

ASSEMBLY BILL

No. 2143

Introduced by Assembly Member Irwin

February 17, 2016

An act to amend Sections 27391, 27393, and 27397.5 of the Government Code, relating to electronic recording.

LEGISLATIVE COUNSEL'S DIGEST

AB 2143, as introduced, Irwin. County recorder: electronic recording.

The Electronic Recording Delivery Act of 2004 authorizes 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 electronic records, subject to specified conditions. The act authorizes a county recorder to enter into a contract with specified entities for the delivery for recording, and return to the party requesting recording a digitized electronic record that is an instrument affecting a right, title, or interest in real property. The act also authorizes a county recorder to contract with the specified entities or their authorized agents to be an authorized submitter of a digital or digitized electronic record that is an instrument of reconveyance, substitution of trustee, or assignment of deed of trust.

The bill would authorize a county recorder to also enter into a contract with an authorized submitter for the delivery for recording, and return to the party requesting recording, of a digital or digitized electronic record that is an instrument to be recorded consistent with a specified provision, or for the submission of a digital or digitized electronic record. The bill would require an authorized submitter, as specified, and any agent submitting documents on behalf of an authorized

submitter, to provide proof of financial responsibility in the form of general liability coverage, as provided.

Existing law requires the Attorney General, in consultation with interested parties, to adopt regulations for the review, approval, and oversight of electronic recording delivery systems. Existing law authorizes the regulations to include specified requirements and procedures.

This bill would additionally authorize the regulations to include requirements for general liability coverage as described above.

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 27391 of the Government Code is
 2 amended to read:
 3 27391. (a) Upon approval by resolution of the board of
 4 supervisors and system certification by the Attorney General, a
 5 county recorder may establish an electronic recording delivery
 6 system.
 7 (b) Upon system certification, a county recorder may enter into
 8 a contract with a title insurer, as defined in Section 12340.4 of the
 9 Insurance Code, underwritten title company, as defined in Section
 10 12340.5 of the Insurance Code, institutional lender, as defined in
 11 paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of the
 12 Financial Code, or an entity of local, state, or federal government
 13 for the delivery for recording, and return to the party requesting
 14 recording, of a *digital or digitized* electronic record that is an
 15 ~~instrument affecting a right, title, or interest in real property.~~ *to be*
 16 *recorded consistent with subdivision (a) of Section 27201.* The
 17 contract may provide for the delivery of documents by an agent.
 18 However, the agent shall not be a vendor of electronic recording
 19 delivery systems.
 20 (c) (1) *A county recorder may enter into a contract with an*
 21 *authorized submitter not authorized pursuant to subdivision (b)*
 22 *for the delivery for recording, and return to the party requesting*
 23 *recording, of a digital or digitized electronic record that is an*
 24 *instrument to be recorded consistent with subdivision (a) of Section*
 25 *27201. The contract may provide for the delivery of documents by*

1 *an agent. However, the agent shall not be a vendor of electronic*
2 *recording delivery systems.*

3 (2) *An authorized submitter authorized pursuant to this*
4 *subdivision and any agent submitting documents on behalf of an*
5 *authorized submitter pursuant to this subdivision shall provide*
6 *proof of financial responsibility by providing a certificate of*
7 *insurance evidencing an amount of general liability coverage of*
8 *at least one million dollars (\$1,000,000).*

9 ~~(e)~~

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

21 ~~(e)~~

22 (e) Notwithstanding Section 27321, a county recorder may
23 require a party electronically submitting records to mail a copy of
24 the recorded electronic document to the address specified in the
25 instructions for mailing upon completion of recording.

26 ~~(e)~~

27 (f) When a signature is required to be accompanied by a notary's
28 seal or stamp, that requirement is satisfied if the electronic
29 signature of the notary contains all of the following:

30 (1) The name of the notary.

31 (2) The words "Notary Public."

32 (3) The name of the county where the bond and oath of office
33 of the notary are filed.

34 (4) The sequential identification number assigned to the notary,
35 if any.

