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AMENDED IN SENATE AUGUST 24, 2004
AMENDED IN SENATE JUNE 28, 2004
AMENDED IN SENATE JUNE 23, 2004
AMENDED IN ASSEMBLY JULY 3, 2003
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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 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 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 software and other services as part of an electronic recording delivery system. Fees paid to the Attorney General under these provisions would be deposited in 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: ²/₃. 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 instruments affecting right, title, or
- 4 interest in real property.



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

14 (2) It is not the intent of the Legislature in limiting electronic
15 recordation of certain documents to digitized electronic delivery,
16 to suggest, and no inference should be drawn, that digital
17 documents pose a greater risk of fraud or identity theft than
18 digitized documents.

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

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

31

32 Article 6. Electronic Recording Delivery Act of 2004

33

34 27390. (a) This article shall be known and may be cited as the
35 Electronic Recording Delivery Act of 2004.

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

38 (1) “Authorized submitter” means a party that has entered into
39 a contract with a county recorder pursuant to subdivision (b) of
40 Section 27391 and is not disqualified pursuant to Section 27395.



1 (2) “Computer security auditor” means computer security
2 personnel hired to perform an independent audit of the electronic
3 recording delivery system. The computer security auditor shall be
4 independent of the county recorder and the authorized submitter
5 and shall not be the same contractor hired to establish or participate
6 in a county’s electronic recording delivery system or in the
7 authorized submitter’s portion of that system.

8 (3) “Digital electronic record” means a record containing
9 information that is created, generated, sent, communicated,
10 received, or stored by electronic means, but not created in original
11 paper form.

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

14 (5) “Electronic recording delivery system” means a system to
15 deliver for recording, and to return to the party requesting
16 recording, digitized or digital electronic records.

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

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

25 (8) “System certification” means the issuance of a
26 confirmation letter regarding a county’s electronic recording
27 delivery system by the Attorney General.

28 27391. (a) Upon approval by resolution of the board of
29 supervisors and system certification by the Attorney General, a
30 county recorder may establish an electronic recording delivery
31 system.

32 (b) Upon system certification, a county recorder may enter into
33 a contract with a title insurer, as defined in Section 12340.4 of the
34 Insurance Code, underwritten title company, as defined in Section
35 12340.5 of the Insurance Code, institutional lender, as defined in
36 paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of the
37 Financial Code, or an entity of local, state, or federal government
38 for the delivery for recording, and return to the party requesting
39 recording, of a digitized electronic record that is an instrument
40 affecting a right, title, or interest in real property. The contract may



1 provide for the delivery of documents by an agent. However, the
2 agent shall not be a vendor of electronic recording delivery
3 systems.

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

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

19 (e) When a signature is required to be accompanied by a
20 notary’s seal or stamp, that requirement is satisfied if the electronic
21 signature of the notary contains all of the following:

- 22 (1) The name of the notary.
- 23 (2) The words “Notary Public.”
- 24 (3) The name of the county where the bond and oath of office
25 of the notary are filed.
- 26 (4) The sequential identification number assigned to the notary,
27 if any.
- 28 (5) The sequential identification number assigned to the
29 manufacturer or vendor of the notary’s physical or electronic seal,
30 if any.

31 27392. (a) No electronic recording delivery system may
32 become operational without system certification by the Attorney
33 General. The certification shall affirm that the proposed county
34 system conforms to this article and any regulations adopted
35 pursuant to this article, that security testing has confirmed that the
36 system is secure and that the proposed operating procedures are
37 sufficient to assure the continuing security and lawful operation of
38 that system. The certification may include any agreements
39 between the county recorder and the Attorney General as to the
40 operation of the system, including, but not limited to, the nature



1 and frequency of computer security audits. Certification may be
2 withdrawn for good cause.

3 (b) The Attorney General shall approve software and other
4 services for electronic recording delivery systems pursuant to
5 regulations adopted as described in paragraph (7) of subdivision
6 (b) of Section 27393.

7 27393. (a) The Attorney General shall, in consultation with
8 interested parties, adopt regulations for the review, approval, and
9 oversight of electronic recording delivery systems. Regulations
10 shall be adopted pursuant to the Administrative Procedure Act
11 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
12 Division 3). The regulations shall comply with Section 12168.7.

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

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

17 (2) Requirements for security, capacity, reliability, and
18 uniformity.

19 (3) Requirements as to the nature and frequency of computer
20 security audits.

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

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

29 (6) Requirements to ensure that substantive modifications to an
30 operating system, compilers, related software, or source code are
31 approved by the Attorney General.

32 (7) Procedures for initial certification of vendors offering
33 software and other services to counties for electronic recording
34 delivery systems.

