

## Assembly Bill No. 2143

### CHAPTER 380

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.

[Approved by Governor September 16, 2016. Filed with Secretary of State September 16, 2016.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2143, 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.

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

SECTION 1. Section 27296 of the Government Code is amended to read:

27296. (a) The county recorder in each county shall complete a yearly statistical report of documents, including electronically transmitted documents, recorded and filed on the form described in subdivision (b). The report shall be submitted to the office of the Insurance Commissioner. Documents shall be counted and reported in the same manner without regard to method of transmission. The county recorder may either charge for copies of this report or may disburse the report without fee for public information. Certified and noncertified copies of any records issued by the county recorder shall not be included in this report.

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

Documents Recorded and Filed	Year
Deeds .....	
Deeds of Trust and Mortgages .....	
Reconveyances .....	
Trustee’s Deeds .....	
Total number of documents recorded and filed .....	

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

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

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

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

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

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

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

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

(6) “Security testing” means an independent security audit by a computer security auditor, including, but not limited to, attempts to penetrate an

electronic recording delivery system for the purpose of testing the security of that system.

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

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

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

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

(b) Upon system certification, a county recorder may enter into a contract with a title insurer as defined in Section 12340.4 of the Insurance Code, underwritten title company as defined in Section 12340.5 of the Insurance Code, institutional lender as defined in paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of the Financial Code, or an entity of local, state, or federal government 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 subdivision (a) of Section 27201. The contract may provide for the delivery of documents by an agent. However, the agent shall not be a vendor of electronic recording delivery systems.

(c) (1) A county recorder may enter into a contract with an authorized submitter not authorized pursuant to subdivision (b) 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 subdivision (a) of Section 27201. The contract may provide for the delivery of documents by an agent. However, the agent shall not be a vendor of electronic recording delivery systems.

(2) An authorized submitter authorized pursuant to this subdivision and any agent submitting documents on behalf of an authorized submitter pursuant to this subdivision shall provide proof of financial responsibility by providing a certificate of insurance evidencing an amount of general liability coverage reasonably adequate to protect against liability and cover potential losses. The amount of general liability coverage required by this paragraph shall be set through rule or regulation by the Attorney General in consultation with interested parties.

(d) A county recorder may refuse to enter into a contract with any party or may terminate or suspend access to a system for any good faith reason, including, but not limited to, a determination by the county recorder that termination or suspension is necessary to protect the public interest, to protect the integrity of public records, or to protect homeowners from financial harm, or if the volume or quality of instruments submitted by the requester is not sufficient to warrant electronic recordation. A county recorder may also terminate or suspend access to a system if a party commits

a substantive breach of the contract, the requirements of this article, or the regulations adopted pursuant to this article.

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

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

- (1) The name of the notary.
- (2) The words "Notary Public."
- (3) The name of the county where the bond and oath of office of the notary are filed.
- (4) The sequential identification number assigned to the notary, if any.
- (5) The sequential identification number assigned to the manufacturer or vendor of the notary's physical or electronic seal, if any.

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

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

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

(b) Upon system certification, a county recorder may enter into a contract with a title insurer as defined in Section 12340.4 of the Insurance Code, underwritten title company as defined in Section 12340.5 of the Insurance Code, institutional lender as defined in paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of the Financial Code, or an entity of local, state, or federal government for the delivery for recording, and return to the party requesting recording, of a digitized electronic record that is an instrument affecting a right, title, or interest in real property. The contract may provide for the delivery of documents by an agent. However, the agent shall not be a vendor of electronic recording delivery systems.

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

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

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

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

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

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

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

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

- (1) Establishment of baseline technological and procedural specifications for electronic recording delivery systems.
- (2) Requirements for security, capacity, reliability, and uniformity.
- (3) Requirements as to the nature and frequency of computer security audits.
- (4) A statement of a detailed and uniform definition of the term “source code” consistent with paragraph (7) of subdivision (b) of Section 27390, and as used in this article, and applicable to each county’s electronic recording delivery system.
- (5) Requirements for placement of a copy of the operating system, source code, compilers, and all related software associated with each county’s electronic recording delivery system in an approved escrow facility prior to that system’s first use.
- (6) Requirements to ensure that substantive modifications to an operating system, compilers, related software, or source code are approved by the Attorney General.
- (7) Procedures for initial certification of vendors offering software and other services to counties for electronic recording delivery systems.
- (8) Requirements for system certification and for oversight of approved systems.
- (9) Requirements for general liability coverage required by subdivision (c) of Section 27391.
- (10) Requirements for fingerprinting and criminal records checks required by Section 27395, including a list of employment positions or classifications subject to criminal records checks under subdivision (f) of that section.
- (11) Requirements for uniform index information that shall be included in every digitized or digital electronic record.

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

(13) Requirements for certification under Section 27397.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) Requirements for certification under Section 27397.5.

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

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

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