

Assembly Bill No. 328

Passed the Assembly August 31, 2009

Chief Clerk of the Assembly

Passed the Senate August 17, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1633.3 of the Civil Code, and to amend Sections 560, 570, 658, 662, 666, 771.02, 779.19, and 1759.7 of, to add Sections 38.5 and 38.8 to, and to add Article 6 (commencing with Section 580) to Chapter 6 of Part 1 of Division 1 of, the Insurance Code, relating to electronic transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 328, Charles Calderon. Electronic transactions: exceptions.

Existing law generally permits parties to contract to conduct transactions by electronic means. Existing law excepts specific transactions from this permission, including various provisions regarding insurance.

This bill would remove specified insurance provisions from the exception to the general authorization that parties may contract to conduct transactions by electronic means. This bill would also provide that with regard to certain transactions relating to automobile insurance, the insurer may not deliver specified documents electronically unless the insured or applicant for insurance began the transaction electronically.

Existing law generally requires, unless otherwise provided, that any required notice related to insurance transactions be made by mail, as specified.

This bill would authorize any required notice related to certain types of insurance on risks or operations in California to be made electronically with the consent of the parties, as specified. This bill would require an insurer to maintain a system for electronically confirming a policyholder's decision to opt in to an agreement to conduct transactions electronically and a system that will allow the policyholder to electronically opt out of the agreement to conduct business electronically, as specified. This bill would require the insurer to maintain the electronic records for the same amount of time the insurer would be required to maintain those records if the records were in written form.

Existing law requires insurers to pay certain covered claims by check or draft, as specified.

This bill would generally allow an insurer, with the consent of the insured, to pay covered claims by an electronic funds transfer, as specified. This bill would prohibit an insurer from requiring an insured to consent to payment by an electronic funds transfer, as specified.

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

SECTION 1. Section 1633.3 of the Civil Code is amended to read:

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1107 and 1206.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of,

Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, or Section 3071.5 of, the Civil Code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7, 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by electronic means if the transaction may be conducted by electronic means under any other applicable law.

SEC. 2. Section 38.5 is added to the Insurance Code, to read:

38.5. Any written notice required to be given or mailed to any person by an insurer relating to any insurance on risks or on operations in this state not excepted by Section 1851 from the coverage of Chapter 9 (commencing with Section 1850.4) of Part 2 of Division 1, may, if not excluded by subdivision (b) or (c) of Section 1633.3 of the Civil Code, be provided by electronic transmission pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each party has agreed to conduct the transaction by electronic means pursuant to Section 1633.5 of the Civil Code. The affidavit of the person who initiated the electronic transmission, stating the facts of that transmission into an information processing system outside of the

control of the sender or of any person that sent the electronic record on behalf of the sender, is prima facie evidence that the notice was transmitted and shall be sufficient proof of notice. Any notice provided by electronic transmission shall be treated as if mailed or given for the purposes of any provision of the Insurance Code, except as provided by subdivision (g) of Section 1633.15 of the Civil Code. The insurance company shall maintain a system for confirming that any notice or document that is to be provided by electronic means has been sent in a manner consistent with Section 1633.15 of the Civil Code. A valid electronic signature shall be sufficient for any provision of law requiring a written signature. The insurance company shall retain a copy of the confirmation and electronic signature, when either is required, with the policy information so that they are retrievable upon request by the Department of Insurance while the policy is in force and for five years thereafter.

SEC. 3. Section 38.8 is added to the Insurance Code, to read:

38.8. Insurers shall maintain a system for electronically confirming a policyholder's decision to opt in to an agreement to conduct transactions electronically and a system that will allow the policyholder to electronically opt out of the agreement to conduct business electronically as specified in subdivision (c) of Section 1633.5. The insurer shall maintain the electronic records for the same amount of time the insurer would be required to maintain those records if the records were in written form.

SEC. 4. Section 560 of the Insurance Code is amended to read:

560. Every insurer issuing an automobile collision policy, as defined in subdivision (d) of Section 660, or a policy for comprehensive coverage for a motor vehicle, as defined in Section 11580.07, shall, in the event of damage to a covered automobile by collision or otherwise and the election by the insurer to have such automobile repaired by the repairer, make payment by check or draft, payable to the repairer or to the named insured and the repairer, jointly, or, with the consent of the repairer, by an electronic funds transfer to the repairer, not later than 10 days subsequent to receipt of an itemized bill or invoice covering repairs authorized by the insurer which have been satisfactorily completed. The provisions of this section shall include all cases where the insured has received actual notice that the repairer is doing work

pursuant to a contract approved by the insurance company in which case the payment shall include the name of the repairer.

