not created in original  
 22 paper form.

23 (4) “Digitized electronic record” means a scanned image of  
 24 the original paper document.

25 (5) “Electronic recording delivery system” means a system  
 26 ~~designed to receive to deliver~~ for recording, and to return to the  
 27 party requesting recording, digitized or digital electronic records.

28 (6) “Security testing” means an independent security audit by  
 29 a computer security auditor, including, but not limited to, attempts  
 30 to penetrate an electronic recording delivery system for the  
 31 purpose of testing the security of that system.

32 (7) “Source code” means a program or set of programs,  
 33 readable and maintainable by humans, translated or interpreted  
 34 into a form that the electronic recording delivery system can  
 35 execute.

36 (8) “System certification” means the issuance of a  
 37 confirmation letter regarding ~~an a county’s~~ electronic recording  
 38 delivery system by the Attorney ~~General, as described in Section~~  
 39 ~~27392.~~



1 ~~27391. (a) Upon approval by resolution of the board of~~  
2 ~~supervisors and system certification by the Attorney General, a~~  
3 ~~county recorder may establish an electronic recording delivery~~  
4 ~~system.~~

5 ~~(b) (1) Upon system certification, a county recorder may enter~~  
6 ~~into a contract with a title insurer, an underwritten title company,~~  
7 ~~an entity of local, state, or federal government, or an institutional~~  
8 ~~lender, as defined in subdivision (j) of Section 50003 of the~~  
9 ~~Financial Code, to facilitate the delivery for recording, and return~~  
10 ~~to the party requesting recording, of a digital electronic record, or~~  
11 ~~a digitized electronic record, that is an instrument of~~  
12 ~~reconveyance, substitution of trustee, or assignment of a deed of~~  
13 ~~trust.~~

14 ~~(2) Any party entering into a contract with a county recorder~~  
15 ~~pursuant to paragraph (1) shall use hardware, software, or~~  
16 ~~firmware approved by the Attorney General that does not allow~~  
17 ~~“secure access,” as defined by the Attorney General in~~  
18 ~~subdivision (f) of Section 27395, by authorized submitters to the~~  
19 ~~electronic recording delivery system in implementing that~~  
20 ~~contract.~~

21 ~~(c) If a county recorder elects to utilize an electronic recording~~  
22 ~~delivery system pursuant to this article, he or she may refuse to~~  
23 ~~enter into a contract with any party or may terminate or suspend~~  
24 ~~access to a system if the county recorder deems it necessary to~~  
25 ~~protect the public interest, protect the integrity the of public~~  
26 ~~records, or protect property owners from financial harm. A county~~  
27 ~~recorder may also terminate or suspend access to a system in the~~  
28 ~~event a party commits a substantive breach of the contract or does~~  
29 ~~not comply with this article or the regulations adopted pursuant to~~  
30 ~~this article.~~

31 ~~(d) No cause of action or liability against the county recorder~~  
32 ~~or any other government entity shall occur or arise from the~~  
33 ~~decision of the county recorder to refuse to contract with any party~~  
34 ~~or to terminate or deny access of any party to the system.~~

35 ~~(e) A county recorder may require a party electronically~~  
36 ~~submitting records to mail a copy of recorded electronic document~~  
37 ~~to the address specified in the instructions for mailing upon~~  
38 ~~completion of recording.~~



1 ~~(f) When a signature is required to be accompanied by a~~  
2 ~~notary's seal or stamp, that requirement is satisfied if the electronic~~  
3 ~~signature of the notary contains all of the following:~~

- 4 ~~(1) The name of the notary.~~
- 5 ~~(2) The words "Notary Public."~~
- 6 ~~(3) The name of the county where the bond and oath of office~~  
7 ~~of the notary are filed.~~
- 8 ~~(4) The sequential identification number assigned to the notary,~~  
9 ~~if any.~~
- 10 ~~(5) The sequential identification number assigned to the~~  
11 ~~manufacturer or vendor of the notary's physical or electronic seal,~~  
12 ~~if any.~~

