

AMENDED IN SENATE AUGUST 25, 2004  
AMENDED IN SENATE AUGUST 24, 2004  
AMENDED IN SENATE JUNE 28, 2004  
AMENDED IN SENATE JUNE 23, 2004  
AMENDED IN ASSEMBLY JULY 3, 2003  
AMENDED IN ASSEMBLY MAY 12, 2003  
AMENDED IN ASSEMBLY MAY 5, 2003  
AMENDED IN ASSEMBLY MAY 1, 2003  
AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 578**

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**Introduced by Assembly Member Leno**

February 18, 2003

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An act to add Article 6 (commencing with Section 27390) to Chapter 6 of Division 2 of Title 3 of the Government Code, relating to county recorders, making an appropriation therefor, 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 Act of 2004, to authorize 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 and digital electronic records, subject to specified conditions, including system certification, regulation, and oversight by the Attorney General. It would authorize a county recorder to include in its electronic recording delivery system a secure method for accepting for recording a digital or digitized electronic record that is an instrument of reconveyance, substitution of trustee, or assignment of deed of trust, subject to specified conditions. It would require participating counties to pay for the direct cost of regulation and oversight by the Attorney General, and authorize those counties to impose fees to cover those costs. 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. Fees paid to the Attorney General under these provisions would be deposited in the Electronic Recording Authorization Account, which would be created in the Special Deposit Fund and continuously appropriated to the Attorney General for these purposes.

This bill would authorize the Attorney General or a district attorney or city prosecutor to seek specified civil remedies.

The Attorney General would be required to evaluate the electronic recording delivery systems, and report to both houses of the Legislature on or before June 30, 2009.

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

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. (a) It is the intent of the Legislature to enact
- 2 legislation to develop a system to permit the electronic delivery,
- 3 recording, and return of instruments affecting right, title, or
- 4 interest in real property.



1 (b) (1) Except as set forth in subdivision (c), it is the intent of  
2 the Legislature that electronic recording be limited in its initial  
3 development to the digitized electronic delivery, recording, and  
4 return of instruments submitted by a title insurer, underwritten title  
5 company, institutional lender, as defined in paragraph (1), (2), or  
6 (4) of subdivision (j) of Section 50003 of the Financial Code, or  
7 an entity of local, state, or federal government. This will enable  
8 county recorders, county district attorneys, and the Attorney  
9 General to develop an electronic recording delivery system that  
10 will protect property owners and lenders from fraud and identity  
11 theft. It is the intent of the Legislature to consider expanding this  
12 system to cover additional submitting entities and digital  
13 electronic records based on experience with the system.

14 (2) *It is not the intent of the Legislature in limiting electronic*  
15 *recordation of certain documents to digitized electronic delivery,*  
16 *to suggest, and no inference should be drawn, that digital*  
17 *documents pose a greater risk of fraud or identity theft than*  
18 *digitized documents.*

19 (c) It is further the intent of the Legislature to enact legislation  
20 to permit, upon certification, a title insurer, underwritten title  
21 company, entity of local, state, or federal government, or  
22 institutional lender, as defined in subdivision (j) of Section 50003  
23 of the Financial Code, to submit a digitized or digital electronic  
24 record that is an instrument of reconveyance, substitution of  
25 trustee, or assignment of deed of trust, without meeting specified  
26 requirements of this act because these instruments are less likely  
27 to result in consumer fraud.

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

31

32 Article 6. Electronic Recording Delivery Act of 2004

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34 27390. (a) This article shall be known and may be cited as the  
35 Electronic Recording Delivery Act of 2004.

