

AMENDED IN ASSEMBLY MAY 1, 2003

AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 578

Introduced by Assembly Member Leno

February 18, 2003

An act to amend ~~Sections 27297.6 and~~ Section 27361.4 of, to add Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3 of, and to repeal Sections 27279.4 and 27398 of, the Government Code, relating to county recorders, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 578, as amended, Leno. County recorders: electronic recording.

(1) Existing law generally specifies that the recorder of any county may, in lieu of a written paper, accept for recording a digitized image of a recordable instrument, subject to specified conditions.

This bill would enact the Electronic Recording Delivery System Act of 2003, to authorize a county recorder to establish an electronic recording delivery system for the recording of digitized electronic records affecting the right, title, or interest in real property, subject to specified conditions, including regulation and oversight by the Attorney General. It would authorize the Attorney General to charge a fee directly to a vendor seeking approval of software and other services as part of an electronic recording delivery system.

This bill would, until January 1, 2011, authorize up to 12 counties, subject to approval by their respective boards of supervisors, to participate in an electronic recording pilot project utilizing digital electronic records to record real property documents, subject to specified criteria. The Attorney General would be required to evaluate the pilot projects and report to both houses of the Legislature on or before June 30, 2007.

(2) Existing law authorizes the board of supervisors of any county to provide for specified fees for the filing and indexing of documents with the county recorder.

This bill would authorize the board of supervisors of any county to provide for an additional fee of up to \$1 per document for recording of a document electronically. It would authorize charging this fee for a period of up to 5 years after a county implements an electronic recording system.

(3) Existing law requires the Attorney General to appoint an Electronic Recordation Task Force, consisting of specified representatives, to meet on a regular basis to address the technical, legal, security, and economic issues associated with electronic recordation, and recommendations on specified issues.

This bill would repeal this provision.

(4) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~ ^{2/3}. 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 27279.4 of the Government Code is
2 repealed.

3 SEC. 2. Section 27361.4 of the Government Code is amended
4 to read:

5 27361.4. (a) The board of supervisors of any county may
6 provide for an additional fee of one dollar (\$1) for filing every
7 instrument, paper, or notice for record, in order to defray the cost
8 of converting the county recorder's document storage system to
9 micrographics. Upon completion of the conversion and payment
10 of the costs therefor, this additional fee shall no longer be imposed.

11 (b) The board of supervisors of any county may provide for an
12 additional fee, other than the fees authorized in subdivisions (a)

1 and (c), of one dollar (\$1) for filing every instrument, paper, or
2 notice for record provided that the resolution providing for the
3 additional fee establishes the days of operation of the county
4 recorder's offices as every business day except for legal holidays
5 and those holidays designated as judicial holidays pursuant to
6 Section 135 of the Code of Civil Procedure.

7 (c) The board of supervisors of any county may provide for an
8 additional fee, other than the fees authorized in subdivisions (a)
9 and (b), of one dollar (\$1) for filing every instrument, paper, or
10 notice for record provided that the resolution providing for the
11 additional fee requires that the instrument, paper, or notice be
12 indexed within two business days after the date of recordation.

13 (d) The board of supervisors of any county may provide for an
14 additional fee, other than the fee provided for in subdivisions (a),
15 (b), and (c), of up to one dollar (\$1) per document for recording
16 a document electronically. This additional fee may be charged for
17 up to five years after the implementation of an electronic recording
18 system.

19 SEC. 3. Article 6 (commencing with Section 27390) is added
20 to Chapter 6 of Division 2 of Title 3 of the Government Code, to
21 read:

22
23 Article 6. Electronic Recording Delivery System Act of 2003

24
25 27390. (a) This article shall be known and may be cited as the
26 Electronic Recording Delivery System Act of 2003.

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

29 (1) "Authorized staff" means either of the following:

30 (A) Any employee, contractor, designee, or agent of an
31 authorized submitter to an electronic recording delivery system.

32 (B) Any employee, contractor, designee, or agent of a county
33 recorder who is entrusted with access to the electronic recording
34 delivery system.

35 (2) "Authorized submitter" means any of the following
36 entities that has complied with this article, including any
37 regulations adopted pursuant to this article, and ~~who have~~ *that has*
38 contracted with a county recorder to electronically record
39 documents:

1 (A) An entity, agency, branch, or instrumentality of local, state,
2 or federal government.

