

BILL ANALYSIS

Senate Research Center

S.B. 2128
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas continues to create the legal infrastructure necessary to support the execution, acknowledgement, and recording of electronic real estate documents. This is reflected in the adoption of:

- (1) the Uniform Electronic Transactions Act (Chapter 322, Business and Commerce Code), which recognizes the validity of electronic documents;
- (2) the Uniform Real Property Electronic Act (Chapter 5, Property Code), which permits the electronic documents to be recorded in Texas counties; and
- (3) the passage in the 85th legislative session of H.B. 1217, which created a process for remote online notarization.

Today approximately 60 counties have the capacity to record electronic documents, and transactions relating to real property in those counties may be fully transacted by electronic means.

S.B. 2128 seeks to provide a process for the recording of a tangible copy of an electronic document so that citizens transacting business in the 190 counties that do not record electronically may take advantage of the convenience and security of electronic real property transactions. The bill declares that a paper copy of an electronic record that meets the requirements of this bill is eligible to be recorded in the public records, and the recording of the document has the same effect as the recording of a traditional paper document. To be eligible for recording, a paper copy of the electronic document must have affixed to it a "Declaration of Authenticity," executed by a notary public or other public officer authorized to take acknowledgements or administer oaths, certifying that the paper document meets the requirements of this new statutory provision. The bill also contains a template for the Declaration of Authenticity that meets the requirements of the certification.

S.B. 2128 has been developed with the input of the Texas Mortgage Bankers Association, the Texas Land Title Association, and representatives of the county clerks. (Original Author's/Sponsor's Statement of Intent)

S.B. 2128 amends current law relating to the recording by a county clerk of certain documents concerning real or personal property.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 193.003(b), Local Government Code, to require the index entry [in an index to a county's real property records] for a paper document described by Section 12.0011(b)(3), Property Code, to contain the names of the grantors and grantees.

SECTION 2. Amends Section 12.0011(b), Property Code, as follows:

(b) Prohibits a paper document concerning real or personal property from being recorded or serving as notice of the paper document unless:

(1)–(2) makes nonsubstantive changes to these subdivisions; or

(3) the paper document is a tangible copy of an electronic record that has been declared to be a true and correct copy of the electronic record as provided by Section 12.0013 by a notary public or other officer who may take an acknowledgment or proof of a written instrument under Section 121.001 (Officers Who May Take Acknowledgements or Proofs), Civil Practice and Remedies Code.

SECTION 3. Amends Chapter 12, Property Code, by adding Section 12.0013, as follows:

Sec. 12.0013. RECORDATION OF PAPER OR TANGIBLE COPY OF ELECTRONIC RECORD. (a) Defines "document," "electronic," "electronic record," and "electronic signature" for purposes of this section.

(b) Requires a county clerk to record a paper or tangible copy of an electronic record that is otherwise eligible under state law to be recorded in the real property records if the paper or tangible copy of the electronic record contains an image of an electronic signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law and has been declared by a notary public or other officer who may take an acknowledgment or proof under Section 121.001, Civil Practice and Remedies Code, to be a true and correct copy of the electronic record as provided by Subsection (d).

(c) Provides that a document that is a paper or tangible copy of an electronic record and is printed and declared to be a true and correct copy as provided by Subsection (d) satisfies any requirement of law that, as a condition for recording, the document be an original or be in writing, be signed or contain an original signature, if the document contains an image of an electronic signature of the person required to sign the document, and be notarized, acknowledged, verified, witnessed, made under oath, sworn to with a jurat, or proved according to law, if the document contains an image of an electronic signature of the person authorized to perform that act and all other information required to be included.

(d) Authorizes a notary public or other officer who may take an acknowledgment or proof under Section 121.001, Civil Practice and Remedies Code, to declare that a paper or tangible copy of an electronic record is a true and correct copy of an electronic record by executing and attaching an official seal to a tangible paper declaration under penalty of perjury and affixing or attaching the declaration to the printed paper or tangible copy of an electronic record.

(e) Requires the form of declaration required under Subsection (d) to be in a certain form and sets forth the required language of the declaration.

SECTION 4. Effective date: September 1, 2019.