

AMENDED IN SENATE MARCH 18, 2013

SENATE BILL

No. 251

Introduced by Senator Calderon

February 12, 2013

An act to amend Section ~~38.5~~ 1633.3 of the Civil Code, and to amend Sections 10083, 10086, and 10087 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 251, as amended, Calderon. Insurance: notice: electronic transmission.

Existing law authorizes 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, with exceptions, to be provided by electronic transmission if each party has agreed to conduct the transaction by electronic means, as provided.

~~This bill would make technical, nonsubstantive changes to those provisions:~~

Existing law prohibits residential property insurer's from issuing or delivering property insurance without offering earthquake coverage. The offer of coverage is authorized to be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it is required to be mailed to the mailing address shown on the policy of residential property insurance or on the application.

This bill would authorize the offer of earthquake coverage to be made electronically, as provided.

Existing law authorizes an earthquake insurer, at any renewal, to modify the terms and conditions of an existing policy, rider, or endorsement, and that if the insurer modifies the terms and conditions of an existing policy, rider, or endorsement, the insurer is required to provide the insured with the renewal notice in a stand-alone disclosure document stating the changes in the terms and conditions of the insured's existing policy, rider, or endorsement. Existing law also provides that, if an offer of earthquake coverage is not accepted, the insurer or any affiliated insurer is required to offer earthquake coverage every other year in connection with any continuation, renewal, or reinstatement of the policy following any lapse, or with respect to any other policy that extends, changes, supersedes, or replaces the policy of residential property insurance.

This bill would authorize the renewal notice for earthquake coverage and the offer of earthquake coverage required to be made every other year to be made electronically, as provided.

This bill would also delete obsolete cross-references and make conforming changes.

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 1633.3 of the Civil Code, as amended by
2 Section 1 of Chapter 433 of the Statutes of 2009, is amended to
3 read:

4 1633.3. (a) Except as otherwise provided in subdivisions (b)
5 and (c), this title applies to electronic records and electronic
6 signatures relating to a transaction.

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

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

11 (2) Division 1 (commencing with Section 1101) of the Uniform
12 Commercial Code, except Sections ~~1107~~ and 1206 and 1306.

13 (3) Divisions 3 (commencing with Section 3101), 4
14 (commencing with Section 4101), 5 (commencing with Section
15 5101), 8 (commencing with Section 8101), 9 (commencing with
16 Section 9101), and 11 (commencing with Section 11101) of the
17 Uniform Commercial Code.

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

6 (c) This title does not apply to any specific transaction described
7 in Section 17511.5 of the Business and Professions Code, Section
8 56.11, 56.17, 798.14, 1133, or 1134 of, Sections 1350 to 1376,
9 inclusive, of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5
10 (commencing with Section 1695) of Title 5 of Part 2 of Division
11 3 of, Section 1720, 1785.15, 1789.14, 1789.16, ~~1789.33~~, or 1793.23
12 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part
13 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713,
14 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3,
15 or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter
16 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of,
17 Chapter 2b (commencing with Section 2981) or 2d (commencing
18 with Section 2985.7) of Title 14 of Part 4 of Division 3 of, or
19 Section 3071.5 of, the Civil Code, subdivision (b) of Section 18608
20 or Section 22328 of the Financial Code, Section 1358.15, 1365,
21 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,
22 Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, ~~10086~~,
23 10113.7, 10127.7, 10127.9, 10127.10, ~~10197~~, 10199.44, 10199.46,
24 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of
25 the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public
26 Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An
27 electronic record may not be substituted for any notice that is
28 required to be sent pursuant to Section 1162 of the Code of Civil
29 Procedure. Nothing in this subdivision shall be construed to
30 prohibit the recordation of any document with a county recorder
31 by electronic means.

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

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

38 (f) The exclusion of a transaction from the application of this
39 title under subdivision (b) or (c) shall be construed only to exclude
40 the transaction from the application of this title, but shall not be

1 construed to prohibit the transaction from being conducted by
2 electronic means if the transaction may be conducted by electronic
3 means under any other applicable law.

