

AMENDED IN ASSEMBLY MARCH 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1867

Introduced by Assembly Member Steinorth

February 10, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1867, as amended, Steinorth. Evidence: ~~admissibility; writings; judicial notice; official records of conviction.~~

Existing law authorizes judicial notice to be taken of certain matters, including the official acts of state and federal legislative, executive, and judicial departments and the records of any state or federal court. Existing law provides that a certified official record of conviction, or an electronically digitized copy of that record, is admissible to prove, among other things, the act, condition, or event recorded by the record. Existing law defines "electronically digitized copy" as a copy (1) made by scanning, photographing, or otherwise exactly reproducing a document, (2) stored or maintained in a digitized format, and (3) bearing an electronic signature or watermark unique to the entity responsible for certifying the document.

This bill would additionally include as an "electronically digitized copy" a copy that, rather than bearing an electronic signature or watermark unique to the entity certifying the document, was transmitted by a superior court clerk in a manner showing that the copy was prepared and transmitted by that superior court clerk.

~~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 452.5 of the Evidence Code is amended
- 2 to read:
- 3 452.5. (a) The official acts and records specified in
- 4 subdivisions (c) and (d) of Section 452 include any
- 5 computer-generated official court records, as specified by the
- 6 Judicial Council which *Council*, that relate to criminal convictions,
- 7 when the record is certified by a clerk of the superior court pursuant

1 to Section 69844.5 of the Government Code at the time of computer
2 entry.

3 (b) (1) An official record of conviction certified in accordance
4 with subdivision (a) of Section 1530, or an electronically digitized
5 copy thereof, is admissible under Section 1280 to prove the
6 commission, attempted commission, or solicitation of a criminal
7 offense, prior conviction, service of a prison term, or other act,
8 condition, or event recorded by the record.

9 (2) For purposes of this subdivision, “electronically digitized
10 copy” means a copy that is made by scanning, photographing, or
11 otherwise exactly reproducing a document, is stored or maintained
12 in a digitized format, and ~~bears an electronic signature or~~
13 ~~watermark unique to the entity responsible for certifying the~~
14 ~~document.~~ *meets either of the following requirements:*

15 (A) *The copy bears an electronic signature or watermark unique*
16 *to the entity responsible for certifying the document.*

17 (B) *The document that is copied is an official record of*
18 *conviction, certified in accordance with subdivision (a) of Section*
19 *1530, that is transmitted by the clerk of the superior court in a*
20 *manner showing that the copy was prepared and transmitted by*
21 *that clerk of the superior court. A seal, signature, or other indicia*
22 *of the court shall constitute adequate showing.*

23 ~~SECTION 1. Section 1452 of the Evidence Code is amended~~
24 ~~to read:~~

25 ~~1452. (a) A seal is presumed to be genuine and its use~~
26 ~~authorized if it purports to be the seal of:~~

27 ~~(1) The United States or a department, agency, or public~~
28 ~~employee of the United States.~~

29 ~~(2) A public entity in the United States or a department, agency,~~
30 ~~or public employee of such public entity.~~

31 ~~(3) A nation recognized by the executive power of the United~~
32 ~~States or a department, agency, or officer of such nation.~~

33 ~~(4) A public entity in a nation recognized by the executive power~~
34 ~~of the United States or a department, agency, or officer of such~~
35 ~~public entity.~~

36 ~~(5) A court of admiralty or maritime jurisdiction.~~

37 ~~(6) A notary public within any state of the United States.~~

38 ~~(b) The presumption set forth in subdivision (a) applies to a~~
39 ~~scanned, electronically stored, faxed, photocopied, or other~~
40 ~~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 authorized~~
3 ~~if it purports to be the signature, affixed in his or her official~~
4 ~~capacity, of:~~

- 5 (1) ~~A public employee of the United States.~~
- 6 (2) ~~A public employee of any public entity in the United States.~~
- 7 (3) ~~A notary public within any state of the United States.~~

8 (b) ~~The presumption set forth in subdivision (a) applies to a~~
9 ~~scanned, electronically stored, faxed, photocopied, or other~~
10 ~~duplicate of a signature.~~

11 SEC. 3. ~~Section 1530 of the Evidence Code is amended to read:~~
12 1530. (a) ~~A purported copy of a writing in the custody of a~~
13 ~~public entity, or of an entry in such a writing, is prima facie~~
14 ~~evidence of the existence and content of such writing or entry if~~
15 ~~any of the following apply:~~

16 (1) ~~The copy purports to be published by the authority of the~~
17 ~~nation or state, or public entity of the nation or state in which the~~
18 ~~writing is kept.~~

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

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

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