SEC. 5. Section 570 of the Insurance Code is amended to read:

570. Except in the event that the insurer has previously obtained a release on a loss, each insurer which issues, amends, or renews, on or after January 1, 1975, a policy of insurance covering repair or reconstruction work on commercial, industrial, or residential real property and appurtenances thereon, shall, in the event of covered work being performed by a licensee under the Contractors License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), make payment by check or draft directly to the contractor performing the work, or, with the consent of the contractor, by an electronic funds transfer to the contractor performing the work, and not to the owner of the property, in every case in which all of the following conditions are present and the insurer has actual knowledge thereof:

(a) The property owner of record has, in a writing signed by him and transmitted to the insurer, stated all of the following:

(1) The work completed meets with his satisfaction.

(2) The insurer, upon direct payment to the contractor, is released from liability.

(3) The writing was not completed or signed by him until after all work was completed.

(b) The property owners of record, the named insured, and any loss payee have consented in writing to such direct payment and release from liability.

(c) The completed work has been certified by the appropriate public agency or authority as conforming to existing building, electrical, and construction codes.

(d) Each subcontractor of the contractor, and each materialman, to whom direct payment is to be made by the insurer has executed, and filed of record, releases of any and all claims, including, but not limited to, mechanic's liens, which the subcontractor and materialman might have against the property or any appurtenance thereof, the property owners of record, the named insured, and any loss payee named in the policy, for any work the subcontractor performed, or material the materialman furnished, upon the property under the contract for which such payment is being made. The property owner or the contractor, as the case may be, shall submit to the insurer proof, satisfactory to it, of such execution

and filing prior to the insurer's making any direct payment provided for by this article.

SEC. 6. Article 6 (commencing with Section 580) is added to Chapter 6 of Part 1 of Division 1 of the Insurance Code, to read:

Article 6. Electronic Payment of Claims

580. Every insurer required to make payment for a loss, may, with the consent of the insured, make payment by an electronic funds transfer. An insurer may not require an insured to consent to payment by an electronic funds transfer.

SEC. 7. Section 658 of the Insurance Code is amended to read:

658. Where any admitted insurer, licensed to issue motor vehicle liability policies as defined in Section 16450 of the Vehicle Code, refuses to accept an applicant for a good driver discount policy as defined in paragraph (1) of subdivision (b) of Section 1861.02 or refuses to issue a good driver discount policy when written application has been made, and where the applicant meets the criteria for purchase of a good driver discount policy, the refusing insurer shall furnish the applicant for insurance a written statement within 10 days of the refusal explaining the reason or reasons relied upon for denying insurance coverage. Notwithstanding Section 1633.3 of the Civil Code, the written statement explaining the reason or reasons for denying the coverage may not be electronically delivered to the applicant unless the application for the good driver discount was electronically delivered to the insurer.

SEC. 8. Section 662 of the Insurance Code is amended to read:

662. (a) No notice of cancellation of a policy to which Section 661 applies shall be effective unless mailed or delivered by the insurer to the named insured, lienholder, or additional interest at least 20 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

(b) This section shall not apply to nonrenewal.

(c) Notices made to lienholders pursuant to this section may be done electronically with the consent of the lienholder.

SEC. 9. Section 666 of the Insurance Code is amended to read:

666. Where the reason for cancellation does not accompany or is not included in the notice of cancellation, the insurer shall upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, specify in writing the reason for the cancellation. The reason shall be mailed or delivered to the named insured within five days after receipt of the request. Notwithstanding Section 1633.3 of the Civil Code, the writing specifying the reason for cancellation may not be delivered electronically to the insured unless the insured electronically delivered the request to the insurer.

SEC. 10. Section 771.02 of the Insurance Code is amended to read:

771.02. (a) When a lender or purchaser of a mortgage on real property has required and obtained a copy of the insurance policy covering that real property, it shall be responsible for providing a copy of that insurance policy or other evidence of insurance acceptable to the purchaser to a subsequent purchaser of the mortgage, servicing agent, or insurance tracking service with whom the lender or purchaser of the mortgage subsequently contracts. A copy of the policy or other evidence of insurance shall be provided so that the subsequent purchaser, servicing agent, or insurance tracking service may verify that the borrower has obtained or is maintaining insurance required by the mortgage. This section does not abrogate the responsibility of an insurer, agent, or broker to provide annually, if requested, a copy of the insurance policy directly to the lender or purchaser of the mortgage named as an additional loss payee or lienholder at an address provided by the lender or purchaser of the mortgage.

(b) A copy of the insurance policy or other evidence of insurance acceptable to the purchaser may be provided electronically to the subsequent purchaser of the mortgage, servicing agent, or insurance tracking service with whom the lender or purchaser of the mortgage subsequently contracts, if that party agrees to electronic service.

SEC. 11. Section 779.19 of the Insurance Code is amended to read:

779.19. All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

All claims shall be paid either by draft drawn upon the insurer, by check of the insurer, or, with consent of the insured, by an electronic funds transfer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.

No plan or arrangement shall be used whereby any person, firm or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

SEC. 12. Section 1759.7 of the Insurance Code is amended to read:

1759.7. All claims paid by the administrator from funds collected on behalf of the insurer shall be paid only on checks or drafts of, or, with the consent of the insured, by an electronic funds transfer from, and as authorized by the insurer.

Approved _____, 2009

Governor