

AMENDED IN ASSEMBLY MARCH 31, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2591

Introduced by Assembly Member Dababneh
(Coauthors: Assembly Members Travis Allen and O'Donnell)
(Coauthor: Senator Bates)

February 19, 2016

An act to amend Section 1633.3 of the Civil Code, and to amend Section 38.6 ~~of~~ *of*, and to repeal Section 38.5 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2591, as amended, Dababneh. Insurance: electronic transmission.

Existing law generally requires, with exceptions, that specified provisions of the Civil Code apply to electronic records and electronic signatures relating to a transaction.

This bill would remove *various notices, including a policy cancellation notice by the named insured insured and a written notice of nonrenewal of the policy* from the above exemptions.

Existing law generally requires that any required notice related to insurance transactions be made by mail. Existing law authorizes an insurer, under specified conditions, to provide by electronic transmission the required offer of renewal for automobile insurance, the required offer of renewal or conditional renewal for property insurance, the required offer of coverage or renewal or any disclosure required regarding earthquake insurance, and the offer of renewal for a workers' compensation policy.

The bill would, for the above-specified records, authorize persons in addition to the insurer to send those records by electronic transmission by providing that an agent, broker, or any other person licensed by the Department of Insurance may send those records electronically. *The bill would also repeal various provisions on the electronic transmission of certain notices.*

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
2 by ~~Chapter 638 of the Statutes~~ *Section 1.5 of Chapter 638 of the*
3 *Statutes* of 2015, is amended to 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 1206 and 1306.
13 (3) ~~Divisions~~ *Division 3* (commencing with Section 3101),
14 *Division 4* (commencing with Section 4101), *Division 5*
15 (commencing with Section 5101), *Division 8* (commencing with
16 Section 8101), *Division 9* (commencing with Section 9101), and
17 *Division 11* (commencing with Section 11101) of the Uniform
18 Commercial Code.
19 (4) A law that requires that specifically identifiable text or
20 disclosures in a record or a portion of a record be separately signed,
21 including initialed, from the record. However, this paragraph does
22 not apply to Section 1677 or 1678 of this code or Section 1298 of
23 the Code of Civil Procedure.
24 (c) This title does not apply to any specific transaction described
25 in Section 17511.5 of the Business and Professions Code, Section
26 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,
27 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of
28 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,
29 1789.16, or 1793.23 of, Chapter 1 (commencing with Section

1 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,
2 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,
3 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section
4 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section
5 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)
6 or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of
7 Division 3 of, Section 3071.5 of, Part 5 (commencing with Section
8 4000) of Division 4 of, or Part 5.3 (commencing with Section
9 6500) of Division 4 of this code, subdivision (b) of Section 18608
10 or Section 22328 of the Financial Code, Section 1358.15, 1365,
11 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,
12 ~~Section 662, paragraph (2) of subdivision (a) of Section 663, 664,~~
13 ~~673, 677, paragraph (2) of subdivision (a) of Section 678,~~
14 ~~subdivisions (a) and (b) of Section 678.1,~~ Section 786 as it applies
15 to individual and group disability policies, Section 10192.18,
16 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1
17 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the
18 Public Utilities Code, or Section 9975 or 11738 of the Vehicle
19 Code. An electronic record may not be substituted for any notice
20 that is required to be sent pursuant to Section 1162 of the Code of
21 Civil Procedure. Nothing in this subdivision shall be construed to
22 prohibit the recordation of any document with a county recorder
23 by electronic means.

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

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

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

36 (g) Notwithstanding subdivisions (b) and (c), this title shall
37 apply to electronic records and electronic signatures relating to
38 transactions conducted by a person licensed, certified, or registered
39 pursuant to the Alarm Company Act (Chapter 11.6 (commencing
40 with Section 7590) of Division 3 of the Business and Professions

1 Code) for purposes of activities authorized by Section 7599.54 of
2 the Business and Professions Code.

3 (h) This section shall remain in effect only until January 1, 2019,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before January 1, 2019, deletes or extends that date.