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

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



- 1 (2) “Computer security auditor” means computer security  
2 personnel hired to perform an independent audit of the electronic  
3 recording delivery system. The computer security auditor shall be  
4 independent of the county recorder and the authorized submitter  
5 and shall not be the same contractor hired to establish or participate  
6 in a county’s electronic recording delivery system or in the  
7 authorized submitter’s portion of that system.
- 8 (3) “Digital electronic record” means a record containing  
9 information that is created, generated, sent, communicated,  
10 received, or stored by electronic means, but not created in original  
11 paper form.
- 12 (4) “Digitized electronic record” means a scanned image of  
13 the original paper document.
- 14 (5) “Electronic recording delivery system” means a system to  
15 deliver for recording, and to return to the party requesting  
16 recording, digitized or digital electronic records.
- 17 (6) “Security testing” means an independent security audit by  
18 a computer security auditor, including, but not limited to, attempts  
19 to penetrate an electronic recording delivery system for the  
20 purpose of testing the security of that system.
- 21 (7) “Source code” means a program or set of programs,  
22 readable and maintainable by humans, translated or interpreted  
23 into a form that the electronic recording delivery system can  
24 execute.
- 25 (8) “System certification” means the issuance of a  
26 confirmation letter regarding a county’s electronic recording  
27 delivery system by the Attorney General.
- 28 27391. (a) Upon approval by resolution of the board of  
29 supervisors and system certification by the Attorney General, a  
30 county recorder may establish an electronic recording delivery  
31 system.
- 32 (b) Upon system certification, a county recorder may enter into  
33 a contract with a title insurer, as defined in Section 12340.4 of the  
34 Insurance Code, underwritten title company, as defined in Section  
35 12340.5 of the Insurance Code, institutional lender, as defined in  
36 paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of the  
37 Financial Code, or an entity of local, state, or federal government  
38 for the delivery for recording, and return to the party requesting  
39 recording, of a digitized electronic record that is an instrument  
40 affecting a right, title, or interest in real property. *The contract may*



1 *provide for the delivery of documents by an agent. However, the*  
2 *agent shall not be a vendor of electronic recording delivery*  
3 *systems.*

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

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

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

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

31 27392. (a) No electronic recording delivery system may  
32 become operational without system certification by the Attorney  
33 General. The certification shall affirm that the proposed county  
34 system conforms to this article and any regulations adopted  
35 pursuant to this article, that security testing has confirmed that the  
36 system is secure and that the proposed operating procedures are  
37 sufficient to assure the continuing security and lawful operation of  
38 that system. The certification may include any agreements  
39 between the county recorder and the Attorney General as to the  
40 operation of the system, including, but not limited to, the nature



1 and frequency of computer security audits. Certification may be  
2 withdrawn for good cause.

3 (b) The Attorney General shall approve software and other  
4 services for electronic recording delivery systems pursuant to  
5 regulations adopted as described in paragraph (7) of subdivision  
6 (b) of Section 27393.

7 27393. (a) The Attorney General shall, in consultation with  
8 interested parties, adopt regulations for the review, approval, and  
9 oversight of electronic recording delivery systems. Regulations  
10 shall be adopted pursuant to the Administrative Procedure Act  
11 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
12 Division 3). The regulations shall comply with Section 12168.7.

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

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

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

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

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

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

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

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

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

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



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

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

6 (12) Requirements for certification under Section 27397.5.

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

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

17 27394. (a) To be eligible to establish an electronic recording  
18 delivery system, a county recorder shall contract with, and obtain  
19 a report from, a computer security auditor selected from a list of  
20 computer security auditors approved by the Attorney General.

21 (b) The Attorney General shall approve computer security  
22 auditors on the basis of significant experience in the evaluation and  
23 analysis of Internet security design, the conduct of security testing  
24 procedures, and specific experience performing Internet  
25 penetration studies. The Attorney General shall complete the  
26 approval of security auditors within 90 days of a request from a  
27 county recorder. The list shall be a public record.

28 (c) An electronic recording delivery system shall be audited, at  
29 least once during the first year of operation and periodically  
30 thereafter, as set forth in regulation and in the system certification,  
31 by a computer security auditor. The computer security auditor  
32 shall conduct security testing of the electronic recording delivery  
33 system. The reports of the computer security auditor shall include,  
34 but not be limited to, all of the following considerations:

35 (1) Safety and security of the system, including the  
36 vulnerability of the electronic recording delivery system to fraud  
37 or penetration.

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



1 (3) Recommendations for any additional precautions needed to  
2 ensure that the system is secure.

3 (d) Upon completion, the reports and any response to any  
4 recommendations shall be transmitted to the board of supervisors,  
5 the county recorder, the county district attorney, and the Attorney  
6 General. These reports shall be exempt from disclosure under the  
7 California Public Records Act (Chapter 3.5 (commencing with  
8 Section 6250) of Division 7 of Title 1).

9 (e) A computer security auditor shall have access to any aspect  
10 of an electronic recording delivery system, in any form requested.  
11 Computer security auditor access shall include, but not be limited  
12 to, permission for a thorough examination of source code and the  
13 associated approved escrow facility, and necessary authorization  
14 and assistance for a penetration study of that system.

15 (f) If the county recorder, a computer security auditor, a district  
16 attorney for a county participating in the electronic recording  
17 delivery system, or the Attorney General reasonably believes that  
18 an electronic recording delivery system is vulnerable to fraud or  
19 intrusion, the county recorder, the board of supervisors, the district  
20 attorney, and the Attorney General shall be immediately notified.  
21 The county recorder shall immediately take the necessary steps to  
22 guard against any compromise of the electronic recording delivery  
23 system, including, if necessary, the suspension of an authorized  
24 submitter or of the electronic recording delivery system.

