

Introduced by Senator Block

February 20, 2013

An act to amend Sections 452.5, 1284, 1452, 1453, 1530, and 1531 of, and to add Section 137 to, the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

SB 378, as introduced, Block. Evidence: admissibility: electronically digitized versions.

Existing law governs the admissibility of evidence in civil and criminal proceedings, as well as actions before referees and court commissioners.

This bill would, as defined, provide that an electronically digitized copy of specified documents and other items is admissible as evidence to the same extent that those documents and items are otherwise admissible as evidence under existing law, including official records of criminal convictions, specified writings made by an employee who is the official custodian of records of a public entity, seals, signatures, purported copies of writings in the custody of a public entity, and attested or certified copies.

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 137 is added to the Evidence Code, to
- 2 read:
- 3 137. "Electronically digitized copy" means a copy that is made
- 4 by scanning, photographing, or otherwise exactly reproducing a
- 5 document, is stored or maintained in a digitized format, and bears

1 an electronic signature or watermark unique to the entity
2 responsible for certifying the document.

3 SEC. 2. Section 452.5 of the Evidence Code is amended to
4 read:

5 452.5. (a) The official acts and records specified in
6 subdivisions (c) and (d) of Section 452 include any
7 computer-generated official court records, as specified by the
8 Judicial Council which relate to criminal convictions, when the
9 record is certified by a clerk of the superior court pursuant to
10 Section 69844.5 of the Government Code at the time of computer
11 entry.

12 (b) An official record of conviction certified in accordance with
13 subdivision (a) of Section 1530, *or an electronically digitized copy*
14 *thereof*, is admissible pursuant to Section 1280 to prove the
15 commission, attempted commission, or solicitation of a criminal
16 offense, prior conviction, service of a prison term, or other act,
17 condition, or event recorded by the record.

18 SEC. 3. Section 1284 of the Evidence Code is amended to read:

19 1284. Evidence of a writing, *including an electronically*
20 *digitized copy thereof*, made by the public employee who is the
21 official custodian of the records in a public office, reciting *a*
22 diligent search and failure to find a record, is not made inadmissible
23 by the hearsay rule when offered to prove the absence of a record
24 in that office.

25 SEC. 4. Section 1452 of the Evidence Code is amended to read:

26 1452. A seal, *including an electronically digitized copy thereof*,
27 is presumed to be genuine and its use authorized if it purports to
28 be the seal of:

29 (a) The United States or a department, agency, or public
30 employee of the United States.

31 (b) A public entity in the United States or a department, agency,
32 or public employee of such public entity.

33 (c) A nation recognized by the executive power of the United
34 States or a department, agency, or officer of such nation.

35 (d) A public entity in a nation recognized by the executive power
36 of the United States or a department, agency, or officer of such
37 public entity.

38 (e) A court of admiralty or maritime jurisdiction.

39 (f) A notary public within any state of the United States.

40 SEC. 5. Section 1453 of the Evidence Code is amended to read:

1 1453. A signature, *including an electronically digitized copy*
2 *thereof*, is presumed to be genuine and authorized if it purports to
3 be the signature, affixed in his official capacity, of:

- 4 (a) A public employee of the United States.
- 5 (b) A public employee of any public entity in the United States.
- 6 (c) A notary public within any state of the United States.

7 SEC. 6. Section 1530 of the Evidence Code is amended to read:

8 1530. (a) A purported copy, *including an electronically*
9 *digitized copy*, of a writing in the custody of a public entity, or of
10 an entry in such a writing, is prima facie evidence of the existence
11 and content of such writing or entry if:

12 (1) The copy purports to be published by the authority of the
13 nation or state, or public entity therein in which the writing is kept;

14 (2) The office in which the writing is kept is within the United
15 States or within the Panama Canal Zone, the Trust Territory of the
16 Pacific Islands, or the Ryukyu Islands, and the copy is attested or
17 certified as a correct copy of the writing or entry by a public
18 employee, or a deputy of a public employee, having the legal
19 custody of the writing; or

20 (3) The office in which the writing is kept is not within the
21 United States or any other place described in paragraph (2) and
22 the copy is attested as a correct copy of the writing or entry by a
23 person having authority to make attestation. The attestation must
24 be accompanied by a final statement certifying the genuineness of
25 the signature and the official position of (i) the person who attested
26 the copy as a correct copy, or (ii) any foreign official who has
27 certified either the genuineness of the signature and official position
28 of the person attesting the copy or the genuineness of the signature
29 and official position of another foreign official who has executed
30 a similar certificate in a chain of such certificates beginning with
31 a certificate of the genuineness of the signature and official position
32 of the person attesting the copy. Except as provided in the next
33 sentence, the final statement may be made only by a secretary of
34 an embassy or legation, consul general, consul, vice consul, or
35 consular agent of the United States, or a diplomatic or consular
36 official of the foreign country assigned or accredited to the United
37 States. Prior to January 1, 1971, the final statement may also be
38 made by a secretary of an embassy or legation, consul general,
39 consul, vice consul, consular agent, or other officer in the foreign
40 service of the United States stationed in the nation in which the

1 writing is kept, authenticated by the seal of his office. If reasonable
2 opportunity has been given to all parties to investigate the
3 authenticity and accuracy of the documents, the court may, for
4 good cause shown, (i) admit an attested copy without the final
5 statement, or (ii) permit the writing or entry in foreign custody to
6 be evidenced by an attested summary with or without a final
7 statement.

8 (b) The presumptions established by this section are
9 presumptions affecting the burden of producing evidence.

10 SEC. 7. Section 1531 of the Evidence Code is amended to read:

11 1531. For the purpose of evidence, whenever a copy of a
12 writing is attested or certified, the attestation or certificate must
13 state in substance that the copy is a correct copy of the original,
14 or of a specified part thereof, as the case may be. *An electronically*
15 *digitized copy of an attested or certified copy is admissible to the*
16 *same extent as an attested or certified copy.*