35 (8) Requirements for system certification and for oversight of
36 approved systems.

37 (9) Requirements for fingerprinting and criminal records
38 checks required by Section 27395, including a list of employment
39 positions or classifications subject to criminal records checks
40 under subdivision (f) of that section.



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

3 (11) Requirements for protecting proprietary information
4 accessed pursuant to subdivision (e) of Section 27394 from public
5 disclosure.

6 (12) Requirements for certification under Section 27397.5.

7 (c) The Attorney General may promulgate any other
8 regulations necessary to fulfill his or her obligations under this
9 article.

10 (c) An electronic recording delivery system shall be subject to
11 local inspection and review by the Attorney General. The Attorney
12 General shall furnish a statement of any relevant findings
13 associated with a local inspection of an electronic recording
14 delivery system, to the county recorder and the district attorney of
15 the affected county, and to all technology vendors associated with
16 that system.

17 27394. (a) To be eligible to establish an electronic recording
18 delivery system, a county recorder shall contract with, and obtain
19 a report from, a computer security auditor selected from a list of
20 computer security auditors approved by the Attorney General.

21 (b) The Attorney General shall approve computer security
22 auditors on the basis of significant experience in the evaluation and
23 analysis of Internet security design, the conduct of security testing
24 procedures, and specific experience performing Internet
25 penetration studies. The Attorney General shall complete the
26 approval of security auditors within 90 days of a request from a
27 county recorder. The list shall be a public record.

28 (c) An electronic recording delivery system shall be audited, at
29 least once during the first year of operation and periodically
30 thereafter, as set forth in regulation and in the system certification,
31 by a computer security auditor. The computer security auditor
32 shall conduct security testing of the electronic recording delivery
33 system. The reports of the computer security auditor shall include,
34 but not be limited to, all of the following considerations:

35 (1) Safety and security of the system, including the
36 vulnerability of the electronic recording delivery system to fraud
37 or penetration.

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



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

3 (d) Upon completion, the reports and any response to any
4 recommendations shall be transmitted to the board of supervisors,
5 the county recorder, the county district attorney, and the Attorney
6 General. These reports shall be exempt from disclosure under the
7 California Public Records Act (Chapter 3.5 (commencing with
8 Section 6250) of Division 7 of Title 1).

9 (e) A computer security auditor shall have access to any aspect
10 of an electronic recording delivery system, in any form requested.
11 Computer security auditor access shall include, but not be limited
12 to, permission for a thorough examination of source code and the
13 associated approved escrow facility, and necessary authorization
14 and assistance for a penetration study of that system.

15 (f) If the county recorder, a computer security auditor, a district
16 attorney for a county participating in the electronic recording
17 delivery system, or the Attorney General reasonably believes that
18 an electronic recording delivery system is vulnerable to fraud or
19 intrusion, the county recorder, the board of supervisors, the district
20 attorney, and the Attorney General shall be immediately notified.
21 The county recorder shall immediately take the necessary steps to
22 guard against any compromise of the electronic recording delivery
23 system, including, if necessary, the suspension of an authorized
24 submitter or of the electronic recording delivery system.

25 27395. (a) No person shall be a computer security auditor or
26 be granted secure access to an electronic recording delivery system
27 if he or she has been convicted of a felony, has been convicted of
28 a misdemeanor related to theft, fraud, or a crime of moral
29 turpitude, or if he or she has pending criminal charges for any of
30 these crimes. A plea of guilty or no contest, a verdict resulting in
31 conviction, or the forfeiture of bail, shall be a conviction within the
32 meaning of this section, irrespective of a subsequent order under
33 Section 1203.4 of the Penal Code.

34 (b) All persons entrusted with secure access to an electronic
35 recording delivery system shall submit fingerprints to the Attorney
36 General for a criminal records check according to regulations
37 adopted pursuant to Section 27393.

38 (c) (1) The Attorney General shall submit to the Department
39 of Justice the fingerprint images and related information of
40 persons with secure access to the electronic recording delivery



1 system and computer security auditors for the purpose of obtaining
2 information as to the existence and nature of a record of state level
3 convictions and arrests for which the Department of Justice
4 establishes that the applicant was released on bail or on his or her
5 own recognizance pending trial.

6 (2) The Department of Justice shall respond to the Attorney
7 General for criminal offender record information requests
8 submitted pursuant to this section, with information as delineated
9 in subdivision (l) of Section 11105 of the Penal Code.

10 (3) The Attorney General shall request subsequent arrest
11 notification service, pursuant to Section 11105.2 of the Penal
12 Code, for all persons with secure access to the electronic recording
13 delivery system and all computer security auditors.

