

ASSEMBLY BILL

No. 1867

Introduced by Assembly Member Steinorth

February 10, 2016

An act to amend Sections 1452, 1453, and 1530 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1867, as introduced, Steinorth. Evidence: admissibility: writings.

Existing law requires a writing to be authenticated before it can be received in evidence. Existing law defines authentication of a writing as the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or the establishment of such facts by any other means, as provided. Under existing law a seal is presumed to be genuine and its use authorized if it purports to be the seal of certain entities including, among other, the United States or a department, agency, or public employee of the United States.

This bill would provide that this presumption applies to a scanned, electronically stored, faxed, photocopied, or other duplicate of a seal.

Under existing law a signature is presumed to be genuine and authorized if it purports to be the signature, affixed in his or her official capacity of a public employee of the United States, a public employee or any public entity in the United States, or a notary public within any state of the United States.

This bill would provide that this presumption applies to a scanned, electronically stored, faxed, photocopied, or other duplicate of a signature.

Under existing law a purported copy of a writing in the custody of a public entity, or of an entry in such a writing, is prima facie evidence of the existence and content of such writing or entry if, among other things, the office in which the writing is kept is within the United States or other specified territory, and the copy is attested or certified as a correct copy of the writing or entry by a public employee or a deputy of a public employee, having the legal custody of the writing.

This bill would provide that this presumption applies to a scanned, electronically stored, faxed, photocopied, or other duplicate of an attested or other certified correct copy of a writing or entry. The bill would also make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

- 1 SECTION 1. Section 1452 of the Evidence Code is amended
- 2 to read:
- 3 1452. (a) A seal is presumed to be genuine and its use
- 4 authorized if it purports to be the seal of:
- 5 (a)
- 6 (1) The United States or a department, agency, or public
- 7 employee of the United States.
- 8 (b)
- 9 (2) A public entity in the United States or a department, agency,
- 10 or public employee of such public entity.
- 11 (c)
- 12 (3) A nation recognized by the executive power of the United
- 13 States or a department, agency, or officer of such nation.
- 14 (d)
- 15 (4) A public entity in a nation recognized by the executive power
- 16 of the United States or a department, agency, or officer of such
- 17 public entity.
- 18 (e)
- 19 (5) A court of admiralty or maritime jurisdiction.
- 20 (f)
- 21 (6) A notary public within any state of the United States.
- 22 (b) *The presumption set forth in subdivision (a) applies to a*
- 23 *scanned, electronically stored, faxed, photocopied, or other*
- 24 *duplicate of a seal.*

1 SEC. 2. Section 1453 of the Evidence Code is amended to read:
2 1453. (a) A signature is presumed to be genuine and
3 authorized if it purports to be the signature, affixed in his *or her*
4 official capacity, of:

5 ~~(a)~~

6 (1) A public employee of the United States.

7 ~~(b)~~

8 (2) A public employee of any public entity in the United States.

9 ~~(c)~~

10 (3) A notary public within any state of the United States.

11 (b) *The presumption set forth in subdivision (a) applies to a*
12 *scanned, electronically stored, faxed, photocopied, or other*
13 *duplicate of a signature.*

14 SEC. 3. Section 1530 of the Evidence Code is amended to read:

15 1530. (a) A purported copy of a writing in the custody of a
16 public entity, or of an entry in such a writing, is prima facie
17 evidence of the existence and content of such writing or entry ~~if:~~
18 *if any of the following apply:*

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

22 (2) The office in which the writing is kept is within the United
23 States or within the Panama Canal Zone, the Trust Territory of the
24 Pacific Islands, or the Ryukyu Islands, and the copy is attested or
25 certified as a correct copy of the writing or entry by a public
26 employee, or a deputy of a public employee, having the legal
27 custody of the ~~writing~~; or writing. *The presumption set forth in*
28 *this paragraph applies to a scanned, electronically stored, faxed,*
29 *photocopied, or other duplicate of an attested or other certified*
30 *correct copy of a writing or entry.*

31 (3) The office in which the writing is kept is not within the
32 United States or any other place described in paragraph (2) and
33 the copy is attested as a correct copy of the writing or entry by a
34 person having authority to make attestation. The attestation must
35 be accompanied by a final statement certifying the genuineness of
36 the signature and the official position of ~~(i)~~ (A) the person who
37 attested the copy as a correct copy or ~~(ii)~~ (B) any foreign official
38 who has certified either the genuineness of the signature and
39 official position of the person attesting the copy or the genuineness
40 of the signature and official position of another foreign official

1 who has executed a similar certificate in a chain of such certificates
2 beginning with a certificate of the genuineness of the signature
3 and official position of the person attesting the copy. Except as
4 provided in the next sentence, the final statement may be made
5 only by a secretary of an embassy or legation, consul general,
6 consul, vice consul, or consular agent of the United States, or a
7 diplomatic or consular official of the foreign country assigned or
8 accredited to the United States. ~~Prior to~~ *Before* January 1, 1971,
9 the final statement may also be made by a secretary of an embassy
10 or legation, consul general, consul, vice consul, consular agent, or
11 other officer in the foreign service of the United States stationed
12 in the nation in which the writing is kept, authenticated by the seal
13 of his *or her* office. If reasonable opportunity has been given to
14 all parties to investigate the authenticity and accuracy of the
15 documents, the court may, for good cause shown, ~~(i)~~ (A) admit an
16 attested copy without the final statement or ~~(ii)~~ (B) permit the
17 writing or entry in foreign custody to be evidenced by an attested
18 summary with or without a final statement.
19 (b) The presumptions established by this section are
20 presumptions affecting the burden of producing evidence.