6 SEC. 2. Section 1633.3 of the Civil Code, as amended by
7 ~~Chapter 638 of the Statutes~~ *Section 2.5 of Chapter 638 of the*
8 *Statutes* of 2015, is amended to read:

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

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

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

16 (2) Division 1 (commencing with Section 1101) of the Uniform
17 Commercial Code, except Sections 1206 and 1306.

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

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

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

1 4000) of Division 4 of, or Part 5.3 (commencing with Section
2 6500) of Division 4 of this code, subdivision (b) of Section 18608
3 or Section 22328 of the Financial Code, Section 1358.15, 1365,
4 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,
5 ~~Section 662, 663, 664, 673, 677, 678, 678.1, 786~~ as it applies to
6 individual and group disability policies, 10192.18, 10199.44,
7 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1 of the
8 Insurance Code, Section 779.1, 10010.1, or 16482 of the Public
9 Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An
10 electronic record may not be substituted for any notice that is
11 required to be sent pursuant to Section 1162 of the Code of Civil
12 Procedure. Nothing in this subdivision shall be construed to
13 prohibit the recordation of any document with a county recorder
14 by electronic means.

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

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

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

27 (g) Notwithstanding subdivisions (b) and (c), this title shall
28 apply to electronic records and electronic signatures relating to
29 transactions conducted by a person licensed, certified, or registered
30 pursuant to the Alarm Company Act (Chapter 11.6 (commencing
31 with Section 7590) of Division 3 of the Business and Professions
32 Code) for purposes of activities authorized by Section 7599.54 of
33 the Business and Professions Code.

34 (h) This section shall become operative on January 1, 2019.

35 (i) This section shall remain in effect only until January 1, 2021,
36 and as of that date is repealed, unless a later enacted statute, that
37 is enacted before January 1, 2021, deletes or extends that date.

38 SEC. 3. Section 1633.3 of the Civil Code, as added by Chapter
39 ~~638 of the Statutes~~ *Section 3.5 of Chapter 638 of the Statutes* of
40 2015, is amended to read:

1 1633.3. (a) Except as otherwise provided in subdivisions (b)
2 and (c), this title applies to electronic records and electronic
3 signatures relating to a transaction.

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

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

8 (2) Division 1 (commencing with Section 1101) of the Uniform
9 Commercial Code, except Sections 1206 and 1306.

10 (3) Divisions 3 (commencing with Section 3101), 4
11 (commencing with Section 4101), 5 (commencing with Section
12 5101), 8 (commencing with Section 8101), 9 (commencing with
13 Section 9101), and 11 (commencing with Section 11101) of the
14 Uniform Commercial Code.

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

20 (c) This title does not apply to any specific transaction described
21 in Section 17511.5 of the Business and Professions Code, Section
22 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,
23 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of
24 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,
25 1789.16, or 1793.23 of, Chapter 1 (commencing with Section
26 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,
27 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,
28 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section
29 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section
30 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)
31 or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of
32 Division 3 of, Section 3071.5 of Part 5 (commencing with Section
33 4000) of Division 4 of, or Part 5.3 (commencing with Section
34 6500) of Division 4 of this code, subdivision (b) of Section 18608
35 or Section 22328 of the Financial Code, Section 1358.15, 1365,
36 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,
37 Section ~~662, 663, 664, 673, 677, 678, 678.1~~, 786, 10086, 10113.7,
38 10127.7, 10127.9, 10127.10, 10192.18, 10199.44, 10199.46,
39 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of
40 the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public

1 Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An
2 electronic record may not be substituted for any notice that is
3 required to be sent pursuant to Section 1162 of the Code of Civil
4 Procedure. Nothing in this subdivision shall be construed to
5 prohibit the recordation of any document with a county recorder
6 by electronic means.

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

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

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

19 (g) Notwithstanding subdivisions (b) and (c), this title shall
20 apply to electronic records and electronic signatures relating to
21 transactions conducted by a person licensed, certified, or registered
22 pursuant to the Alarm Company Act (Chapter 11.6 (commencing
23 with Section 7590) of Division 3 of the Business and Professions
24 Code) for purposes of activities authorized by Section 7599.54 of
25 the Business and Professions Code.

26 (h) This section shall become operative on January 1, 2021.