13 ~~(g) In addition to, and notwithstanding Section 27361.5, a~~  
14 ~~county recorder, with approval by resolution of the board of~~  
15 ~~supervisors, may require, but need not be limited to, the following~~  
16 ~~index information on the first page or sheet of a digital or digitized~~  
17 ~~electronic document presented for recording:~~

- 18 ~~(1) The parcel identifier number of the real estate.~~
- 19 ~~(2) The address of the real estate, to the extent available.~~
- 20 ~~(3) The name of the authorized submitter presenting the~~  
21 ~~document for recording.~~
- 22 ~~(4) The name of the authorized requestor of a document for~~  
23 ~~recording.~~
- 24 ~~(5) The marital, corporate, partnership, or other similar legal~~  
25 ~~status of a person who is a party to the document.~~
- 26 ~~(6) The date of the document.~~
- 27 ~~(7) The number of pages or sheets contained in the record,~~  
28 ~~including the first page or sheet.~~
- 29 ~~(8) The transmittal information to identify the sender and~~  
30 ~~provide recording record information.~~
- 31 ~~(9) If the document is a grant deed, quitclaim deed, or deed of~~  
32 ~~trust, evidence that the grantor has given informed consent to the~~  
33 ~~use of an electronic document. General.~~

34 *27391. (a) Upon approval by resolution of the board of*  
35 *supervisors and system certification by the Attorney General, a*  
36 *county recorder may establish an electronic recording delivery*  
37 *system.*

38 *(b) Upon system certification, a county recorder may enter into*  
39 *a contract with a title insurer, as defined in Section 12340.4 of the*  
40 *Insurance Code, underwritten title company, as defined in Section*



1 12340.5 of the Insurance Code, institutional lender, as defined in  
2 paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of the  
3 Financial Code, or an entity of local, state, or federal government  
4 for the delivery for recording, and return to the party requesting  
5 recording, of a digitized electronic record that is an instrument  
6 affecting a right, title, or interest in real property.

7 (c) A county recorder may refuse to enter into a contract with  
8 any party or may terminate or suspend access to a system for any  
9 good faith reason, including, but not limited to, a determination by  
10 the county recorder that termination or suspension is necessary to  
11 protect the public interest, to protect the integrity of public records,  
12 or to protect homeowners from financial harm, or if the volume or  
13 quality of instruments submitted by the requester is not sufficient  
14 to warrant electronic recordation. A county recorder may also  
15 terminate or suspend access to a system if a party commits a  
16 substantive breach of the contract, the requirements of this article,  
17 or the regulations adopted pursuant to this article.

18 (d) Notwithstanding Section 27321, a county recorder may  
19 require a party electronically submitting records to mail a copy of  
20 the recorded electronic document to the address specified in the  
21 instructions for mailing upon completion of recording.

22 (e) When a signature is required to be accompanied by a  
23 notary's seal or stamp, that requirement is satisfied if the electronic  
24 signature of the notary contains all of the following:

25 (1) The name of the notary.

26 (2) The words "Notary Public."

27 (3) The name of the county where the bond and oath of office  
28 of the notary are filed.

29 (4) The sequential identification number assigned to the  
30 notary, if any.

31 (5) The sequential identification number assigned to the  
32 manufacturer or vendor of the notary's physical or electronic seal,  
33 if any.

34 27392. (a) No electronic recording delivery system may  
35 become operational without system certification by the Attorney  
36 General. The certification shall affirm that the proposed county  
37 system conforms to this article and any regulations adopted  
38 pursuant to this article, that security testing has confirmed that the  
39 system is secure and that the proposed operating procedures are  
40 sufficient to assure the continuing security and lawful operation of



1 that system. The certification may include any agreements  
2 between the county recorder and the Attorney General as to the  
3 operation of the system, including, but not limited to, the nature  
4 and frequency of computer security audits. Certification may be  
5 withdrawn for good cause.