3 (B) A licensed title insurance company as defined in Section
4 12340.4 or 12340.5 of the Insurance Code, or an escrow company
5 subject to Chapter 2 (commencing with Section 17200) of
6 Division 6 of the Financial Code.

7 (C) The Federal National Mortgage Association (Fannie Mae)
8 or the Federal Home Mortgage Association (Freddie Mac).

9 (D) An institutional investor as defined in subdivision (i) of
10 Section 5003 of the Financial Code.

11 (E) Any additional submitter determined by a county recorder
12 to be eligible pursuant to Section 27391.

13 (3) “Computer security auditor” means accredited computer
14 security personnel, hired from either the public or private sector,
15 to perform an independent audit or review of the electronic
16 recording delivery system. The computer security auditor shall be
17 independent of the county and shall not be the same contractor
18 hired to establish or participate in that electronic recording
19 delivery system or in any other county’s electronic recording
20 delivery system.

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

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

27 (6) “Document” means an instrument or record that otherwise
28 meets the requirements of this article and affects the right or title
29 to, interest in, or possession of, real property.

30 (7) “Electronic” means relating to technology having
31 electrical, digital, magnetic, wireless, optical, electromagnetic, or
32 similar capabilities.

33 (8) “Electronic document” means a document that is created,
34 generated, sent, communicated, or received by electronic means.

35 (9) “Electronic recording delivery system” means a system to
36 deliver for recording, and for return to the party requesting
37 recording, digitized electronic records affecting the right, title, or
38 interest in real property.

39 (10) “Electronic signature” means an electronic sound,
40 symbol, or process attached to or logically associated with an



1 electronic record and executed or adopted by a person with the
2 intent to sign the electronic record.

3 (11) “Security testing” means an independent computer
4 security audit, including, but not limited to, the use of computer
5 security auditors to attempt to penetrate an electronic recording
6 delivery system for the purpose of testing the security of that
7 system. Security testing, including penetration studies, shall be
8 subject to regulation by the Attorney General.

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

13 (13) “System certification” means issuance of a confirmation
14 letter regarding a specific electronic recording delivery system by
15 the Attorney General. The system certification shall include any
16 agreements between the Attorney General as to the operation of
17 the electronic recording delivery system, including, but not
18 limited to, the frequency of computer security audits.

19 27391. In addition to any other person or entity described in
20 paragraph (2) of subdivision (b) of Section 27390 as an authorized
21 submitter, the county recorder may in his or her discretion
22 determine other persons or entities to be authorized submitters.
23 The recorder shall be guided in the exercise of his or her discretion
24 by the following factors:

25 (a) Whether accepting electronically delivered records from
26 the person or entity is in the best interest of the county and the
27 public.

28 (b) Whether the person or entity requesting access to the
29 program for the purpose of electronically delivering documents
30 has effective security precautions in place to safeguard against
31 potential fraud and forgery of documents during the electronic
32 delivery process.

33 (c) Whether the person or entity requesting access
34 demonstrates the maintenance of sufficient financial ability to
35 indemnify losses for which it is responsible that might be suffered
36 by the county or members of the public. The recorder may in his
37 or her sole discretion consider or require net worth, maintenance
38 of insurance or bonding, access to indemnity or fidelity funds,
39 other evidences of financial ability, or any combination thereof.

1 (d) Whether the volume and quality of electronic records
2 submitted will be sufficient to warrant electronic delivery.

3 (e) Whether factors of cost, capacity, or security require the
4 limitation of the provision of access to persons requesting to
5 participate, based upon business reasons for recording documents,
6 scope of authority under a license, if any, and volume of
7 documents recorded in previous years.

8 27392. (a) A county recorder may establish an electronic
9 recording delivery system in accordance with this article.

10 (b) Any system developed pursuant to this article shall provide
11 for proper offsite archival procedures in accordance with
12 guidelines developed pursuant to Section 12236.

13 (c) Any system developed pursuant to this article shall require
14 a governing contractual relationship between the recorder and
15 each authorized submitter that includes, but need not be limited to,
16 the following components:

17 (1) A requirement that the submitter comply with this article
18 and any implementing regulations.

19 (2) Provisions governing the identification and supervision of
20 authorized staff.

21 (3) Mutually agreed upon standards of operation of the
22 electronic recording delivery system.

23 (4) Permission by the submitter for security testing.

24 (5) A provision specifying that the agreement may be
25 terminated at any time.

