

AMENDED IN ASSEMBLY MAY 10, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

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, *Cristina Garcia,*
O'Donnell, ~~and Olsen Olsen, and Wilk~~)
(Coauthor: Senator Bates)

February 19, 2016

An act to amend Section 1633.3 of the Civil Code, and to amend Section 38.6 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 and a written notice of nonrenewal of the policy from the above-exemptions: *exemptions, making those notices subject to the specified provisions of the Civil Code. The bill, commencing January 1, 2021, would reinstate the exemptions of those notices from the specified provisions of the Civil Code.*

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:~~ *electronically, as specified.*

Existing law prohibits an insurer, relating to any insurance on risks or on operations in this state, including reinsurance, life insurance, insurance of vessels or craft, title insurance, and disability insurance, from sending a written notice by electronic transmission.

This bill would repeal the above prohibition, thereby allowing an insurer, relating to any insurance on risks or on operations in this state, including reinsurance, life insurance, insurance of vessels or craft, title insurance, and disability insurance, to send a written notice by electronic transmission.

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 Section 1.5 of Chapter 638 of the Statutes of 2015, is amended
- 3 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.

(3) Division 3 (commencing with Section 3101), Division 4 (commencing with Section 4101), Division 5 (commencing with Section 5101), Division 8 (commencing with Section 8101), Division 9 (commencing with Section 9101), and Division 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, 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, 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, 1950.6, 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, Section 3071.5 of, Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this 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 786 as it applies to individual and group disability policies, Section 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 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

1 subdivision (b) when used for a transaction subject to a law other
2 than those specified in subdivision (b).

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

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

11 (g) Notwithstanding subdivisions (b) and (c), this title shall
12 apply to electronic records and electronic signatures relating to
13 transactions conducted by a person licensed, certified, or registered
14 pursuant to the Alarm Company Act (Chapter 11.6 (commencing
15 with Section 7590) of Division 3 of the Business and Professions
16 Code) for purposes of activities authorized by Section 7599.54 of
17 the Business and Professions Code.

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

21 SEC. 2. Section 1633.3 of the Civil Code, as amended by
22 Section 2.5 of Chapter 638 of the Statutes of 2015, is amended to
23 read:

24 1633.3. (a) Except as otherwise provided in subdivisions (b)
25 and (c), this title applies to electronic records and electronic
26 signatures relating to a transaction.

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

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

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

33 (3) Divisions 3 (commencing with Section 3101), 4
34 (commencing with Section 4101), 5 (commencing with Section
35 5101), 8 (commencing with Section 8101), 9 (commencing with
36 Section 9101), and 11 (commencing with Section 11101) of the
37 Uniform Commercial Code.

38 (4) A law that requires that specifically identifiable text or
39 disclosures in a record or a portion of a record be separately signed,
40 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, 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, 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, 1950.6, 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, Section 3071.5 of Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this 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 786 as it applies to individual and group disability policies, 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 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.

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

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

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

~~SEC. 3.— Section 1633.3 of the Civil Code, as added by Section 3.5 of Chapter 638 of the Statutes of 2015, 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 1206 and 1306.~~

~~(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.~~

~~(e) 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, 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, 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, 1950.6, 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, Section 3071.5 of Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this 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 786, 10086, 10113.7, 10127.7, 10127.9, 10127.10, 10192.18, 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.~~

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

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

1 ~~SEC. 4.~~

2 *SEC. 3.* Section 38.5 of the Insurance Code, as amended by
3 Section 4 of Chapter 369 of the Statutes of 2013, is repealed.

4 ~~SEC. 5.~~

5 *SEC. 4.* Section 38.5 of the Insurance Code, as added by
6 Section 5 of Chapter 369 of the Statutes of 2013, is repealed.

7 ~~SEC. 6.~~

8 *SEC. 5.* Section 38.6 of the Insurance Code is amended to read:

9 38.6. (a) (1) Any written record required to be given or mailed
10 to any person by a licensee, including an offer of renewal required
11 by Sections 663 and 678, the notice of policy change or
12 cancellation requested by the insured as required by Section 667.5,
13 the notice of conditional renewal required by Section 678.1, the
14 offer of coverage or renewal or any disclosure required by Section
15 10086, the offer of renewal for a workers' compensation policy,
16 Section 662, paragraph (2) of subdivision (a) of Section 663,
17 Section 664, 667.5, 673, 677, paragraph (2) of subdivision (a) of
18 Section 678, subdivisions (a) and (b) of Section 678.1, or any
19 written record required to be given or mailed to any person by a
20 licensee relating to the business of life insurance, as defined in
21 Section 101 of this code may, if not excluded by subdivision (b)
22 or (c) of Section 1633.3 of the Civil Code, be provided by
23 electronic transmission pursuant to Title 2.5 (commencing with
24 Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each
25 party has agreed to conduct the transaction by electronic means
26 pursuant to Section 1633.5 of the Civil Code, and if the licensee
27 complies with the provisions of this section. A valid electronic
28 signature shall be sufficient for any provision of law requiring a
29 written signature.