25 27395. (a) No person shall be a computer security auditor or  
26 be granted secure access to an electronic recording delivery system  
27 if he or she has been convicted of a felony, has been convicted of  
28 a misdemeanor related to theft, fraud, or a crime of moral  
29 turpitude, or if he or she has pending criminal charges for any of  
30 these crimes. A plea of guilty or no contest, a verdict resulting in  
31 conviction, or the forfeiture of bail, shall be a conviction within the  
32 meaning of this section, irrespective of a subsequent order under  
33 Section 1203.4 of the Penal Code.

34 (b) All persons entrusted with secure access to an electronic  
35 recording delivery system shall submit fingerprints to the  
36 ~~Department of Justice~~ *Attorney General* for a criminal records  
37 check according to regulations adopted pursuant to Section 27393.

38 ~~(c) Once the Department of Justice has ascertained the criminal~~  
39 ~~history information, it shall forward written notification of~~  
40 ~~criminal convictions or pending criminal charges, or both, to the~~



1 ~~division of the office of Attorney General charged with oversight~~  
2 ~~duties regarding this article. The Attorney General shall request~~  
3 ~~subsequent arrest notification service from the Department of~~  
4 ~~Justice pursuant to Section 11105.2 of the Penal Code for all~~  
5 ~~persons subject to a criminal records check pursuant to this section.~~

6 *(c) (1) The Attorney General shall submit to the Department*  
7 *of Justice the fingerprint images and related information of*  
8 *persons with secure access to the electronic recording delivery*  
9 *system and computer security auditors for the purpose of obtaining*  
10 *information as to the existence and nature of a record of state level*  
11 *convictions and arrests for which the Department of Justice*  
12 *establishes that the applicant was released on bail or on his or her*  
13 *own recognizance pending trial.*

14 *(2) The Department of Justice shall respond to the Attorney*  
15 *General for criminal offender record information requests*  
16 *submitted pursuant to this section, with information as delineated*  
17 *in subdivision (1) of Section 11105 of the Penal Code.*

18 *(3) The Attorney General shall request subsequent arrest*  
19 *notification service, pursuant to Section 11105.2 of the Penal*  
20 *Code, for all persons with secure access to the electronic recording*  
21 *delivery system and all computer security auditors.*

22 *(d) The Attorney General shall deliver written notification of*  
23 *an individual's ineligibility for access to an electronic recording*  
24 *delivery system to the individual, his or her known employer, the*  
25 *computer security auditor, and the county recorder.*

26 ~~*(e) The Department of Justice may charge a fee sufficient to*~~  
27 ~~*cover its costs under this section.*~~

28 *(e) The Department of Justice shall charge a fee sufficient to*  
29 *cover the cost of processing the criminal offender record*  
30 *information request and any other costs incurred pursuant to this*  
31 *section.*

32 *(f) The Attorney General shall define "secure access" by*  
33 *regulation and by agreement with the county recorder in the*  
34 *system certification.*

35 27396. *(a) The Attorney General shall monitor the security*  
36 *of electronic recording delivery systems statewide, in close*  
37 *cooperation with county recorders and public prosecutors. In the*  
38 *event of an emergency involving multiple fraudulent transactions*  
39 *linked to one county's use of an electronic recording delivery*  
40 *system, the Attorney General may order the suspension of*



1 electronic recording delivery systems in any county or in multiple  
2 counties, if necessary to protect the security of the system, for a  
3 period of up to seven court days. The Attorney General may seek  
4 an order from the superior court if it is necessary to extend this  
5 order.

6 (b) (1) The Attorney General, a district attorney, or a city  
7 prosecutor may bring an action in the name of the people of the  
8 state seeking declaratory or injunctive relief, restitution for  
9 damages or economic loss, rescission, or other equitable relief  
10 pertaining to any alleged violation of this article or regulations  
11 adopted pursuant to this article. Injunctive relief may include, but  
12 is not limited to, an order suspending a party from participation in  
13 the electronic recording delivery system, on a temporary or  
14 permanent basis.

15 (2) Nothing in this subdivision shall be construed to prevent the  
16 Attorney General, a district attorney, or a city prosecutor from  
17 seeking legal or equitable relief under any other provision of law.

18 27397. (a) A county establishing an electronic recording  
19 delivery system under this article shall pay for the direct cost of  
20 regulation and oversight by the Attorney General.