26 (d) Notwithstanding Section 27203, a recorder may refuse to
27 enter an agreement with an authorized submitter, or may refuse to
28 accept an electronically delivered document from an authorized
29 submitter whenever any of the following occur:

30 (1) The submitter or authorized staff has been convicted of a
31 crime related to fraud or dishonesty.

32 (2) The recorder reasonably believes that the submitter or
33 authorized staff has engaged in improper conduct relating to the
34 recording of documents.

35 (3) The recorder reasonably believes that the submitter or
36 authorized staff has violated any provision of the contractual
37 agreement required by this article.

38 (e) The county recorder may terminate access to any electronic
39 recording delivery system, or any part of a system, or may
40 terminate access of any authorized submitter, or any authorized

1 staff, at any time he or she deems it necessary to protect the public
2 interest, to protect the integrity of public records, to protect
3 homeowners or real property owners from financial harm, or in the
4 event an authorized submitter or its agents or employees violates
5 any rules or regulations established by the county recorder for
6 maintenance of the system. No cause of action or liability against
7 the county recorder or any government agency shall arise from the
8 decision of the county recorder to terminate or deny access of any
9 person to the electronic recording delivery system.

10 27393. (a) To be eligible to establish an electronic recording
11 delivery system, a county or county recorder shall contract with,
12 and obtain a report from, a computer security auditor selected from
13 a list of computer security auditors approved by the Attorney
14 General.

15 (b) The Attorney General shall approve computer security
16 auditors on the basis of significant experience in the evaluation and
17 analysis of Internet security design, the conduct of security testing
18 procedures, and specific experience performing Internet
19 penetration studies.

20 (c) The Attorney General shall complete the approval of
21 security auditors within 90 days of a request from a county
22 recorder. The list shall be a public record. The computer security
23 auditor shall conduct ongoing monitoring of the electronic
24 recording delivery system and issue periodic reports, with the
25 frequency of monitoring and reporting to be determined by
26 regulation. The reports of the computer security auditor shall
27 include, but not be limited to, all of the following considerations:

28 (1) Safety and security of the proposed system, including the
29 vulnerability of the electronic recordation system to fraud or
30 penetration.

31 (2) Results of testing of the system's protections against fraud
32 or intrusion, including security testing and penetration studies.

33 (3) Recommendations of any additional precautions or
34 provisions needed to ensure that the proposed system is as secure
35 and protects the integrity of the recorder's records.

36 (d) Upon completion, the reports and any response to any
37 recommendations shall be transmitted to the board of supervisors,
38 the county district attorney and the Attorney General. A county
39 may not begin an electronic recording delivery system until
40 security testing, as defined in paragraph (11) of subdivision (b) of

1 Section 27390, has demonstrated that the system is secure and
2 system certification has occurred. The Attorney General shall not
3 approve any electronic recording delivery system, unless it fulfills
4 the requirements of this article and the regulations of the Attorney
5 General.

6 (e) An electronic recording delivery system shall be audited, at
7 least once during the first year of operation and periodically
8 thereafter, as set forth in regulation and in the system certification,
9 by a computer security auditor. The nature and scope of the audit
10 shall conform to this article and regulations adopted pursuant to
11 this article. Audit reports shall be submitted to the Attorney
12 General, the county district attorney, and the county recorder. In
13 conducting the audit, the primary role of the computer security
14 auditor shall be to protect the public interest and ensure that
15 electronic recording delivery systems are reliable and secure.

16 (f) A computer security auditor shall have access to any aspect
17 of an electronic recording delivery system, in any form requested.
18 Auditor access shall include, but not be limited to, permission for
19 a thorough examination of source code and the associated
20 approved escrow facility, and necessary authorization and
21 assistance for a penetration study of that system.

22 (g) If the county recorder, a computer security auditor, a district
23 attorney for a county participating in the electronic recording
24 delivery system, or the Attorney General reasonably believes that
25 an electronic recording delivery system is vulnerable to fraud or
26 intrusion, the county recorder, the board of supervisors, the district
27 attorney, and the Attorney General shall be immediately notified.
28 The county recorder shall immediately take the necessary steps to
29 guard against any compromise of the electronic recording delivery
30 system, including, if necessary, the suspension of the electronic
31 recording delivery system.