4 *SEC. 2. Section 1633.3 of the Civil Code, as amended by*
5 *Section 36 of Chapter 181 of the Statutes of 2012, is amended to*
6 *read:*

7 1633.3. (a) Except as otherwise provided in subdivisions (b)
8 and (c), this title applies to electronic records and electronic
9 signatures relating to a transaction.

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

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

14 (2) Division 1 (commencing with Section 1101) of the Uniform
15 Commercial Code, except Sections ~~1107~~ and 1206 and 1306.

16 (3) Divisions 3 (commencing with Section 3101), 4
17 (commencing with Section 4101), 5 (commencing with Section
18 5101), 8 (commencing with Section 8101), 9 (commencing with
19 Section 9101), and 11 (commencing with Section 11101) of the
20 Uniform Commercial Code.

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

26 (c) This title does not apply to any specific transaction described
27 in Section 17511.5 of the Business and Professions Code, Section
28 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,
29 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of
30 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,
31 1789.16, ~~1789.33~~, or 1793.23 of, Chapter 1 (commencing with
32 Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24,
33 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c,
34 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing
35 with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division
36 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with
37 Section 2981) or 2d (commencing with Section 2985.7) of Title
38 14 of Part 4 of Division 3 of, Section 3071.5 of, or Part 5
39 (commencing with Section 4000) of Division 4 of, the Civil Code,
40 subdivision (b) of Section 18608 or Section 22328 of the Financial

1 Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5
 2 of the Health and Safety Code, Section 662, 663, 664, 667.5, 673,
 3 677, 678, 678.1, 786, ~~10086~~, 10113.7, 10127.7, 10127.9, 10127.10,
 4 ~~10197~~, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7,
 5 11624.09, or 11624.1 of the Insurance Code, Section 779.1,
 6 10010.1, or 16482 of the Public Utilities Code, or Section 9975
 7 or 11738 of the Vehicle Code. An electronic record may not be
 8 substituted for any notice that is required to be sent pursuant to
 9 Section 1162 of the Code of Civil Procedure. Nothing in this
 10 subdivision shall be construed to prohibit the recordation of any
 11 document with a county recorder by electronic means.

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

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

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

24 *SEC. 3. Section 10083 of the Insurance Code is amended to*
 25 *read:*

26 10083. (a) The offer of coverage required by Section 10081
 27 may be made prior to, concurrent with, or within 60 days following
 28 the issuance or renewal of a residential property insurance policy.
 29 If the offer of coverage is mailed to the named insured or applicant,
 30 it shall be mailed to the mailing address shown on the policy of
 31 residential property insurance or on the application. *The offer may*
 32 *be made electronically pursuant to Section 38.5.* The offer of
 33 earthquake coverage shall contain the following language in at
 34 least 10-point boldface type:

35 YOUR POLICY DOES NOT PROVIDE COVERAGE
 36 AGAINST THE PERIL OF EARTHQUAKE.

37 CALIFORNIA LAW REQUIRES THAT EARTHQUAKE
 38 COVERAGE BE OFFERED TO YOU AT YOUR OPTION.

39 WARNING: THESE COVERAGES MAY DIFFER
 40 SUBSTANTIALLY FROM AND PROVIDE LESS

1 PROTECTION THAN THE COVERAGE PROVIDED BY YOUR
2 HOMEOWNERS' INSURANCE POLICY. THERE ARE
3 EXCLUSIONS AND LIMITATIONS SUCH AS
4 OUTBUILDINGS, SWIMMING POOLS, MASONRY FENCES,
5 AND MASONRY CHIMNEYS. THIS DISCLOSURE FORM
6 CONTAINS ONLY A GENERAL DESCRIPTION OF
7 COVERAGES AND IS NOT PART OF YOUR EARTHQUAKE
8 INSURANCE POLICY. ONLY THE SPECIFIC PROVISIONS
9 OF YOUR POLICY WILL DETERMINE WHETHER A
10 PARTICULAR LOSS IS COVERED AND, IF SO, THE
11 AMOUNT PAYABLE.