21 (b) The Attorney General may charge a fee directly to a vendor  
22 seeking approval of software and other services as part of an  
23 electronic recording delivery system. The fee shall not exceed the  
24 reasonable costs of approving software or other services for  
25 vendors.

26 (c) In order to pay costs under this section, a county may do any  
27 of the following:

28 (1) Impose a fee in an amount up to and including one dollar  
29 (\$1) for each instrument that is recorded by the county. This fee  
30 may, at the county's discretion, be limited to instruments that are  
31 recorded pursuant to the electronic recording delivery system.

32 (2) Impose a fee upon any vendor seeking approval of software  
33 and other services as part of an electronic recording delivery  
34 system.

35 (3) Impose a fee upon any person seeking to contract as an  
36 authorized submitter.

37 (d) The total fees assessed by a county recorder pursuant to this  
38 section may not exceed the reasonable total costs of the electronic  
39 recording delivery system, the review and approval of vendors and  
40 potential authorized submitters, security testing as required by this



1 article and the regulations of the Attorney General, and  
2 reimbursement to the Attorney General for regulation and  
3 oversight of the electronic recording delivery system.

4 (e) Fees paid to the Attorney General pursuant to subdivisions  
5 (a) and (b) shall be deposited in the Electronic Recording  
6 Authorization Account, which is hereby created in the Special  
7 Deposit Fund, and, notwithstanding Section 13340, is  
8 continuously appropriated, without regard to fiscal years, to the  
9 Attorney General for the costs described in those subdivisions.

10 27397.5. (a) A county recorder may include in the county's  
11 electronic recording delivery system a secure method for  
12 accepting for recording a digital or digitized electronic record that  
13 is an instrument of reconveyance, substitution of trustee, or  
14 assignment of deed of trust.

15 (b) A county recorder may contract with a title insurer, as  
16 defined in Section 12340.4 of the Insurance Code, underwritten  
17 title company, as defined in Section 12340.5 of the Insurance  
18 Code, an entity of state, local, or federal government, or an  
19 institutional lender, as defined in Section 50003 of the Financial  
20 Code, or their authorized agents, to be an authorized submitter of  
21 the documents specified in subdivision (a).

22 (c) With respect to the electronic submission of the records  
23 described in subdivision (a), the requirements that an authorized  
24 submitter be subject to a security audit under Section 27394 and  
25 a criminal records check under Section 27395 shall not apply  
26 where the certification requirements of subdivision (d) have been  
27 met.

28 (d) (1) In order for subdivision (c) to apply, the county  
29 recorder and the Attorney General shall certify that the method of  
30 submission allowed under the system will not permit an authorized  
31 submitter or its employees and agents, or any third party, to  
32 modify, manipulate, insert, or delete information in the public  
33 record, maintained by the county recorder, or information in ~~other~~  
34 ~~electronic records that may be submitted for recording pursuant to~~  
35 ~~a county's system.~~ *electronic records other than those specified in*  
36 *subdivision (a).*

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



1 (e) For purposes of this section, an agent of an authorized  
2 submitter shall not include a vendor of *electronic recording*  
3 *delivery systems*.

4 27398. (a) The Attorney General shall conduct an evaluation  
5 of electronic recording delivery systems authorized by this article,  
6 and report to both houses of the Legislature on or before June 30,  
7 2009.

8 (b) It is the intent of the Legislature that the evaluation include  
9 an analysis of costs, cost savings, security and real estate fraud  
10 prevention, and recommendations as to improvements and  
11 possible expansion of the provisions of this article.

12 (c) The evaluation shall also include a study of the feasibility  
13 of expanding the provisions of this article to cover the delivery,  
14 recording, and return of other electronic records.

15 27399. (a) Nothing in this article shall be construed to  
16 authorize any state agency to administer any of the processes or  
17 procedures relating to the business of the county recorders of the  
18 state in any manner not otherwise specifically set forth in this  
19 article.

20 (b) The authority granted in this article is in addition to any  
21 other authority or obligation under state or federal law.

22 (c) Nothing in this article shall be construed to repeal or affect  
23 Section 27279, 27279.1, 27279.2, 27297.6, 27387.1, or 27399.7,  
24 or the authority of the Counties of Orange and San Bernardino to  
25 act under those provisions.

26 SEC. 3. This act is an urgency statute necessary for the  
27 immediate preservation of the public peace, health, or safety  
28 within the meaning of Article IV of the Constitution and shall go  
29 into immediate effect. The facts constituting the necessity are:

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