32 27394. (a) In lieu of the requirements set forth in Section
33 27321, after acceptance for recording, the county recorder shall
34 electronically transmit a copy of each recorded electronic
35 document accepted under this article to the authorized submitter.
36 The authorized submitter shall be responsible for mailing either by
37 United States Postal Service or electronically a copy of the
38 recorded electronic document to the address specified in the
39 instructions for mailing upon completion of recording.



(b) 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.

(c) In addition to, and notwithstanding Section 27361.5, a county recorder, with approval by resolution of the board of supervisors, may require, but need not be limited to, the following index information on the first page or sheet of a digital or digitized electronic document presented for recording:

(1) The parcel identifier number of the real estate.

(2) The address of the real estate, to the extent available.

(3) The name of the authorized submitter presenting the document for recording.

(4) The name of the authorized requestor of a document for recording.

(5) The marital, corporate, partnership, or other similar legal status of a person who is a party to the document.

(6) The date of the document.

(7) The number of pages or sheets contained in the record, including the first page or sheet.

(8) The transmittal information to identify the sender and provide recording record information.

27395. (a) (1) All individuals who are entrusted with access to the electronic recording delivery system as authorized staff, or a computer security auditor, shall submit two 8" by 8" fingerprint cards bearing the legible rolled and flat impressions of their fingerprints together with a personal description, prepared by a local public law enforcement agency, which shall transmit the card to the Bureau of Criminal Identification and Information in the Department of Justice. Positions subject to this subdivision shall be determined by regulation and shall be set forth in a county's system certification.

1 (2) The Attorney General may utilize an alternate system of
2 examining fingerprints if that system meets the same standard of
3 reliability and security set forth in this subdivision and is approved
4 and operated by the Department of Justice.

5 (3) The Department of Justice may forward one copy of the
6 applicant's fingerprint cards to the Federal Bureau of Investigation
7 for the purpose of obtaining any record of previous out-of-state
8 conviction of an applicant.

9 (b) The Department of Justice shall ascertain whether an
10 individual applicant authorized staff or an individual applicant
11 computer security auditor has suffered a felony conviction or a
12 misdemeanor conviction for theft, fraud, or moral turpitude,
13 including whether the individual applicant has pending criminal
14 charges within the State of California. No individual applicant
15 classified as authorized staff or as a computer security auditor may
16 be employed in the security status of having access to the
17 electronic recording delivery system, if he or she has suffered a
18 felony conviction or misdemeanor conviction for theft, fraud, or
19 crimes of moral turpitude, nor may the applicant have pending
20 criminal charges of felony violations or allegations of
21 misdemeanor charges for theft, fraud, or crimes of moral
22 turpitude, as detailed in the criminal history information that is
23 reviewed by the Department of Justice. A plea or verdict of guilty
24 or a finding of guilt by a court in a trial without a jury for forfeiture
25 of bail is deemed to be a conviction within the meaning of this
26 article, irrespective of a subsequent order under the provisions of
27 Section 1203.4 of the Penal Code allowing the withdrawal of the
28 plea of guilty and entering of a plea of not guilty, or setting aside
29 the verdict of guilty, or dismissing the accusations or information.

30 (c) The Department of Justice shall charge a fee sufficient to
31 cover the cost of processing the fingerprint submission and to
32 cover the cost of the Department of Justice maintaining and storing
33 all applicant records.

34 (d) Once the Department of Justice has ascertained the criminal
35 history information of an applicant, it shall forward a written
36 notification of criminal convictions or pending criminal charges,
37 or both, to the division of the Office of the Attorney General
38 charged with oversight duties regarding this article.

39 (e) The Attorney General shall deliver written notification of
40 an applicant's ineligibility for access to an electronic recording

1 delivery system to an applicant, his or her known employer,
2 whether it be a public or private employer, to the related authorized
3 submitter, and to the county recorder of the jurisdiction where the
4 applicant seeks access to an electronic recording delivery system.

5 27396. County recorders are encouraged to experiment with
6 notices to property owners to help them become aware of possible
7 fraudulent or erroneous recordings against their properties.

8 27397. (a) The Attorney General shall, in consultation with
9 the County Recorders Association of California and the California
10 District Attorneys Association, adopt regulations establishing
11 standards for the review and approval by county recorders of
12 systems and processes to conduct electronic recording and
13 providing for the regulatory oversight of electronic recording
14 delivery systems. Regulations shall be adopted pursuant to the
15 Administrative Procedures Act, Chapter 3.5 (commencing with
16 Section 11340) of Part 1 of Division 3.

