

AMENDED IN SENATE JUNE 28, 2016

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 Sections 27296 and 27390 of, and to amend, repeal, and add Sections 27391 and 27393 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, 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, including electronically  
5 transmitted documents, recorded and filed on the form described  
6 in subdivision (b). The report shall be submitted to the office of  
7 the Insurance Commissioner. Documents shall be counted and  
8 reported in the same manner without regard to method of  
9 transmission. The county recorder may either charge for copies of  
10 this report or may disburse the report without fee for public  
11 information. Certified and noncertified copies of any records issued  
12 by the county recorder shall not be included in this report.

13 (b) The standard statistical report form shall be substantially as  
14 follows:

15

16

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

10 27390. (a) This article shall be known and may be cited as the  
11 Electronic Recording Delivery Act of 2004.

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

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

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

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

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

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

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

37 (7) “Source code” means a program or set of programs, readable  
38 and maintainable by humans, translated or interpreted into a form  
39 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. 3. Section 27391 of the Government Code is amended  
 5 to read:

6 27391. (a) Upon approval by resolution of the board of  
 7 supervisors and system certification by the Attorney General, a  
 8 county recorder may establish an electronic recording delivery  
 9 system.

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

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

30 (2) An authorized submitter authorized pursuant to this  
 31 subdivision and any agent submitting documents on behalf of an  
 32 authorized submitter pursuant to this subdivision shall provide  
 33 proof of financial responsibility by providing a certificate of  
 34 insurance evidencing an amount of general liability coverage ~~of~~  
 35 ~~at least one million dollars (\$1,000,000):~~ *reasonably adequate to*  
 36 *protect against liability and cover potential losses. The amount of*  
 37 *general liability coverage required by this paragraph shall be set*  
 38 *through rule or regulation by the Attorney General in consultation*  
 39 *with interested parties.*

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

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

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

19 (1) The name of the notary.

20 (2) The words "Notary Public."

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

23 (4) The sequential identification number assigned to the notary,  
24 if any.

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

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

30 SEC. 4. Section 27391 is added to the Government Code, to  
31 read:

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

36 (b) Upon system certification, a county recorder may enter into  
37 a contract with a title insurer as defined in Section 12340.4 of the  
38 Insurance Code, underwritten title company as defined in Section  
39 12340.5 of the Insurance Code, institutional lender as defined in  
40 paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of the

1 Financial Code, or an entity of local, state, or federal government  
2 for the delivery for recording, and return to the party requesting  
3 recording, of a digitized electronic record that is an instrument  
4 affecting a right, title, or interest in real property. The contract  
5 may provide for the delivery of documents by an agent. However,  
6 the agent shall not be a vendor of electronic recording delivery  
7 systems.

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

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

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

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

35 (f) This section shall become operative on January 1, 2027.

36 SEC. 5. Section 27393 of the Government Code is amended  
37 to read:

38 27393. (a) The Attorney General shall, in consultation with  
39 interested parties, adopt regulations for the review, approval, and  
40 oversight of electronic recording delivery systems. Regulations

1 shall be adopted pursuant to the Administrative Procedure Act  
2 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
3 Division 3). The regulations shall comply with Section 12168.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (13) Requirements for certification under Section 27397.5.

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

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

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

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

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

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

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

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

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

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

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

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

1 (7) Procedures for initial certification of vendors offering  
2 software and other services to counties for electronic recording  
3 delivery systems.

4 (8) Requirements for system certification and for oversight of  
5 approved systems.

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

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

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

15 (12) Requirements for certification under Section 27397.5.

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

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

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