

AMENDED IN SENATE JUNE 6, 2016  
AMENDED IN ASSEMBLY APRIL 12, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2143**

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**Introduced by Assembly Member Irwin**

February 17, 2016

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An act to amend ~~Section~~ *Sections 27296 and 27390* of, and to amend, repeal, and add Sections 27391 and 27393 ~~to, of~~, the Government Code, relating to electronic recording.

LEGISLATIVE COUNSEL'S DIGEST

AB 2143, as amended, Irwin. County recorder: electronic recording. *Existing law requires the county recorder in each county to complete a yearly statistical report on a specified form of documents recorded and filed.*

*This bill would require the report to also include information regarding electronically submitted documents, and would require documents to be counted and reported in the same manner without regard to method of transmission.*

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~~ *recording*, a digitized electronic record that is an instrument affecting a right, title, or interest in real property.

This bill, until January 1, 2027, 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. The bill, until January 1, 2027, 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, until January 1, 2027, 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 27296 of the Government Code is  
2 amended to read:  
3 27296. (a) The county recorder in each county shall complete  
4 a yearly statistical report of ~~documents~~ documents, including  
5 electronically transmitted documents, recorded and filed on the  
6 form ~~herein described~~. Such a described in subdivision (b). The  
7 report shall be submitted to the office of the Insurance  
8 Commissioner. Documents shall be counted and reported in the  
9 same manner without regard to method of transmission. The county  
10 recorder may either charge for copies of this report or may disburse  
11 the report without fee for public information. Certified and  
12 noncertified copies of any records issued by the county recorder  
13 shall not be included in this report.  
14 ~~The~~  
15 (b) The standard statistical report form shall be substantially  
16 as follows:  
17  
18

Documents Recorded and Filed

1		Year
2	Deeds .....	
3	Deeds of Trust and Mortgages .....	
4	Reconveyances .....	
5	Trustee’s Deeds .....	
6	Total number of documents recorded and filed .....	

7  
8 **SECTION 1.**

9 *SEC. 2.* Section 27390 of the Government Code is amended  
10 to read:

11 27390. (a) This article shall be known and may be cited as the  
12 Electronic Recording Delivery Act of 2004.

13 (b) For the purposes of this article, the following definitions  
14 shall apply:

15 (1) “Authorized submitter” means a party that has entered into  
16 a contract with a county recorder pursuant to Section 27391 and  
17 is not disqualified pursuant to Section 27395.

18 (2) “Computer security auditor” means computer security  
19 personnel hired to perform an independent audit of the electronic  
20 recording delivery system. The computer security auditor shall be  
21 independent of the county recorder and the authorized submitter  
22 and shall not be the same contractor hired to establish or participate  
23 in a county’s electronic recording delivery system or in the  
24 authorized submitter’s portion of that system.

25 (3) “Digital electronic record” means a record containing  
26 information that is created, generated, sent, communicated,  
27 received, or stored by electronic means, but not created in original  
28 paper form.

29 (4) “Digitized electronic record” means a scanned image of the  
30 original paper document.

31 (5) “Electronic recording delivery system” means a system to  
32 deliver for recording, and to return to the party requesting  
33 recording, digitized or digital electronic records.

34 (6) “Security testing” means an independent security audit by  
35 a computer security auditor, including, but not limited to, attempts  
36 to penetrate an electronic recording delivery system for the purpose  
37 of testing the security of that system.

38 (7) “Source code” means a program or set of programs, readable  
39 and maintainable by humans, translated or interpreted into a form  
40 that the electronic recording delivery system can execute.

1 (8) “System certification” means the issuance of a confirmation  
2 letter regarding a county’s electronic recording delivery system  
3 by the Attorney General.

4 ~~SEC. 2.~~

5 *SEC. 3.* Section 27391 of the Government Code is amended  
6 to read:

7 27391. (a) Upon approval by resolution of the board of  
8 supervisors and system certification by the Attorney General, a  
9 county recorder may establish an electronic recording delivery  
10 system.

11 (b) Upon system certification, a county recorder may enter into  
12 a contract with a title insurer as defined in Section 12340.4 of the  
13 Insurance Code, underwritten title company as defined in Section  
14 12340.5 of the Insurance Code, institutional lender as defined in  
15 paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of the  
16 Financial Code, or an entity of local, state, or federal government  
17 for the delivery for recording, and return to the party requesting  
18 recording, of a digital or digitized electronic record that is an  
19 instrument to be recorded consistent with subdivision (a) of Section  
20 27201. The contract may provide for the delivery of documents  
21 by an agent. However, the agent shall not be a vendor of electronic  
22 recording delivery systems.