12 THE COVERAGE, SUBJECT TO POLICY PROVISIONS,
13 MAY BE PURCHASED AT ADDITIONAL COST ON THE
14 FOLLOWING TERMS:

15 (A) AMOUNT OF DWELLING COVERAGE: _____

16 (B) APPLICABLE DEDUCTIBLE: _____ IF YOUR LOSS IS
17 BELOW THIS AMOUNT, YOU MAY NOT RECEIVE ANY
18 PAYMENT FROM YOUR COVERAGE.

19 YOUR INSURANCE COMPANY OR AGENT WILL
20 PROVIDE WRITTEN NOTICE AS TO HOW THE
21 DEDUCTIBLE APPLIES TO THE MARKET VALUE OF YOUR
22 COVERAGE, THE INSURED VALUE OF YOUR COVERAGE,
23 OR THE REPLACEMENT VALUE OF YOUR COVERAGE.

24 (C) CONTENTS COVERAGE: _____

25 IF YOUR LOSS DOES NOT EXCEED THE DEDUCTIBLE
26 FOR THE DWELLING, YOU WILL NOT RECEIVE ANY
27 PAYMENT FOR THIS COVERAGE.

28 YOUR INSURANCE COMPANY OR AGENT WILL
29 PROVIDE WRITTEN NOTICE AS TO HOW THE
30 DEDUCTIBLE APPLIES TO THE AMOUNT YOU RECEIVE
31 PURSUANT TO THIS COVERAGE.

32 (D) ADDITIONAL LIVING EXPENSES: _____

33 (E) RATE OR PREMIUM: _____

34 YOU MUST ASK THE COMPANY TO ADD EARTHQUAKE
35 COVERAGE WITHIN 30 DAYS FROM THE DATE OF
36 MAILING OF THIS NOTICE OR IT SHALL BE
37 CONCLUSIVELY PRESUMED THAT YOU HAVE NOT
38 ACCEPTED THIS OFFER.

39 THIS COVERAGE SHALL BE EFFECTIVE ON THE DAY
40 YOUR ACCEPTANCE OF THIS OFFER IS RECEIVED BY US.

1 (b) When the insurer, agent, or broker establishes delivery of
2 the disclosure form by obtaining the signature of the applicant or
3 insured, or when an insurer, agent, or broker provides the applicant
4 with the disclosure form and the applicant does not return a signed
5 acknowledgment of receipt within 60 days of the date it was
6 provided, there shall be a conclusive presumption that the insurer,
7 agent, or broker has complied with the disclosure requirements of
8 this section.

9 (c) The offer may contain additional provisions not in conflict
10 with or in derogation of this section.

11 (d) The commissioner may only approve modifications to the
12 language prescribed in subdivision (a) if all of the following
13 conditions are met:

14 (1) The modifications are not in conflict with or in derogation
15 of any provision of this section or Section 10089.

16 (2) The modifications are necessary to ensure that the disclosure
17 statement accurately reflects the coverage actually provided by
18 the policy being offered.

19 (3) The modifications are strictly limited to necessary changes
20 so that the modified disclosure statement is otherwise identical to
21 the disclosure statement prescribed in this section.

22 (e) Use of the language prescribed by this section, or modified
23 language approved pursuant to subdivision (d), shall constitute
24 compliance with the requirements of Section 10081 by an insurer
25 subject thereto.

26 *SEC. 4. Section 10086 of the Insurance Code is amended to*
27 *read:*

28 10086. (a) If an offer of earthquake coverage is accepted, the
29 coverage shall be continued at the applicable rates and conditions
30 for the policy term, provided the policy of residential property
31 insurance is not terminated by the named insured or insurer.

32 (1) At any renewal, an insurer may modify the terms and
33 conditions of an existing policy, rider, or endorsement providing
34 coverage against loss or damage caused by the peril of earthquake
35 if the modified terms and conditions provide the minimum
36 coverages required by Section 10089.

