

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 378

Introduced by Senator Block

February 20, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 378, as amended, Block. ~~Evidence: admissibility: Official record of conviction: admissibility of electronically digitized versions copy.~~

Existing law provides that evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if specified conditions apply. Existing law provides that an official record of conviction certified under a specified statute is admissible under this hearsay exception to prove the commission, attempted commission, or solicitation of a criminal offense, prior conviction, service of a prison term, or other act, condition, or event recorded by the record.

This bill would provide that an electronically digitized copy, as defined, of an official record of conviction is also admissible under this hearsay exception for the same purposes as the official record.

~~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~~
6 ~~an electronic signature or watermark unique to the entity~~
7 ~~responsible for certifying the document.~~

8 ~~SEC. 2.~~

9 ~~SECTION 1.~~ Section 452.5 of the Evidence Code is amended
10 to read:

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

18 (b) (1) An official record of conviction certified in accordance
19 with subdivision (a) of Section 1530, or an electronically digitized
20 copy thereof, is admissible ~~pursuant to~~ *under* Section 1280 to prove
21 the commission, attempted commission, or solicitation of a criminal
22 offense, prior conviction, service of a prison term, or other act,
23 condition, or event recorded by the record.

24 (2) *For purposes of this subdivision, “electronically digitized*
25 *copy” means a copy that is made by scanning, photographing, or*
26 *otherwise exactly reproducing a document, is stored or maintained*
27 *in a digitized format, and bears an electronic signature or*
28 *watermark unique to the entity responsible for certifying the*
29 *document.*

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

1 ~~1284. Evidence of a writing, including an electronically~~
2 ~~digitized copy thereof, made by the public employee who is the~~
3 ~~official custodian of the records in a public office, reciting a~~
4 ~~diligent search and failure to find a record, is not made inadmissible~~
5 ~~by the hearsay rule when offered to prove the absence of a record~~
6 ~~in that office.~~

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

8 1452. A seal, including an electronically digitized copy thereof,
9 is presumed to be genuine and its use authorized if it purports to
10 be the seal of:

11 (a) ~~The United States or a department, agency, or public~~
12 ~~employee of the United States.~~

13 (b) ~~A public entity in the United States or a department, agency,~~
14 ~~or public employee of such public entity.~~

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

17 (d) ~~A public entity in a nation recognized by the executive power~~
18 ~~of the United States or a department, agency, or officer of such~~
19 ~~public entity.~~

20 (e) ~~A court of admiralty or maritime jurisdiction.~~

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

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

23 1453. A signature, including an electronically digitized copy
24 thereof, is presumed to be genuine and authorized if it purports to
25 be the signature, affixed in his official capacity, of:

26 (a) ~~A public employee of the United States.~~

27 (b) ~~A public employee of any public entity in the United States.~~

28 (c) ~~A notary public within any state of the United States.~~

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

30 1530. (a) ~~A purported copy, including an electronically~~
31 ~~digitized copy, of a writing in the custody of a public entity, or of~~
32 ~~an entry in such a writing, is prima facie evidence of the existence~~
33 ~~and content of such writing or entry if:~~

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

36 (2) ~~The office in which the writing is kept is within the United~~
37 ~~States or within the Panama Canal Zone, the Trust Territory of the~~
38 ~~Pacific Islands, or the Ryukyu Islands, and the copy is attested or~~
39 ~~certified as a correct copy of the writing or entry by a public~~

1 employee, or a deputy of a public employee, having the legal
2 custody of the writing; or

3 (3) ~~The office in which the writing is kept is not within the~~
4 ~~United States or any other place described in paragraph (2) and~~
5 ~~the copy is attested as a correct copy of the writing or entry by a~~
6 ~~person having authority to make attestation. The attestation must~~
7 ~~be accompanied by a final statement certifying the genuineness of~~
8 ~~the signature and the official position of (i) the person who attested~~
9 ~~the copy as a correct copy, or (ii) any foreign official who has~~
10 ~~certified either the genuineness of the signature and official position~~
11 ~~of the person attesting the copy or the genuineness of the signature~~
12 ~~and official position of another foreign official who has executed~~
13 ~~a similar certificate in a chain of such certificates beginning with~~
14 ~~a certificate of the genuineness of the signature and official position~~
15 ~~of the person attesting the copy. Except as provided in the next~~
16 ~~sentence, the final statement may be made only by a secretary of~~
17 ~~an embassy or legation, consul general, consul, vice consul, or~~
18 ~~consular agent of the United States, or a diplomatic or consular~~
19 ~~official of the foreign country assigned or accredited to the United~~
20 ~~States. Prior to January 1, 1971, the final statement may also be~~
21 ~~made by a secretary of an embassy or legation, consul general,~~
22 ~~consul, vice consul, consular agent, or other officer in the foreign~~
23 ~~service of the United States stationed in the nation in which the~~
24 ~~writing is kept, authenticated by the seal of his office. If reasonable~~
25 ~~opportunity has been given to all parties to investigate the~~
26 ~~authenticity and accuracy of the documents, the court may, for~~
27 ~~good cause shown, (i) admit an attested copy without the final~~
28 ~~statement, or (ii) permit the writing or entry in foreign custody to~~
29 ~~be evidenced by an attested summary with or without a final~~
30 ~~statement.~~

31 (b) ~~The presumptions established by this section are~~
32 ~~presumptions affecting the burden of producing evidence.~~

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

34 ~~1531. For the purpose of evidence, whenever a copy of a~~
35 ~~writing is attested or certified, the attestation or certificate must~~
36 ~~state in substance that the copy is a correct copy of the original,~~
37 ~~or of a specified part thereof, as the case may be. An electronically~~
38 ~~digitized copy of an attested or certified copy is admissible to the~~
39 ~~same extent as an attested or certified copy.~~

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