6 (b) The Attorney General shall approve ~~hardware, software,~~  
7 ~~firmware,~~ *software* and other services for electronic recording  
8 delivery systems pursuant to regulations adopted as described in  
9 paragraph (7) of subdivision (b) of Section 27393.

10 27393. (a) The Attorney General shall, in consultation with  
11 ~~the County Recorders Association of California and the California~~  
12 ~~District Attorneys Association~~ *interested parties*, adopt  
13 regulations for the review, approval, and oversight of electronic  
14 recording delivery systems. ~~Other interested parties may be~~  
15 ~~consulted.~~ Regulations shall be adopted pursuant to the  
16 Administrative Procedure Act (Chapter 3.5 (commencing with  
17 Section 11340) of Part 1 of Division 3). The regulations shall  
18 comply with Section 12168.7.

19 (b) The regulations adopted pursuant to subdivision (a) may  
20 include, but need not be limited to, all of the following:

21 (1) Establishment of baseline technological and procedural  
22 specifications for electronic recording delivery systems.

23 (2) Requirements for security, capacity, reliability, and  
24 uniformity.

25 (3) Requirements as to the nature and frequency of computer  
26 security audits.

27 (4) A *statement of a* detailed and uniform definition of the term  
28 ~~“source code”~~ *“source code”* consistent with paragraph (7) of  
29 subdivision (b) of Section 27390, and as used in this article, and  
30 applicable to each county’s electronic recording delivery system.

31 (5) Requirements for placement of a copy of the operating  
32 system, source code, compilers, and all related software associated  
33 with each county’s electronic recording delivery system in an  
34 approved escrow facility prior to that system’s first use.

35 ~~(6) Requirements for ensuring approval by the Attorney~~  
36 ~~General of~~

37 (6) *Requirements to ensure that* substantive modifications to an  
38 operating system, compilers, related software, or source code *are*  
39 *approved by the Attorney General.*



1 (7) Procedures for ~~approval of hardware, software, firmware,~~  
2 ~~and other services for electronic initial certification of vendors~~  
3 ~~offering software and other services to counties for electronic~~  
4 recording delivery systems.

5 (8) Requirements for system certification and for oversight of  
6 approved systems.

7 (9) Requirements for fingerprinting and criminal records  
8 checks required by Section 27395, including a list of employment  
9 positions or classifications subject to criminal records checks ~~and~~  
10 ~~including a definition of “secure access” as specified in under~~  
11 subdivision (f) of that section.

12 (10) Requirements for uniform index information that shall be  
13 included in every digitized or digital electronic record.

14 ~~Provisions to protect~~ *Requirements for protecting*  
15 proprietary information accessed pursuant to subdivision (e) of  
16 Section 27394 from public disclosure.

17 *(12) Requirements for certification under Section 27397.5.*

18 (c) The Attorney General may promulgate any other  
19 regulations necessary to fulfill his or her obligations under this  
20 article.

21 ~~(d)~~

22 (c) An electronic recording delivery system shall be subject to  
23 local inspection and review by the Attorney General. The Attorney  
24 General shall furnish a statement of any relevant findings  
25 associated with a local inspection ~~to the county recorder of a~~  
26 ~~county participating in the inspected~~ *of an* electronic recording  
27 delivery system, to the ~~district attorney~~ *county recorder and the*  
28 *district attorney of the affected county*, and to all technology  
29 vendors associated with that system.

30 27394. (a) To be eligible to establish an electronic recording  
31 delivery system, a county recorder shall contract with, and obtain  
32 a report from, a computer security auditor selected from a list of  
33 computer security auditors approved by the Attorney General.

34 (b) The Attorney General shall approve computer security  
35 auditors on the basis of significant experience in the evaluation and  
36 analysis of Internet security design, the conduct of security testing  
37 procedures, and specific experience performing Internet  
38 penetration studies. The Attorney General shall complete the  
39 approval of security auditors within 90 days of a request from a  
40 county recorder. The list shall be a public record.