27 *SEC. 4. Section 38.5 of the Insurance Code, as amended by*
28 *Section 4 of Chapter 369 of the Statutes of 2013, is repealed.*

29 ~~38.5. (a) Any written notice required to be given or mailed to~~
30 ~~any person by an insurer relating to any insurance on risks or on~~
31 ~~operations in this state not excepted by subdivision (a), (b), (c),~~
32 ~~(d), (e), or (g) of Section 1851 from the coverage of Chapter 9~~
33 ~~(commencing with Section 1850.4) of Part 2 of Division 1 of this~~
34 ~~code may, if not excluded by subdivision (b) or (e) of Section~~
35 ~~1633.3 of the Civil Code, be provided by electronic transmission~~
36 ~~pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2~~
37 ~~of Division 3 of the Civil Code, if each party has agreed to conduct~~
38 ~~the transaction by electronic means pursuant to Section 1633.5 of~~
39 ~~the Civil Code. The affidavit of the person who initiated the~~
40 ~~electronic transmission, stating the facts of that transmission into~~

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

18 (b) ~~The offer of renewal required by Sections 663 and 678, the~~
19 ~~notice of conditional renewal required by Section 678.1, and the~~
20 ~~offer of coverage or renewal or any disclosure required by Section~~
21 ~~10086 and the offer of renewal for a workers' compensation policy~~
22 ~~may be provided by electronic transmission if an insurer complies~~
23 ~~with all of the following:~~

24 (1) ~~An insurer, or insurer's representative, acquires the consent~~
25 ~~of the insured to opt in to receive the offer, notice, or disclosure~~
26 ~~by electronic transmission, and the insured has not withdrawn that~~
27 ~~consent, prior to providing the offer, notice, or disclosure by~~
28 ~~electronic transmission. An insured's consent may be acquired~~
29 ~~verbally, in writing, or electronically. If consent is acquired~~
30 ~~verbally, the insurer shall confirm consent in writing or~~
31 ~~electronically. The insurer shall retain a record of the insured's~~
32 ~~consent to receive the offer, notice, or disclosure by electronic~~
33 ~~transmission with the policy information so that it is retrievable~~
34 ~~upon request by the Department of Insurance while the policy is~~
35 ~~in force and for five years thereafter.~~

36 (2) ~~An insurer discloses, in writing or electronically, to the~~
37 ~~insured all of the following:~~

38 (A) ~~The opt in to receive the offer, notice, or disclosure by~~
39 ~~electronic transmission is voluntary.~~

1 ~~(B) That the insured may opt out of receiving the offer, notice,~~
2 ~~or disclosure by electronic transmission at any time, and the process~~
3 ~~or system for the insured to opt out.~~

4 ~~(C) A description of the offer, notice, or disclosure that the~~
5 ~~insured will receive by electronic transmission.~~

6 ~~(D) The process or system to report a change or correction in~~
7 ~~the insured's email address.~~

8 ~~(E) The insurer's contact information, which includes, but is~~
9 ~~not limited to, a toll-free number or an insurer's Internet Web site~~
10 ~~address.~~

11 ~~(3) An insurer shall include the insured's email address on the~~
12 ~~policy declaration page.~~

13 ~~(4) An insurer shall annually provide one free printed copy of~~
14 ~~any offer, notice, or disclosure described in this subdivision upon~~
15 ~~request by the insured.~~

16 ~~(5) An insurer shall maintain a process or system that can~~
17 ~~demonstrate that the offer, notice, or disclosure provided by~~
18 ~~electronic transmission was both sent and received consistent with~~
19 ~~Section 1633.15 of the Civil Code. If a different method of sending~~
20 ~~or receiving is agreed upon by the insurer and the insured pursuant~~
21 ~~to Section 1633.15 of the Civil Code, an insurer shall comply with~~
22 ~~the provisions of this subdivision. The insurer shall retain and~~
23 ~~document information so that the documentation and information~~
24 ~~is retrievable upon request by the Department of Insurance while~~
25 ~~the current policy is in force and for five years thereafter related~~
26 ~~to its process or system demonstrating that the offer, notice, or~~
27 ~~disclosure provided by electronic transmission was sent to the~~
28 ~~insured by the applicable statutory regular mail delivery deadlines~~
29 ~~and received electronically. The offer, notice, or disclosure~~
30 ~~provided by electronic transmission shall be treated as if mailed~~
31 ~~so long as the insurer delivers it to the insured in compliance with~~
32 ~~the applicable statutory regular mail delivery deadlines.~~