37 (2) An insurer that modifies the terms and conditions of an
38 existing policy, rider, or endorsement shall provide the insured
39 with the renewal notice in a stand-alone disclosure document
40 stating the changes in the terms and conditions of the insured's

1 existing policy, rider, or endorsement. *The offer of renewal may*
2 *be made electronically pursuant to Section 38.5.* Proof of mailing
3 of the disclosure document by first-class mail to a named insured
4 at the mailing address shown on the policy or application, *or proof*
5 *consistent with Section 38.5 that the offer of renewal of coverage*
6 *was sent to the named insured or applicant by electronic*
7 *transmission, creates a conclusive presumption that the disclosure*
8 document was provided. The disclosure shall include the following
9 statement in 14-point boldface type:

10 THE COVERAGE IN THE POLICY WE ARE OFFERING
11 YOU WITH THIS RENEWAL HAS BEEN REDUCED, AND
12 SUBSTANTIALLY DIFFERS FROM THE COVERAGES
13 PROVIDED BY YOUR HOMEOWNERS' POLICY.
14 INSURANCE COMPANIES ARE ALLOWED TO RENEW
15 EARTHQUAKE INSURANCE POLICIES WITH COVERAGE
16 THAT IS REDUCED FROM THE COVERAGE YOU
17 PREVIOUSLY PURCHASED. YOU MAY REQUEST A
18 SAMPLE COPY OF THIS NEW POLICY TO REVIEW PRIOR
19 TO MAKING A DECISION TO ACCEPT THIS RENEWAL,
20 AND WE WILL MAIL OR DELIVER IT TO YOU WITHIN 14
21 DAYS OF YOUR REQUEST. A REQUEST FOR THE SAMPLE
22 COPY SHALL NOT CHANGE OR EXTEND THE POLICY
23 EXPIRATION DATE SPECIFIED IN THE RENEWAL NOTICE.
24 A SUMMARY OF THE CHANGES IS INCLUDED WITH THIS
25 NOTICE.

26 The commissioner shall approve the form of the summary at the
27 time he or she approves the policy. The summary shall include the
28 information contained in subdivision (a) of Section 10083, and
29 may be included with the renewal notice in standard type.

30 The commissioner may approve substantially similar disclosure
31 forms if necessary to accurately disclose relevant information to
32 the policyholder. The commissioner may also approve disclosure
33 forms substantially similar to the disclosure statement required by
34 Section 10083 if necessary to accurately disclose relevant
35 information to the policyholder.

36 (3) If the earthquake coverage is provided by a policy issued
37 by the California Earthquake Authority, the following disclosure
38 shall be provided in 14-point boldface type:

1 CALIFORNIA EARTHQUAKE AUTHORITY POLICY
2 DISCLOSURE
3

4 THIS POLICY IS BEING PURCHASED FROM THE
5 CALIFORNIA EARTHQUAKE AUTHORITY (“CEA”). THE
6 COVERAGE IN THIS CEA POLICY SUBSTANTIALLY
7 DIFFERS FROM THE COVERAGES PROVIDED IN YOUR
8 HOMEOWNER’S POLICY. THE CEA IS NOT PART OF OR
9 ASSOCIATED WITH YOUR HOMEOWNER’S INSURANCE
10 COMPANY. IF LOSSES AS A RESULT OF AN EARTHQUAKE
11 OR A SERIES OF EARTHQUAKES EXCEED THE
12 AVAILABLE RESOURCES OF THE CEA, THIS POLICY IS
13 NOT COVERED BY THE CALIFORNIA INSURANCE
14 GUARANTY ASSOCIATION. THEREFORE, THE
15 CALIFORNIA INSURANCE GUARANTY ASSOCIATION
16 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR
17 ASSETS IF THE CEA BECOMES INSOLVENT AND IS
18 UNABLE TO MAKE PAYMENTS AS PROMISED. IN
19 ADDITION, YOUR CEA POLICY MAY BE SUBJECT TO
20 FUTURE SURCHARGES OF THE POLICY PREMIUM IN
21 CERTAIN CASES WHERE AN EARTHQUAKE OR SERIES
22 OF EARTHQUAKES HAS EXCEEDED AVAILABLE
23 RESOURCES TO PAY CLAIMS. IN THAT CASE, THIS
24 MEANS THAT IN ADDITION TO THE ANNUAL PREMIUM,
25 YOU MAY BE CHARGED UP TO AN ADDITIONAL 20% OF
26 THE PREMIUM.