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

18 (e) The Department of Justice shall charge a fee sufficient to
19 cover the cost of processing the criminal offender record
20 information request and any other costs incurred pursuant to this
21 section.

22 (f) The Attorney General shall define "secure access" by
23 regulation and by agreement with the county recorder in the
24 system certification.

25 27396. (a) The Attorney General shall monitor the security
26 of electronic recording delivery systems statewide, in close
27 cooperation with county recorders and public prosecutors. In the
28 event of an emergency involving multiple fraudulent transactions
29 linked to one county's use of an electronic recording delivery
30 system, the Attorney General may order the suspension of
31 electronic recording delivery systems in any county or in multiple
32 counties, if necessary to protect the security of the system, for a
33 period of up to seven court days. The Attorney General may seek
34 an order from the superior court if it is necessary to extend this
35 order.

36 (b) (1) The Attorney General, a district attorney, or a city
37 prosecutor may bring an action in the name of the people of the
38 state seeking declaratory or injunctive relief, restitution for
39 damages or economic loss, rescission, or other equitable relief
40 pertaining to any alleged violation of this article or regulations



1 adopted pursuant to this article. Injunctive relief may include, but
2 is not limited to, an order suspending a party from participation in
3 the electronic recording delivery system, on a temporary or
4 permanent basis.

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

8 27397. (a) A county establishing an electronic recording
9 delivery system under this article shall pay for the direct cost of
10 regulation and oversight by the Attorney General.

11 (b) The Attorney General may charge a fee directly to a vendor
12 seeking approval of software and other services as part of an
13 electronic recording delivery system. The fee shall not exceed the
14 reasonable costs of approving software or other services for
15 vendors.

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

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

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

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

27 (d) The total fees assessed by a county recorder pursuant to this
28 section may not exceed the reasonable total costs of the electronic
29 recording delivery system, the review and approval of vendors and
30 potential authorized submitters, security testing as required by this
31 article and the regulations of the Attorney General, and
32 reimbursement to the Attorney General for regulation and
33 oversight of the electronic recording delivery system.

34 (e) Fees paid to the Attorney General pursuant to subdivisions
35 (a) and (b) shall be deposited in the Electronic Recording
36 Authorization Account, which is hereby created in the Special
37 Deposit Fund, and, notwithstanding Section 13340, is
38 continuously appropriated, without regard to fiscal years, to the
39 Attorney General for the costs described in those subdivisions.



1 27397.5. (a) A county recorder may include in the county's
2 electronic recording delivery system a secure method for
3 accepting for recording a digital or digitized electronic record that
4 is an instrument of reconveyance, substitution of trustee, or
5 assignment of deed of trust.

6 (b) A county recorder may contract with a title insurer, as
7 defined in Section 12340.4 of the Insurance Code, underwritten
8 title company, as defined in Section 12340.5 of the Insurance
9 Code, an entity of state, local, or federal government, or an
10 institutional lender, as defined in Section 50003 of the Financial
11 Code, or their authorized agents, to be an authorized submitter of
12 the documents specified in subdivision (a).

13 (c) With respect to the electronic submission of the records
14 described in subdivision (a), the requirements that an authorized
15 submitter be subject to a security audit under Section 27394 and
16 a criminal records check under Section 27395 shall not apply
17 where the certification requirements of subdivision (d) have been
18 met.

19 (d) (1) In order for subdivision (c) to apply, the county
20 recorder and the Attorney General shall certify that the method of
21 submission allowed under the system will not permit an authorized
22 submitter or its employees and agents, or any third party, to
23 modify, manipulate, insert, or delete information in the public
24 record, maintained by the county recorder, or information in
25 electronic records ~~other than those specified in subdivision (a)~~
26 *submitted pursuant to subdivision (b) of Section 27391.*

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

30 (e) For purposes of this section, an agent of an authorized
31 submitter shall not include a vendor of electronic recording
32 delivery systems.

33 27398. (a) The Attorney General shall conduct an evaluation
34 of electronic recording delivery systems authorized by this article,
35 and report to both houses of the Legislature on or before June 30,
36 2009.

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



1 (c) The evaluation shall also include a study of the feasibility
2 of expanding the provisions of this article to cover the delivery,
3 recording, and return of other electronic records.

4 27399. (a) Nothing in this article shall be construed to
5 authorize any state agency to administer any of the processes or
6 procedures relating to the business of the county recorders of the
7 state in any manner not otherwise specifically set forth in this
8 article.

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

11 (c) Nothing in this article shall be construed to repeal or affect
12 Section 27279, 27279.1, 27279.2, 27297.6, 27387.1, or 27399.7,
13 or the authority of the Counties of Orange and San Bernardino to
14 act under those provisions.

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

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