36 (5) The sequential identification number assigned to the
37 manufacturer or vendor of the notary's physical or electronic seal,
38 if any.

39 SEC. 2. Section 27393 of the Government Code is amended
40 to read:

1 27393. (a) The Attorney General shall, in consultation with
 2 interested parties, adopt regulations for the review, approval, and
 3 oversight of electronic recording delivery systems. Regulations
 4 shall be adopted pursuant to the Administrative Procedure Act
 5 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
 6 Division 3). The regulations shall comply with Section 12168.7.
 7 (b) The regulations adopted pursuant to subdivision (a) may
 8 include, but need not be limited to, all of the following:
 9 (1) Establishment of baseline technological and procedural
 10 specifications for electronic recording delivery systems.
 11 (2) Requirements for security, capacity, reliability, and
 12 uniformity.
 13 (3) Requirements as to the nature and frequency of computer
 14 security audits.
 15 (4) A statement of a detailed and uniform definition of the term
 16 “source code” consistent with paragraph (7) of subdivision (b) of
 17 Section 27390, and as used in this article, and applicable to each
 18 county’s electronic recording delivery system.
 19 (5) Requirements for placement of a copy of the operating
 20 system, source code, compilers, and all related software associated
 21 with each county’s electronic recording delivery system in an
 22 approved escrow facility prior to that system’s first use.
 23 (6) Requirements to ensure that substantive modifications to an
 24 operating system, compilers, related software, or source code are
 25 approved by the Attorney General.
 26 (7) Procedures for initial certification of vendors offering
 27 software and other services to counties for electronic recording
 28 delivery systems.
 29 (8) Requirements for system certification and for oversight of
 30 approved systems.
 31 (9) *Requirements for general liability coverage required by*
 32 *subdivision (c) of Section 27391.*
 33 ~~(9)~~
 34 (10) Requirements for fingerprinting and criminal records checks
 35 required by Section 27395, including a list of employment positions
 36 or classifications subject to criminal records checks under
 37 subdivision (f) of that section.
 38 ~~(10)~~
 39 (11) Requirements for uniform index information that shall be
 40 included in every digitized or digital electronic record.

1 ~~(11)~~
2 (12) Requirements for protecting proprietary information
3 accessed pursuant to subdivision (e) of Section 27394 from public
4 disclosure.

5 ~~(12)~~
6 (13) Requirements for certification under Section 27397.5.

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

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

16 SEC. 3. Section 27397.5 of the Government Code is amended
17 to read:

18 27397.5. (a) A county recorder may include in the county's
19 electronic recording delivery system a secure method for accepting
20 for recording a digital or digitized electronic record that is an
21 instrument of reconveyance, substitution of trustee, or assignment
22 of deed of trust. *record.*

23 (b) A county recorder may contract with ~~a title insurer, as~~
24 ~~defined in Section 12340.4 of the Insurance Code, underwritten~~
25 ~~title company, as defined in Section 12340.5 of the Insurance Code,~~
26 ~~an entity of state, local, or federal government, or an institutional~~
27 ~~lender, as defined in Section 50003 of the Financial Code, an~~
28 *authorized submitter* or their authorized agents, to be an authorized
29 submitter of the documents specified in subdivision (a).

30 (c) With respect to the electronic submission of the records
31 described in subdivision (a), the requirements that an authorized
32 submitter be subject to a security audit under Section 27394 and
33 a criminal records check under Section 27395 shall not apply where
34 the certification requirements of subdivision (d) have been met.

35 (d) (1) In order for subdivision (c) to apply, the county recorder
36 and the Attorney General shall certify that the method of
37 submission allowed under the system will not permit an authorized
38 submitter or its employees and agents, or any third party, to modify,
39 manipulate, insert, or delete information in the public record,

1 maintained by the county recorder, or information in electronic
2 records submitted pursuant to subdivision (b) of Section 27391.

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

6 (e) For purposes of this section, an agent of an authorized
7 submitter shall not include a vendor of electronic recording delivery
8 systems.

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