

ASSEMBLY BILL

No. 1770

Introduced by Assembly Member Dababneh

February 14, 2014

An act to amend Section 1624 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1770, as introduced, Dababneh. Contracts: statute of frauds.

Existing law provides that certain contracts are invalid unless the contract, or some note or memorandum of the contract, is in writing and subscribed by the party to be charged.

This bill would make a technical, nonsubstantive change to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 1624 of the Civil Code is amended to
2 read:
3 1624. (a) The following contracts are invalid, unless they, or
4 some note or memorandum thereof, are in writing and subscribed
5 by the party to be charged or by the party's agent:
6 (1) An agreement that by its terms is not to be performed within
7 a year from the making thereof.
8 (2) A special promise to answer for the debt, default, or
9 miscarriage of another, except in the cases provided for in Section
10 2794.

1 (3) An agreement for the leasing for a longer period than one
2 year, or for the sale of real property, or of an interest therein; such
3 an agreement, if made by an agent of the party sought to be
4 charged, is invalid, unless the authority of the agent is in writing,
5 subscribed by the party sought to be charged.

6 (4) An agreement authorizing or employing an agent, broker,
7 or any other person to purchase or sell real estate, or to lease real
8 estate for a longer period than one year, or to procure, introduce,
9 or find a purchaser or seller of real estate or a lessee or lessor of
10 real estate where the lease is for a longer period than one year, for
11 compensation or a commission.

12 (5) An agreement that by its terms is not to be performed during
13 the lifetime of the promisor.

14 (6) An agreement by a purchaser of real property to pay an
15 indebtedness secured by a mortgage or deed of trust upon the
16 property purchased, unless assumption of the indebtedness by the
17 purchaser is specifically provided for in the conveyance of the
18 property.

19 (7) A contract, promise, undertaking, or commitment to loan
20 money or to grant or extend credit, in an amount greater than one
21 hundred thousand dollars (\$100,000), not primarily for personal,
22 family, or household purposes, made by a person engaged in the
23 business of lending or arranging for the lending of money or
24 extending credit. For purposes of this section, a contract, promise,
25 undertaking or commitment to loan money secured solely by
26 residential property consisting of one to four dwelling units shall
27 be deemed to be for personal, family, or household purposes.

28 (b) Notwithstanding paragraph (1) of subdivision (a):

29 (1) An agreement or contract that is valid in other respects and
30 is otherwise enforceable is not invalid for lack of a ~~note,~~
31 ~~memorandum,~~ *memorandum*, *note*, or other writing and is
32 enforceable by way of action or defense, provided that the
33 agreement or contract is a qualified financial contract as defined
34 in paragraph (2) and (A) there is, as provided in paragraph (3),
35 sufficient evidence to indicate that a contract has been made or
36 (B) the parties thereto by means of a prior or subsequent written
37 contract, have agreed to be bound by the terms of the qualified
38 financial contract from the time they reached agreement (by
39 telephone, by exchange of electronic messages, or otherwise) on
40 those terms.

1 (2) For purposes of this subdivision, a “qualified financial
2 contract” means an agreement as to which each party thereto is
3 other than a natural person and that is any of the following:

4 (A) For the purchase and sale of foreign exchange, foreign
5 currency, bullion, coin or precious metals on a forward, spot,
6 next-day value or other basis.

7 (B) A contract (other than a contract for the purchase of a
8 commodity for future delivery on, or subject to the rules of, a
9 contract market or board of trade) for the purchase, sale, or transfer
10 of any commodity or any similar good, article, service, right, or
11 interest that is presently or in the future becomes the subject of a
12 dealing in the forward contract trade, or any product or byproduct
13 thereof, with a maturity date more than two days after the date the
14 contract is entered into.

15 (C) For the purchase and sale of currency, or interbank deposits
16 denominated in United States dollars.

17 (D) For a currency option, currency swap, or cross-currency
18 rate swap.

19 (E) For a commodity swap or a commodity option (other than
20 an option contract traded on, or subject to the rules of a contract
21 market or board of trade).

22 (F) For a rate swap, basis swap, forward rate transaction, or an
23 interest rate option.

24 (G) For a security-index swap or option, or a security or
25 securities price swap or option.

26 (H) An agreement that involves any other similar transaction
27 relating to a price or index (including, without limitation, any
28 transaction or agreement involving any combination of the
29 foregoing, any cap, floor, collar, or similar transaction with respect
30 to a rate, commodity price, commodity index, security or securities
31 price, security index, other price index, or loan price).

32 (I) An option with respect to any of the foregoing.

33 (3) There is sufficient evidence that a contract has been made
34 in any of the following circumstances:

35 (A) There is evidence of an electronic communication
36 (including, without limitation, the recording of a telephone call or
37 the tangible written text produced by computer retrieval),
38 admissible in evidence under the laws of this state, sufficient to
39 indicate that in the communication a contract was made between
40 the parties.

1 (B) A confirmation in writing sufficient to indicate that a
2 contract has been made between the parties and sufficient against
3 the sender is received by the party against whom enforcement is
4 sought no later than the fifth business day after the contract is made
5 (or any other period of time that the parties may agree in writing)
6 and the sender does not receive, on or before the third business
7 day after receipt (or the other period of time that the parties may
8 agree in writing), written objection to a material term of the
9 confirmation. For purposes of this subparagraph, a confirmation
10 or an objection thereto is received at the time there has been an
11 actual receipt by an individual responsible for the transaction or,
12 if earlier, at the time there has been constructive receipt, which is
13 the time actual receipt by that individual would have occurred if
14 the receiving party, as an organization, had exercised reasonable
15 diligence. For the purposes of this subparagraph, a “business day”
16 is a day on which both parties are open and transacting business
17 of the kind involved in that qualified financial contract that is the
18 subject of confirmation.

19 (C) The party against whom enforcement is sought admits in
20 its pleading, testimony, or otherwise in court that a contract was
21 made.

22 (D) There is a note, memorandum, or other writing sufficient
23 to indicate that a contract has been made, signed by the party
24 against whom enforcement is sought or by its authorized agent or
25 broker.

26 For purposes of this paragraph, evidence of an electronic
27 communication indicating the making in that communication of a
28 contract, or a confirmation, admission, note, memorandum, or
29 writing is not insufficient because it omits or incorrectly states one
30 or more material terms agreed upon, as long as the evidence
31 provides a reasonable basis for concluding that a contract was
32 made.

33 (4) For purposes of this subdivision, the tangible written text
34 produced by telex, telefacsimile, computer retrieval, or other
35 process by which electronic signals are transmitted by telephone
36 or otherwise shall constitute a writing, and any symbol executed
37 or adopted by a party with the present intention to authenticate a
38 writing shall constitute a signing. The confirmation and notice of
39 objection referred to in subparagraph (B) of paragraph (3) may be
40 communicated by means of telex, telefacsimile, computer, or other

1 similar process by which electronic signals are transmitted by
2 telephone or otherwise, provided that a party claiming to have
3 communicated in that manner shall, unless the parties have
4 otherwise agreed in writing, have the burden of establishing actual
5 or constructive receipt by the other party as set forth in
6 subparagraph (B) of paragraph (3).

7 (c) This section does not apply to leases subject to Division 10
8 (commencing with Section 10101) of the Commercial Code.

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