27 (b) If the offer is not accepted, the insurer or any affiliated
28 insurer shall be required on an every other year basis to offer
29 earthquake coverage in connection with any continuation, renewal,
30 or reinstatement of the policy following any lapse thereof, or with
31 respect to any other policy that extends, changes, supersedes, or
32 replaces the policy of residential property insurance. *The offer may*
33 *be made electronically pursuant to Section 38.5.*

34 (c) Nothing in this section shall preclude the named insured
35 from terminating the earthquake coverage at any time.

36 *SEC. 5. Section 10087 of the Insurance Code is amended to*
37 *read:*

38 10087. (a) As used in this chapter “policy of residential
39 property insurance” shall mean a policy insuring individually
40 owned residential structures of not more than four dwelling units,

1 individually owned condominium units, or individually owned
2 mobilehomes, and their contents, located in this state and used
3 exclusively for residential purposes or a tenant’s policy insuring
4 personal contents of a residential unit located in this state. “Policy
5 of residential property insurance,” as defined, shall not include
6 insurance for real property or its contents used for any commercial,
7 industrial or business purpose, except a structure of not more than
8 four dwelling units rented for individual residential purposes. A
9 policy that does not include any of the perils insured against in a
10 standard fire policy shall not be included in the definition of “policy
11 of residential property insurance.”

12 (b) Proof of mailing of the offer by first-class mail addressed
13 to a named insured or applicant at the mailing address shown on
14 the policy or application, *or proof consistent with Section 38.5*
15 *that the offer of coverage was sent to the named insured or*
16 *applicant by electronic transmission*, shall create a conclusive
17 presumption that the offer was made.

18 ~~SECTION 1. Section 38.5 of the Insurance Code is amended~~
19 ~~to read:~~

20 ~~38.5. (a) Any written notice required to be given or mailed to~~
21 ~~any person by an insurer relating to any insurance on risks or on~~
22 ~~operations in this state not excepted by Section 1851 from the~~
23 ~~coverage of Chapter 9 (commencing with Section 1850.4) of Part~~
24 ~~2 of Division 1 may, if not excluded by subdivision (b) or (c) of~~
25 ~~Section 1633.3 of the Civil Code, be provided by electronic~~
26 ~~transmission pursuant to Title 2.5 (commencing with Section~~
27 ~~1633.1) of Part 2 of Division 3 of the Civil Code, if each party has~~
28 ~~agreed to conduct the transaction by electronic means pursuant to~~
29 ~~Section 1633.5 of the Civil Code.~~

30 ~~(b) The affidavit of the person who initiated the electronic~~
31 ~~transmission, stating the facts of that transmission into an~~
32 ~~information processing system outside of the control of the sender~~
33 ~~or of any person that sent the electronic record on behalf of the~~
34 ~~sender, is prima facie evidence that the notice was transmitted and~~
35 ~~shall be sufficient proof of notice. Any notice provided by~~
36 ~~electronic transmission shall be treated as if mailed or given for~~
37 ~~the purposes of any provision of this code, except as provided by~~
38 ~~subdivision (g) of Section 1633.15 of the Civil Code.~~

39 ~~(c) The insurance company shall maintain a system for~~
40 ~~confirming that any notice or document that is to be provided by~~

1 electronic means has been sent in a manner consistent with Section
2 1633.15 of the Civil Code. A valid electronic signature shall be
3 sufficient for any provision of law requiring a written signature.
4 The insurance company shall retain a copy of the confirmation
5 and electronic signature, when either is required, with the policy
6 information so that they are retrievable upon request by the
7 Department of Insurance while the policy is in force and for five
8 years thereafter.

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