23 (c) (1) A county recorder may enter into a contract with an  
24 authorized submitter not authorized pursuant to subdivision (b)  
25 for the delivery for recording, and return to the party requesting  
26 recording, of a digital or digitized electronic record that is an  
27 instrument to be recorded consistent with subdivision (a) of Section  
28 27201. The contract may provide for the delivery of documents  
29 by an agent. However, the agent shall not be a vendor of electronic  
30 recording delivery systems.

31 (2) An authorized submitter authorized pursuant to this  
32 subdivision and any agent submitting documents on behalf of an  
33 authorized submitter pursuant to this subdivision shall provide  
34 proof of financial responsibility by providing a certificate of  
35 insurance evidencing an amount of general liability coverage of  
36 at least one million dollars (\$1,000,000).

37 (d) A county recorder may refuse to enter into a contract with  
38 any party or may terminate or suspend access to a system for any  
39 good faith reason, including, but not limited to, a determination  
40 by the county recorder that termination or suspension is necessary

1 to protect the public interest, to protect the integrity of public  
2 records, or to protect homeowners from financial harm, or if the  
3 volume or quality of instruments submitted by the requester is not  
4 sufficient to warrant electronic recordation. A county recorder may  
5 also terminate or suspend access to a system if a party commits a  
6 substantive breach of the contract, the requirements of this article,  
7 or the regulations adopted pursuant to this article.

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

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

15 (1) The name of the notary.

16 (2) The words "Notary Public."

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

19 (4) The sequential identification number assigned to the notary,  
20 if any.

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

24 (g) This section shall remain in effect only until January 1, 2027,  
25 and as of that date is repealed.

26 ~~SEC. 3.~~

27 *SEC. 4.* Section 27391 is added to the Government Code, to  
28 read:

29 27391. (a) Upon approval by resolution of the board of  
30 supervisors and system certification by the Attorney General, a  
31 county recorder may establish an electronic recording delivery  
32 system.

33 (b) Upon system certification, a county recorder may enter into  
34 a contract with a title insurer as defined in Section 12340.4 of the  
35 Insurance Code, underwritten title company as defined in Section  
36 12340.5 of the Insurance Code, institutional lender, lender  
37 as defined in paragraph (1), (2), or (4) of subdivision (j) of Section  
38 50003 of the Financial Code, or an entity of local, state, or federal  
39 government for the delivery for recording, and return to the party  
40 requesting recording, of a digitized electronic record that is an

1 instrument affecting a right, title, or interest in real property. The  
2 contract may provide for the delivery of documents by an agent.  
3 However, the agent shall not be a vendor of electronic recording  
4 delivery systems.

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

16 (d) Notwithstanding Section 27321, a county recorder may  
17 require a party electronically submitting records to mail a copy of  
18 the recorded electronic document to the address specified in the  
19 instructions for mailing upon completion of recording.

20 (e) When a signature is required to be accompanied by a notary’s  
21 seal or stamp, that requirement is satisfied if the electronic  
22 signature of the notary contains all of the following:

- 23 (1) The name of the notary.
- 24 (2) The words “Notary Public.”
- 25 (3) The name of the county where the bond and oath of office  
26 of the notary are filed.
- 27 (4) The sequential identification number assigned to the notary,  
28 if any.
- 29 (5) The sequential identification number assigned to the  
30 manufacturer or vendor of the notary’s physical or electronic seal,  
31 if any.

32 (f) ~~The~~ This section shall become operative on January 1, 2027.  
33 ~~SEC. 4.~~

34 SEC. 5. Section 27393 of the Government Code is amended  
35 to read:

36 27393. (a) The Attorney General shall, in consultation with  
37 interested parties, adopt regulations for the review, approval, and  
38 oversight of electronic recording delivery systems. Regulations  
39 shall be adopted pursuant to the Administrative Procedure Act

1 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
2 Division 3). The regulations shall comply with Section 12168.7.

3 (b) The regulations adopted pursuant to subdivision (a) may  
4 include, but need not be limited to, all of the following:

5 (1) Establishment of baseline technological and procedural  
6 specifications for electronic recording delivery systems.