33 ~~(A) Acceptable methods for an insurer to demonstrate that the~~
34 ~~offer, notice, or disclosure was sent to the insured include simple~~
35 ~~mail transfer protocol server log files indicating transmission, or~~
36 ~~other methodologies indicating sent transmission consistent with~~
37 ~~standards set forth in Section 1633.15 of the Civil Code.~~

38 ~~(B) Acceptable methods for an insurer to demonstrate that the~~
39 ~~offer, notice, or disclosure was received by the insured include~~
40 ~~server log files indicating that the email or application has been~~

1 received, or log files showing that the insured logged into his or
2 her secured account with the insurer, or other methodologies
3 indicating received transmission consistent with standards set forth
4 in Section 1633.15 of the Civil Code.

5 (6) If the offer, notice, or disclosure is not delivered directly to
6 the electronic address designated by the insured, but placed at an
7 electronic address accessible to the insured, an insurer shall notify
8 the insured in plain, clear, and conspicuous language at the
9 electronic address designated by the insured that describes the
10 offer, notice, or disclosure, informs that insured that it is available
11 at another location, and provides instructions to the insured as to
12 how to obtain the offer, notice, or disclosure.

13 (7) (A) Upon an insurer receiving information indicating that
14 the offer, notice, or disclosure sent by electronic transmission was
15 not received by the insured, the insurer shall, within two business
16 days, either clause (i) or (ii):

17 (i) Contact the insured to confirm or update the insured's email
18 address and resend the offer, notice, or disclosure by electronic
19 transmission. If the insurer elects to resend the offer, notice, or
20 disclosure by electronic transmission, the insurer shall demonstrate
21 the transmission was received by the insured, pursuant to paragraph
22 (5). If the insurer is unable to confirm or update the insured's email
23 address, the insurer shall resend the offer, notice, or disclosure by
24 regular mail to the insured at the address shown on the policy.

25 (ii) Resend the offer, notice, or disclosure initially provided by
26 electronic transmission by regular mail to the insured at the address
27 shown on the policy.

28 (B) If the insurer sends the first electronic offer, notice, or
29 disclosure within the time period required by law and the insurer
30 complies with both paragraph (5) and subparagraph (A) of this
31 paragraph, the electronic offer, notice, or disclosure sent pursuant
32 to clause (i) or (ii) of subparagraph (A) shall be treated as if mailed
33 in compliance with the applicable statutory regular mail delivery
34 deadlines.

35 (8) On or before January 1, 2018, the commissioner shall submit
36 a report to the Governor and to the committees of the Senate and
37 Assembly having jurisdiction over insurance and the judiciary,
38 regarding the impact and implementation of the authorization of
39 the electronic transmission of certain insurance renewal offers,
40 notices, or disclosures as authorized by this section. The report

1 shall include input from insurers, consumers, and consumer
2 organizations, and shall include an assessment of the department's
3 experience pertaining to the authorization of the electronic
4 transmission of insurance renewals as authorized by this section.

5 (e) The department may suspend an insurer from providing
6 offers, notices, or disclosures by electronic transmission if there
7 is a pattern or practices that demonstrate the insurer has failed to
8 comply with the requirements of this section. An insurer may
9 appeal the suspension and resume its electronic transmission of
10 offers, notices, or disclosures upon communication from the
11 department that the changes the insurer made to its process or
12 system to comply with the requirements of this section are
13 satisfactory.

14 (d) This section shall remain in effect only until January 1, 2019,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2019, deletes or extends that date.