1 (c) An electronic recording delivery system shall be audited, at  
2 least once during the first year of operation and periodically  
3 thereafter, as set forth in regulation and in the system certification,  
4 by a computer security auditor. The computer security auditor  
5 shall conduct security testing of the electronic recording delivery  
6 system. The reports of the computer security auditor shall include,  
7 but not be limited to, all of the following considerations:

8 (1) Safety and security of the system, including the  
9 vulnerability of the electronic recording delivery system to fraud  
10 or penetration.

11 (2) Results of testing of the system's protections against fraud  
12 or intrusion, including security testing and penetration studies.

13 ~~(3) If an auditor finds a security breach, or the imminent threat~~  
14 ~~of a security breach, but is unable to find the source of that breach~~  
15 ~~in the electronic recording system, then the auditor may~~  
16 ~~recommend security testing of an authorized submitter's system,~~  
17 ~~pursuant to subdivision (e).~~

18 ~~(4)~~

19 (3) Recommendations for any additional precautions needed to  
20 ensure that the system is secure.

21 (d) Upon completion, the reports and any response to any  
22 recommendations shall be transmitted to the board of supervisors,  
23 the county recorder, the county district attorney, and the Attorney  
24 General. ~~These entities are authorized to take appropriate action~~  
25 ~~based upon the recommendations and findings of the auditor.~~  
26 *General. These reports shall be exempt from disclosure under the*  
27 *California Public Records Act (Chapter 3.5 (commencing with*  
28 *Section 6250) of Division 7 of Title 1).*

29 (e) ~~(1)~~ A computer security auditor shall have access to any  
30 aspect of an electronic recording delivery system, in any form  
31 requested. Computer security auditor access shall include, but not  
32 be limited to, permission for a thorough examination of source  
33 code and the associated approved escrow facility, and necessary  
34 authorization and assistance for a penetration study of that system.

35 ~~(2) If it is necessary to extend security testing to any portion of~~  
36 ~~an authorized submitter's system, an authorized submitter may~~  
37 ~~employ, at its own expense, a computer security auditor for this~~  
38 ~~aspect of security testing. The security auditor shall meet all the~~  
39 ~~requirements of this section and shall complete and submit all~~



1 ~~security testing and reports as required by this article and any~~  
2 ~~regulations adopted pursuant to this article.~~

3 (f) If the county recorder, a computer security auditor, a district  
4 attorney for a county participating in the electronic recording  
5 delivery system, or the Attorney General reasonably believes that  
6 an electronic recording delivery system is vulnerable to fraud or  
7 intrusion, the county recorder, the board of supervisors, the district  
8 attorney, and the Attorney General shall be immediately notified.  
9 The county recorder shall immediately take the necessary steps to  
10 guard against any compromise of the electronic recording delivery  
11 system, including, if necessary, the suspension of an authorized  
12 submitter or of the electronic recording delivery system.

13 27395. (a) No person shall be a computer security auditor or  
14 be granted secure access to an electronic recording delivery system  
15 if he or she has been convicted of a felony, has been convicted of  
16 a misdemeanor related to theft, fraud, or a crime of moral  
17 turpitude, or if he or she has pending criminal charges for any of  
18 these crimes. A plea of guilty or no contest, a verdict resulting in  
19 conviction, or the forfeiture of bail, shall be a conviction within the  
20 meaning of this section, irrespective of a subsequent order under  
21 Section 1203.4 of the Penal Code.

22 (b) All persons entrusted with secure access to an electronic  
23 recording delivery system shall submit fingerprints to the  
24 Department of Justice for a criminal records check according to  
25 regulations adopted pursuant to Section 27393.

26 (c) Once the Department of Justice has ascertained the criminal  
27 history information, it shall forward written notification of  
28 criminal convictions or pending criminal charges, or both, to the  
29 division of the office of Attorney General charged with oversight  
30 duties regarding this article. The Attorney General shall request  
31 subsequent arrest notification service from the Department of  
32 Justice pursuant to Section 11105.2 of the Penal Code for all  
33 persons subject to a criminal records check pursuant to this section.