7 (2) Requirements for security, capacity, reliability, and  
8 uniformity.

9 (3) Requirements as to the nature and frequency of computer  
10 security audits.

11 (4) A statement of a detailed and uniform definition of the term  
12 “source code” consistent with paragraph (7) of subdivision (b) of  
13 Section 27390, and as used in this article, and applicable to each  
14 county’s electronic recording delivery system.

15 (5) Requirements for placement of a copy of the operating  
16 system, source code, compilers, and all related software associated  
17 with each county’s electronic recording delivery system in an  
18 approved escrow facility prior to that system’s first use.

19 (6) Requirements to ensure that substantive modifications to an  
20 operating system, compilers, related software, or source code are  
21 approved by the Attorney General.

22 (7) Procedures for initial certification of vendors offering  
23 software and other services to counties for electronic recording  
24 delivery systems.

25 (8) Requirements for system certification and for oversight of  
26 approved systems.

27 (9) Requirements for general liability coverage required by  
28 subdivision (c) of Section 27391.

29 (10) Requirements for fingerprinting and criminal records checks  
30 required by Section 27395, including a list of employment positions  
31 or classifications subject to criminal records checks under  
32 subdivision (f) of that section.

33 (11) Requirements for uniform index information that shall be  
34 included in every digitized or digital electronic record.

35 (12) Requirements for protecting proprietary information  
36 accessed pursuant to subdivision (e) of Section 27394 from public  
37 disclosure.

38 (13) Requirements for certification under Section 27397.5.

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

1 (d) An electronic recording delivery system shall be subject to  
2 local inspection and review by the Attorney General. The Attorney  
3 General shall furnish a statement of any relevant findings  
4 associated with a local inspection of an electronic recording  
5 delivery system, to the county recorder and the district attorney of  
6 the affected county, and to all technology vendors associated with  
7 that system.

8 (e) This section shall remain in effect only until January 1, 2027,  
9 and as of that date is repealed.

10 ~~SEC. 5.~~

11 *SEC. 6.* Section 27393 is added to the Government Code, to  
12 read:

13 27393. (a) The Attorney General shall, in consultation with  
14 interested parties, adopt regulations for the review, approval, and  
15 oversight of electronic recording delivery systems. Regulations  
16 shall be adopted pursuant to the Administrative Procedure Act  
17 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
18 Division 3). The regulations shall comply with Section 12168.7.

19 (b) The regulations adopted pursuant to subdivision (a) may  
20 include, but need not be limited to, all of the following:

21 (1) Establishment of baseline technological and procedural  
22 specifications for electronic recording delivery systems.

23 (2) Requirements for security, capacity, reliability, and  
24 uniformity.

25 (3) Requirements as to the nature and frequency of computer  
26 security audits.

27 (4) A statement of a detailed and uniform definition of the term  
28 “source code” consistent with paragraph (7) of subdivision (b) of  
29 Section 27390, and as used in this article, and applicable to each  
30 county’s electronic recording delivery system.

31 (5) Requirements for placement of a copy of the operating  
32 system, source code, compilers, and all related software associated  
33 with each county’s electronic recording delivery system in an  
34 approved escrow facility prior to that system’s first use.

35 (6) Requirements to ensure that substantive modifications to an  
36 operating system, compilers, related software, or source code are  
37 approved by the Attorney General.

38 (7) Procedures for initial certification of vendors offering  
39 software and other services to counties for electronic recording  
40 delivery systems.

1 (8) Requirements for system certification and for oversight of  
2 approved systems.

3 (9) Requirements for fingerprinting and criminal records checks  
4 required by Section 27395, including a list of employment positions  
5 or classifications subject to criminal records checks under  
6 subdivision (f) of that section.

7 (10) Requirements for uniform index information that shall be  
8 included in every digitized or digital electronic record.

9 (11) Requirements for protecting proprietary information  
10 accessed pursuant to subdivision (e) of Section 27394 from public  
11 disclosure.

12 (12) Requirements for certification under Section 27397.5.

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

15 (d) An electronic recording delivery system shall be subject to  
16 local inspection and review by the Attorney General. The Attorney  
17 General shall furnish a statement of any relevant findings  
18 associated with a local inspection of an electronic recording  
19 delivery system, to the county recorder and the district attorney of  
20 the affected county, and to all technology vendors associated with  
21 that system.

22 (e) This section shall become operative on January 1, 2027.