17 *SEC. 5. Section 38.5 of the Insurance Code, as added by*
18 *Section 5 of Chapter 369 of the Statutes of 2013, is repealed.*

19 ~~38.5. (a) Any written notice required to be given or mailed to~~
20 ~~any person by an insurer relating to any insurance on risks or on~~
21 ~~operations in this state not excepted by Section 1851 from the~~
22 ~~coverage of Chapter 9 (commencing with Section 1850.4) of Part~~
23 ~~2 of Division 1 of this code may, if not excluded by subdivision~~
24 ~~(b) or (c) of Section 1633.3 of the Civil Code, be provided by~~
25 ~~electronic transmission pursuant to Title 2.5 (commencing with~~
26 ~~Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each~~
27 ~~party has agreed to conduct the transaction by electronic means~~
28 ~~pursuant to Section 1633.5 of the Civil Code. The affidavit of the~~
29 ~~person who initiated the electronic transmission, stating the facts~~
30 ~~of that transmission into an information processing system outside~~
31 ~~of the control of the sender or of any person that sent the electronic~~
32 ~~record on behalf of the sender, is prima facie evidence that the~~
33 ~~notice was transmitted and shall be sufficient proof of notice. Any~~
34 ~~notice provided by electronic transmission shall be treated as if~~
35 ~~mailed or given for the purposes of any provision of this code,~~
36 ~~except as provided by subdivision (g) of Section 1633.15 of the~~
37 ~~Civil Code. The insurance company shall maintain a system for~~
38 ~~confirming that any notice or document that is to be provided by~~
39 ~~electronic means has been sent in a manner consistent with Section~~
40 ~~1633.15 of the Civil Code. A valid electronic signature shall be~~

1 sufficient for any provision of law requiring a written signature.
2 The insurance company shall retain a copy of the confirmation
3 and electronic signature, when either is required, with the policy
4 information so that they are retrievable upon request by the
5 Department of Insurance while the policy is in force and for five
6 years thereafter.

7 ~~(b) This section shall become operative on January 1, 2019.~~

8 ~~SEC. 4.~~

9 *SEC. 6.* Section 38.6 of the Insurance Code is amended to read:

10 38.6. (a) (1) Any written record required to be given or mailed
11 to any person by a licensee, including an offer of renewal required
12 by Sections 663 and 678, the notice of policy change or
13 cancellation requested by the insured as required by Section 667.5,
14 the notice of conditional renewal required by Section 678.1, the
15 offer of coverage or renewal or any disclosure required by Section
16 10086, the offer of renewal for a workers' compensation policy,
17 *Section 662, paragraph (2) of subdivision (a) of Section 663,*
18 *Section 664, 667.5, 673, 677, paragraph (2) of subdivision (a) of*
19 *Section 678, subdivisions (a) and (b) of Section 678.1,* or any
20 written record required to be given or mailed to any person by a
21 licensee relating to the business of life insurance, as defined in
22 Section 101 of this code may, if not excluded by subdivision (b)
23 or (c) of Section 1633.3 of the Civil Code, be provided by
24 electronic transmission pursuant to Title 2.5 (commencing with
25 Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each
26 party has agreed to conduct the transaction by electronic means
27 pursuant to Section 1633.5 of the Civil Code, and if the licensee
28 complies with the provisions of this section. A valid electronic
29 signature shall be sufficient for any provision of law requiring a
30 written signature.

31 (2) For purposes of this section, the definitions set forth in
32 Section 1633.2 of the Civil Code shall apply. The term "licensee"
33 means an insurer, agent, broker, or any other person who is required
34 to be licensed by the department.

35 (3) Notwithstanding subdivision (1) of Section 1633.2 of the
36 Civil Code, for purposes of this section, "person" includes, but is
37 not limited to, the policy owner, policyholder, applicant, insured,
38 or assignee or designee of an insured.

39 (b) In order to transmit a record listed in subdivision (a)
40 electronically, a licensee shall comply with all of the following:

1 (1) A licensee, or licensee's representative, acquires the consent
2 of the person to opt in to receive the record by electronic
3 transmission, and the person has not withdrawn that consent, prior
4 to providing the record by electronic transmission. A person's
5 consent may be acquired verbally, in writing, or electronically. If
6 consent is acquired verbally, the licensee shall confirm consent in
7 writing or electronically. The licensee shall retain a record of the
8 person's consent to receive the record by electronic transmission
9 with the policy information so that it is retrievable upon request
10 by the department while the policy is in force and for five years
11 thereafter.

