

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2296

Introduced by Assembly Member Low

February 18, 2016

An act to amend Section 1633.2 of the Civil Code, and to amend Section 16.5 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL’S DIGEST

AB 2296, as amended, Low. Digital signatures.

Existing law authorizes law, the Uniform Electronic Transactions Act, provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form and defines an electronic signature for purposes of the act. Existing provisions of the Government Code authorize the use of a digital signature in any written communication with a public entity, and specifies that in those communications, the use of a digital signature has the same force and effect as the use of a manual signature if it complies with specified requirements.

This bill would express the intent of the Legislature to enact legislation that would clarify that a digital signature may be used to satisfy the requirements of an electronic signature under the Uniform Electronic Transactions Act. The bill would, for purposes of the Uniform Electronic Transactions Act, provide that an electronic signature includes a digital signature under the above described provisions of the Government Code and that a digital signature under those provisions is a type of an electronic signature as set forth in the Uniform Electronic Transaction Act.

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. (a) The Legislature hereby finds and declares
2 all of the following:
3 (1) California is a world leader in innovation and harnessing
4 the power of new technologies to promote efficiency, consumer
5 benefits, and economic growth.
6 (2) The Internet and digital technologies enable government to
7 provide services to the public and to transact business more
8 efficiently than with paper-based processes.
9 (3) In 1995, in order to promote e-commerce and digital
10 transactions with public agencies, California enacted Section 16.5
11 of the Government Code, which authorizes use of a “digital
12 signature” in any written communication with a public agency in
13 which a signature is required or used, consistent with regulations
14 to be adopted by the Secretary of State.
15 (4) In 1999, California enacted the Uniform Electronic
16 Transactions Act (Title 2.5 (commencing with Section 1633.2) of
17 Part 2 of Division 3 of the Civil Code), which provides that an
18 “electronic signature” is valid and enforceable under any law that
19 requires a signature in any transaction between two or more
20 persons, including a government agency.
21 (5) The definition of “digital signature” in Section 16.5 of the
22 Government Code and the definition of “electronic signature” in
23 the Uniform Electronic Transactions Act are similar, and neither
24 statute includes any cross-reference to the other, leading to
25 confusion in the marketplace and among public agencies as to
26 what law governs.
27 (6) A lack of clarity in the law creates a barrier to public
28 agencies utilizing fully digital transactions that require a signature,
29 including contracts, permits, and forms to obtain service or
30 participate in government programs. As a result, both government
31 and the public may not realize the benefits of digital transactions
32 and online services, including efficiency, cost savings,
33 convenience, and paper reduction.
34 (b) It is the intent of the Legislature to ~~enact legislation that~~
35 ~~would~~ amend current law to clarify that a “digital signature”

1 authorized by Section 16.5 of the Government Code and subject
2 to regulations adopted by the Secretary of State is one type of
3 “electronic signature” that a public agency may choose to adopt
4 under the Uniform Electronic Transactions Act.

5 *SEC. 2. Section 1633.2 of the Civil Code is amended to read:*

6 1633.2. In this title the following terms have the following
7 definitions:

8 (a) “Agreement” means the bargain of the parties in fact, as
9 found in their language or inferred from other circumstances and
10 from rules, regulations, and procedures given the effect of
11 agreements under laws otherwise applicable to a particular
12 transaction.

13 (b) “Automated transaction” means a transaction conducted or
14 performed, in whole or in part, by electronic means or electronic
15 records, in which the acts or records of one or both parties are not
16 reviewed by an individual in the ordinary course in forming a
17 contract, performing under an existing contract, or fulfilling an
18 obligation required by the transaction.

19 (c) “Computer program” means a set of statements or
20 instructions to be used directly or indirectly in an information
21 processing system in order to bring about a certain result.

22 (d) “Contract” means the total legal obligation resulting from
23 the parties’ agreement as affected by this title and other applicable
24 law.

25 (e) “Electronic” means relating to technology having electrical,
26 digital, magnetic, wireless, optical, electromagnetic, or similar
27 capabilities.

28 (f) “Electronic agent” means a computer program or an
29 electronic or other automated means used independently to initiate
30 an action or respond to electronic records or performances in whole
31 or in part, without review by an individual.

32 (g) “Electronic record” means a record created, generated, sent,
33 communicated, received, or stored by electronic means.

34 (h) “Electronic signature” means an electronic sound, symbol,
35 or process attached to or logically associated with an electronic
36 record and executed or adopted by a person with the intent to sign
37 the electronic record. *For purposes of this title, a “digital*
38 *signature” as defined in subdivision (d) of Section 16.5 of the*
39 *Government Code is a type of electronic signature.*

(i) “Governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(j) “Information” means data, text, images, sounds, codes, computer programs, software, data bases, or the like.

(k) “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(l) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(m) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) “Security procedure” means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(o) “Transaction” means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

SEC. 3. Section 16.5 of the Government Code is amended to read:

16.5. (a) In any written communication with a public entity, as defined in Section 811.2, in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. The use of a digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

- (1) It is unique to the person using it.
- (2) It is capable of verification.
- (3) It is under the sole control of the person using it.

1 (4) It is linked to data in such a manner that if the data are
2 changed, the digital signature is invalidated.

3 (5) It conforms to regulations adopted by the Secretary of State.
4 Initial regulations shall be adopted no later than January 1, 1997.
5 In developing these regulations, the secretary shall seek the advice
6 of public and private entities, including, but not limited to, the
7 Department of Information Technology, the California
8 Environmental Protection Agency, and the Department of General
9 Services. Before the secretary adopts the regulations, he or she
10 shall hold at least one public hearing to receive comments.

11 (b) The use or acceptance of a digital signature shall be at the
12 option of the parties. Nothing in this section shall require a public
13 entity to use or permit the use of a digital signature.

14 (c) Digital signatures employed pursuant to Section 71066 of
15 the Public Resources Code are exempted from this section.

16 (d) “Digital signature” means an electronic identifier, created
17 by computer, intended by the party using it to have the same force
18 and effect as the use of a manual signature. *For purposes of this*
19 *section, a digital signature is a type of “electronic signature” as*
20 *defined in subdivision (h) of Section 1633.1 of the Civil Code.*