17 (b) No electronic recording delivery system may become
18 operational without the approval of the Attorney General pursuant
19 to applicable regulations adopted pursuant to this article.

20 (c) The regulations shall include general guidelines relating to
21 security, capacity, reliability, and uniformity, and shall comply
22 with Section 12168.7. The regulations shall establish minimum
23 standards to ensure that a county recorder has the capability of
24 identifying security problems that may make the system
25 susceptible to fraud or any attempt to tamper with official records,
26 and shall establish specific guidelines, including the approximate
27 frequency of security testing, and standards for security and
28 security testing.

29 (d) The regulations governing security shall require that each
30 electronic recording delivery system comply with all requirements
31 deemed by the Attorney General to be consistent with the public
32 interest in electronic recording delivery systems being as reliable
33 and secure as possible.

34 (e) The regulations shall also contain all of the following:

35 (1) A statement of a uniform definition of the term “source
36 code” consistent with this article and applicable to every
37 electronic recording delivery system throughout the State.

38 (2) The placement of an exact copy of each source code
39 associated with each approved electronic recording project in an
40 approved escrow facility prior to that system’s first use.

(3) A requirement that any modification to a source code held in escrow that is associated with an approved electronic recording delivery system be approved by the Attorney General.

(4) An expression of standardized policies and procedures for the establishment and operation of approved escrow facilities.

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

(f) Regulations may also provide for initial certification of vendors offering software and other services to counties for electronic recording delivery systems.

(g) The Attorney General shall monitor the security of electronic recording delivery systems statewide, in close cooperation with county recorders. In the event of an emergency involving multiple fraudulent transactions linked to one county's use of an electronic recording delivery system, the Attorney General may order the suspension of electronic recording delivery systems in any county or in multiple counties, if necessary to protect the security of the system, for a period of up to seven calendar days.

(h) The Attorney General or a district attorney may initiate an action for declaratory or injunctive relief pertaining to any alleged violation of this article or regulations adopted pursuant to this article.

(i) 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 to the county recorder of the inspected electronic recording delivery system and to all technology vendors associated with that system.

27398. (a) Subject to the approval of their respective boards of supervisors, up to 12 counties may participate in an electronic recording pilot project utilizing digital electronic records to record real property documents.

(b) Except as set forth in this section, the requirements contained in this article shall apply to an electronic recording pilot project implemented under this section.

(c) The Attorney General may enact any additional regulations necessary to ensure the security of a system based upon digital electronic records, including regulations related to the acceptance

1 of a document containing an electronic signature or digital
2 notarization.

3 (d) The Attorney General shall conduct an evaluation of the
4 pilot projects and report to both houses of the Legislature on or
5 before June 30, 2007. The Legislature may, based on this
6 evaluation, consider whether the pilot project should be expanded
7 or extended, or limited or terminated.

8 (e) Subject to the requirements of this article, a pilot project
9 established under subdivision (a) that is in lawful operation on
10 June 30, 2007, may continue in operation until December 31,
11 2010.

12 (f) This section shall remain in effect only until January 1,
13 2011, and as of that date is repealed, unless a later enacted statute,
14 that is enacted before January 1, 2011, deletes or extends that date.

15 27399. (a) Nothing in this article shall be construed to
16 authorize any public agency to intrude upon the autonomy or
17 business practices of the county recorders of the State of California
18 in any manner not specifically set forth in this article.

19 (b) If a district attorney or county counsel for a county
20 developing an electronic recording delivery system or the
21 Attorney General reasonably believes that a system operated
22 pursuant to this article has been compromised by fraud or
23 intrusion, he or she shall immediately take the necessary steps to
24 alert the county recorder to guard against any compromise of the
25 system that may result in the suspension of electronic recording.

26 27399.5. The authority granted in this article is in addition to
27 any other authority or obligation under California or federal law.
28 Nothing in this article shall be construed to repeal or affect Section
29 27279, 27279.1, 27279.2, or 27279.3.

30 *SEC. 4. This act is an urgency statute necessary for the*
31 *immediate preservation of the public peace, health, or safety*
32 *within the meaning of Article IV of the Constitution and shall go*
33 *into immediate effect. The facts constituting the necessity are:*

34 *In order that county recorders may alleviate fiscal constraints*
35 *by implementing electronic recording delivery systems at the*
36 *earliest possible time, it is necessary for this act to take effect*
37 *immediately.*