12 (2) A licensee discloses, in writing or electronically, to the
13 person all of the following:

14 (A) The opt in to receive the record by electronic transmission
15 is voluntary.

16 (B) That the person may opt out of receiving the record by
17 electronic transmission at any time, and the process or system for
18 the person to opt out.

19 (C) A description of the record that the person will receive by
20 electronic transmission.

21 (D) The process or system to report a change or correction in
22 the person's email address.

23 (E) The licensee's contact information, which includes, but is
24 not limited to, a toll-free number or the licensee's Internet Web
25 site address.

26 (3) The opt-in consent disclosure required by paragraph (2) may
27 be set forth in the application or in a separate document that is part
28 of the policy approved by the commissioner and shall be bolded
29 or otherwise set forth in a conspicuous manner. The person's
30 signature shall be set forth immediately below the opt-in consent
31 disclosure. If the licensee seeks consent at any time prior to the
32 completion of the application, consent and signature shall be
33 obtained before the application is completed. If the person has not
34 opted in at the time the application is completed, the licensee may
35 receive the opt-in consent at any time thereafter, pursuant to the
36 same opt in requirements that apply at the time of the application.
37 The licensee shall retain a copy of the signed opt-in consent
38 disclosure with the policy information so that each is retrievable
39 upon request by the department while the policy is in force and
40 for five years thereafter.

1 (4) The email address of the person who has consented to
2 electronic transmission shall be set forth on the consent disclosure.
3 In addition, if the person who consented receives an annual
4 statement, the email address of the person who has consented shall
5 be set forth on that record.

6 (5) The licensee shall annually provide one free printed copy
7 of any record described in this subdivision upon request by the
8 person.

9 (6) If a provision of this code requires a licensee to transmit a
10 record by ~~first class~~ *first-class* mail, regular mail, does not specify
11 a method of delivery, or is a record that is required to be provided
12 pursuant to Article 6.6 (commencing with Section 791), and if the
13 licensee is not otherwise prohibited from transmitting the record
14 electronically under subdivision (b) of Section 1633.8 of the Civil
15 Code, then the record may be transmitted by electronic transmission
16 if the licensee complies with all of the requirements of Sections
17 1633.15 and 1633.16 of the Civil Code.

18 (7) Notwithstanding subdivision (b) of Section 1633.8 of the
19 Civil Code, if a provision of this code requires a licensee to
20 transmit a record by return receipt, registered mail, certified mail,
21 signed written receipt of delivery, or other method of delivery
22 evidencing actual receipt by the person, and if the licensee is not
23 otherwise prohibited from transmitting the record electronically
24 under Section 1633.3 of the Civil Code and the provisions of this
25 section, then the licensee shall maintain a process or system that
26 demonstrates proof of delivery and actual receipt of the record by
27 the person consistent with this paragraph. The licensee shall
28 document and retain information demonstrating delivery and actual
29 receipt so that it is retrievable, upon request, by the department at
30 least five years after the policy is no longer in force. The record
31 provided by electronic transmission shall be treated as if actually
32 received if the licensee delivers the record to the person in
33 compliance with applicable statutory delivery deadlines. A licensee
34 may demonstrate actual delivery and receipt by any of the
35 following:

36 (A) The person acknowledges receipt of the electronic
37 transmission of the record by returning an electronic receipt or by
38 executing an electronic signature.

39 (B) The record is made part of, or attached to, an email sent to
40 the email address designated by the person, and there is a

1 confirmation receipt, or some other evidence that the person
2 received the email in his or her email account and opened the
3 email.

4 (C) The record is posted on the licensee's secure Internet Web
5 site, and there is evidence demonstrating that the person logged
6 onto the licensee's secure Internet Web site and downloaded,
7 printed, or otherwise acknowledged receipt of the record.

8 (D) If a licensee is unable to demonstrate actual delivery and
9 receipt pursuant to this paragraph, the licensee shall resend the
10 record by regular mail to the person in the manner originally
11 specified by the underlying provision of this code.