34 (d) The Attorney General shall deliver written notification of  
35 an individual's ineligibility for access to an electronic recording  
36 delivery system to the individual, his or her known employer, the  
37 computer security auditor, and the county recorder.

38 (e) The Department of Justice may charge a fee sufficient to  
39 cover its costs under this section.



1 (f) The Attorney General shall define “secure access” for  
2 purposes of this section by regulation and by agreement with the  
3 county recorder in the system certification. ~~The definition of~~  
4 ~~“secure access” shall in no way limit the electronic recording~~  
5 ~~delivery system from receiving digital records pursuant to~~  
6 ~~paragraph (1) of subdivision (b) of Section 27391.~~

7 ~~(g) Authorized submitters, as defined in paragraph (1) of~~  
8 ~~subdivision (b) of Section 27390, are not subject to the~~  
9 ~~requirements of this section unless it is necessary for them to have~~  
10 ~~secure access to the electronic recording delivery system.~~

11 27396. (a) The Attorney General shall monitor the security  
12 of electronic recording delivery systems statewide, in close  
13 cooperation with county recorders and public prosecutors. In the  
14 event of an emergency involving multiple fraudulent transactions  
15 linked to one county’s use of an electronic recording delivery  
16 system, the Attorney General may order the suspension of  
17 electronic recording delivery systems in any county or in multiple  
18 counties, if necessary to protect the security of the system, for a  
19 period of up to seven court days. The Attorney General may seek  
20 an order from the superior court if it is necessary to extend this  
21 order.

22 (b) (1) The Attorney General, a district attorney, or a city  
23 prosecutor may bring an action in the name of the people of the  
24 state seeking declaratory or injunctive relief, restitution for  
25 damages or economic loss, rescission, or other equitable relief  
26 pertaining to any alleged violation of this article or regulations  
27 adopted pursuant to this article. Injunctive relief may include, but  
28 is not limited to, an order suspending a party from participation in  
29 the electronic recording delivery system, on a temporary or  
30 permanent basis.

31 (2) Nothing in this subdivision shall be construed to prevent the  
32 Attorney General, a district attorney, or a city prosecutor from  
33 seeking legal or equitable relief under any other provision of law.

34 27397. (a) A county establishing an electronic recording  
35 delivery system under this article shall pay for the direct cost of  
36 regulation and oversight by the Attorney General.

37 (b) The Attorney General may charge a fee directly to a vendor  
38 seeking approval of ~~hardware, software, firmware, software~~ and  
39 other services as part of an electronic recording delivery system.  
40 The fee shall not exceed the reasonable costs of approving



1 ~~hardware, software, firmware,~~ *software* or other services for  
2 vendors.

3 (c) In order to pay costs under this section, a county may do any  
4 of the following:

5 (1) Impose a fee in an amount up to and including one dollar  
6 (\$1) for each instrument that is recorded by the county. This fee  
7 may, at the county's discretion, be limited to instruments that are  
8 recorded pursuant to the electronic recording delivery system.

9 (2) Impose a fee upon any vendor seeking approval of software  
10 and other services as part of an electronic recording delivery  
11 system.

12 (3) Impose a fee upon any person seeking to contract as an  
13 authorized submitter.

14 (d) The total fees assessed by a county recorder pursuant to this  
15 section may not exceed the reasonable total costs of the electronic  
16 recording delivery system, the review and approval of vendors and  
17 potential authorized submitters, security testing as required by this  
18 article and the regulations of the Attorney General, and  
19 reimbursement to the Attorney General for regulation and  
20 oversight of the electronic recording delivery system.

21 (e) Fees paid to the Attorney General pursuant to subdivisions  
22 (a) and (b) shall be deposited in the ~~\_\_\_\_\_~~ *Electronic Recording*  
23 *Authorization* Account, which is hereby created in the Special  
24 Deposit Fund, and, notwithstanding Section 13340, is  
25 continuously appropriated, without regard to fiscal years, to the  
26 Attorney General for the costs described in those subdivisions.