12 (8) Notwithstanding any other law, a notice of lapse,
13 nonrenewal, cancellation, or termination of any product subject to
14 this section may be transmitted electronically if the licensee
15 demonstrates proof of delivery as set forth in paragraph (7) and
16 complies with the other provisions in this section.

17 (9) If the record is not delivered directly to the electronic address
18 designated by the person but placed at an electronic address
19 accessible to the person, a licensee shall notify the person in plain,
20 clear, and conspicuous language at the electronic address
21 designated by the person that describes the record, informs that
22 person that it is available at another location, and provides
23 instructions to the person as to how to obtain the record.

24 (10) (A) Upon a licensee receiving information indicating that
25 the record sent by electronic transmission was not received by the
26 person, the licensee shall, within five business days, comply with
27 either clause (i) or (ii):

28 (i) Contact the person to confirm or update the person's email
29 address and resend the record by electronic transmission. If the
30 licensee elects to resend the record by electronic transmission, the
31 licensee shall demonstrate the transmission was received by the
32 person, pursuant to paragraph (6), (7), or (8). If the licensee is
33 unable to confirm or update the person's email address, the licensee
34 shall resend the record by regular mail to the licensee at the address
35 shown on the policy, or, if the underlying statute requires delivery
36 in a specified manner, send the record in that specified manner.

37 (ii) Resend the record initially provided by electronic
38 transmission by regular mail to the insured at the address shown
39 on the policy, or, if the underlying statute requires delivery in a
40 specified manner, send the record in that specified manner.

1 (B) If the licensee sends the first electronic record within the
2 time period required by law and the licensee complies with both
3 paragraph (5) and subparagraph (A) of this paragraph, the record
4 sent pursuant to clause (i) or (ii) of subparagraph (A) shall be
5 treated as if mailed in compliance with the applicable statutory
6 regular mail delivery deadlines.

7 (11) The licensee shall not charge any person who declines to
8 opt in to receive a record through electronic transmission from
9 receiving a record electronically. The licensee shall not provide a
10 discount or an incentive to any person to opt in to receive electronic
11 records.

12 (12) The licensee shall verify a person’s email address via paper
13 writing sent by regular mail when more than 12 months have
14 elapsed since the license’s last electronic communication.

15 (c) An insurance agent or broker acting under the direction of
16 a party that enters into a contract by means of an electronic record
17 or electronic signature shall not be held liable for any deficiency
18 in the electronic procedures agreed to by the parties under that
19 contract if all of the following are met:

20 (1) The insurance agent or broker has not engaged in negligent,
21 reckless, or intentional tortious conduct.

22 (2) The insurance agent or broker was not involved in the
23 development or establishment of the electronic procedures.

24 (3) The insurance agent or broker did not deviate from the
25 electronic procedures.

26 (d) On or before January 1, 2020, the commissioner shall submit
27 a report to the Governor and to the committees of the Senate and
28 Assembly having jurisdiction over insurance and the judiciary,
29 regarding the impact and implementation of the authorization of
30 the electronic transmission of certain insurance renewal offers,
31 notices, or disclosures as authorized by this section. The report
32 shall include input from insurers, consumers, and consumer
33 organizations, and shall include an assessment of the department’s
34 experience pertaining to the authorization of the electronic
35 transmission of insurance renewals as authorized by this section.

36 (e) Notwithstanding paragraph (4) of subdivision (b) of Section
37 1633.3 of the Civil Code, for any policy of life insurance, as
38 defined in Section 101, any statutory requirement for a separate
39 acknowledgment, signature, or initial, which is not expressly
40 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,

1 may be transacted using an electronic signature, or by electronic
2 transaction, subject to all applicable provisions of this section.

3 (f) The department may suspend a licensee from providing
4 records by electronic transmission if there is a pattern or practices
5 that demonstrate the licensee has failed to comply with the
6 requirements of this section. A licensee may appeal the suspension
7 and resume its electronic transmission of records upon
8 communication from the department that the changes the licensee
9 made to its process or system to comply with the requirements of
10 this section are satisfactory.

11 ~~(g) This section shall remain in effect only until January 1, 2021,~~
12 ~~and as of that date is repealed, unless a later enacted statute, that~~
13 ~~is enacted before January 1, 2021, deletes or extends that date.~~