27 27397.5. (a) *A county recorder may include in the county's*  
28 *electronic recording delivery system a secure method for accepting*  
29 *for recording a digital or digitized electronic record that is an*  
30 *instrument of reconveyance, substitution of trustee, or assignment*  
31 *of deed of trust.*

32 (b) *A county recorder may contract with a title insurer, as*  
33 *defined in Section 12340.4 of the Insurance Code, underwritten*  
34 *title company, as defined in Section 12340.5 of the Insurance*  
35 *Code, an entity of state, local, or federal government, or an*  
36 *institutional lender, as defined in Section 50003 of the Financial*  
37 *Code, or their authorized agents, to be an authorized submitter of*  
38 *the documents specified in subdivision (a).*

39 (c) *With respect to the electronic submission of the records*  
40 *described in subdivision (a), the requirements that an authorized*



1 submitter be subject to a security audit under Section 27394 and  
2 a criminal records check under Section 27395 shall not apply  
3 where the certification requirements of subdivision (d) have been  
4 met.

5 (d) (1) In order for subdivision (c) to apply, the county  
6 recorder and the Attorney General shall certify that the method of  
7 submission allowed under the system will not permit an authorized  
8 submitter or its employees and agents, or any third party, to  
9 modify, manipulate, insert, or delete information in the public  
10 record, maintained by the county recorder, or information in other  
11 electronic records that may be submitted for recording pursuant to  
12 a county's system.

13 (2) Certification under this section may be withdrawn by either  
14 the county recorder or the Attorney General at any time either  
15 determines that the requirements of this subdivision are not met.

16 (e) For purposes of this section, an agent of an authorized  
17 submitter shall not include a vendor.

18 27398. (a) The Attorney General shall conduct an evaluation  
19 of electronic recording delivery systems authorized by this article,  
20 and report to both houses of the Legislature on or before June 30,  
21 2009.

22 ~~(a) The evaluation shall~~

23 (b) It is the intent of the Legislature that the evaluation include  
24 an analysis of costs, cost savings, security and real estate fraud  
25 prevention, and recommendations as to improvements and  
26 possible expansion of the provisions of this article.

27 ~~(b) (1) It is the intent of the Legislature that the electronic~~  
28 ~~delivery, recording, and return of digital and digitized electronic~~  
29 ~~records pursuant to this article be limited to an instrument of~~  
30 ~~reconveyance, a substitution of trustee, or an assignment of deed~~  
31 ~~of trust, because these documents pose less risk of real estate fraud~~  
32 ~~loss to property owners and financial institutions than other~~  
33 ~~documents affecting the right, title, or interest in real property.~~

34 ~~(2) Therefore, the evaluation conducted under this section shall~~

35 (c) The evaluation shall also include a study of the feasibility  
36 of expanding the provisions of this article to cover the delivery,  
37 recording, and return of other ~~digital and digitized~~ electronic  
38 records.

39 27399. (a) Nothing in this article shall be construed to  
40 authorize any state agency to administer any of the processes or



1 *procedures relating to the business of the county recorders of the*  
2 *state in any manner not otherwise specifically set forth in this*  
3 *article.*

4 (b) The authority granted in this article is in addition to any  
5 other authority or obligation under state or federal law.

6 ~~(b)~~

7 (c) Nothing in this article shall be construed to repeal or affect  
8 Section 27279, 27279.1, 27279.2, 27297.6, 27387.1, or 27399.7,  
9 *or the authority of the Counties of Orange and San Bernardino to*  
10 *act under those provisions.*

11 SEC. 3. This act is an urgency statute necessary for the  
12 immediate preservation of the public peace, health, or safety  
13 within the meaning of Article IV of the Constitution and shall go  
14 into immediate effect. The facts constituting the necessity are:

15 In order that county recorders may alleviate fiscal constraints by  
16 implementing electronic recording delivery systems at the earliest  
17 possible time, it is necessary for this act to take effect immediately.