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

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

38 (b) In order to transmit a record listed in subdivision (a)
39 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~~ *opt-in* requirements that apply at the time of the
37 application. The licensee shall retain a copy of the signed opt-in
38 consent disclosure with the policy information so that each is
39 retrievable upon request by the department while the policy is in
40 force and 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 mail, regular mail, does not specify a method
11 of delivery, or is a record that is required to be provided pursuant
12 to Article 6.6 (commencing with Section 791), and if the licensee
13 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)~~

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

9 ~~(D)~~

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

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

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

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

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

39 (ii) Resend the record initially provided by electronic
40 transmission by regular mail to the insured at the address shown

1 on the policy, or, if the underlying statute requires delivery in a
2 specified manner, send the record in that specified manner.

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

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

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

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

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

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

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

28 (d) (1) On or before January 1, ~~2020~~, 2019, the commissioner
29 shall submit a report to the Governor and to the committees of the
30 Senate and Assembly having jurisdiction over insurance and the
31 judiciary, regarding the impact and implementation of the
32 authorization of the electronic transmission of certain insurance
33 renewal offers, notices, or disclosures, relating to the business of
34 life insurance, as authorized by this section. The report shall include
35 input from insurers, consumers, and consumer organizations, and
36 shall include an assessment of the department's experience
37 pertaining to the authorization of the electronic transmission of
38 insurance renewals, relating to the business of life insurance, as
39 authorized by this section.

(2) On or before January 1, ~~2018~~, 2019, the commissioner shall submit a report to the Governor and to the committees of the Senate and Assembly having jurisdiction over insurance and the judiciary, regarding the impact and implementation of the authorization of the electronic transmission of certain insurance renewal offers, notices, or disclosures including an offer of renewal required by Sections 663 and 678, the notice of conditional renewal required by Section 678.1, the offer of coverage or renewal or any disclosure required by Section 10086, and the offer of renewal for a workers' compensation policy, as authorized by this section. The report shall include input from insurers, consumers, and consumer organizations, and shall include an assessment of the department's experience pertaining to the authorization of the electronic transmission of insurance renewals, including, an offer of renewal required by Sections 663 and 678, the notice of conditional renewal required by Section 678.1, the offer of coverage or renewal or any disclosure required by Section 10086, and the offer of renewal for a workers' compensation policy, as authorized by this section.

(e) Notwithstanding paragraph (4) of subdivision (b) of Section 1633.3 of the Civil Code, for any policy of life insurance, as defined in Section 101, any statutory requirement for a separate acknowledgment, signature, or initial, which is not expressly prohibited by subdivision (c) of Section 1633.3 of the Civil Code, may be transacted using an electronic signature, or by electronic transaction, subject to all applicable provisions of this section.

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

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

SEC. 6. Section 38.6 is added to the Insurance Code, to read:

38.6. (a) (1) Any written record required to be given or mailed to any person by a licensee, including an offer of renewal required by Sections 663 and 678, the notice of policy change or

1 cancellation requested by the insured as required by Section 667.5,
2 the notice of conditional renewal required by Section 678.1, the
3 offer of coverage or renewal or any disclosure required by Section
4 10086, the offer of renewal for a workers' compensation policy,
5 or any written record required to be given or mailed to any person
6 by a licensee relating to the business of life insurance, as defined
7 in Section 101 of this code may, if not excluded by subdivision (b)
8 or (c) of Section 1633.3 of the Civil Code, be provided by electronic
9 transmission pursuant to Title 2.5 (commencing with Section
10 1633.1) of Part 2 of Division 3 of the Civil Code, if each party has
11 agreed to conduct the transaction by electronic means pursuant
12 to Section 1633.5 of the Civil Code, and if the licensee complies
13 with the provisions of this section. A valid electronic signature
14 shall be sufficient for any provision of law requiring a written
15 signature.

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

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

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

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

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

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

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

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

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

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

11 (3) The opt-in consent disclosure required by paragraph (2)
12 may be set forth in the application or in a separate document that
13 is part of the policy approved by the commissioner and shall be
14 bolded or otherwise set forth in a conspicuous manner. The
15 person's signature shall be set forth immediately below the opt-in
16 consent disclosure. If the licensee seeks consent at any time prior
17 to the completion of the application, consent and signature shall
18 be obtained before the application is completed. If the person has
19 not opted in at the time the application is completed, the licensee
20 may receive the opt-in consent at any time thereafter, pursuant to
21 the same opt-in requirements that apply at the time of the
22 application. The licensee shall retain a copy of the signed opt-in
23 consent disclosure with the policy information so that each is
24 retrievable upon request by the department while the policy is in
25 force and for five years thereafter.

26 (4) The email address of the person who has consented to
27 electronic transmission shall be set forth on the consent disclosure.
28 In addition, if the person who consented receives an annual
29 statement, the email address of the person who has consented shall
30 be set forth on that record.

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

34 (6) If a provision of this code requires a licensee to transmit a
35 record by first-class mail, regular mail, does not specify a method
36 of delivery, or is a record that is required to be provided pursuant
37 to Article 6.6 (commencing with Section 791), and if the licensee
38 is not otherwise prohibited from transmitting the record
39 electronically under subdivision (b) of Section 1633.8 of the Civil
40 Code, then the record may be transmitted by electronic

1 transmission if the licensee complies with all of the requirements
2 of Sections 1633.15 and 1633.16 of the Civil Code.

3 (7) If the record is not delivered directly to the electronic
4 address designated by the person but placed at an electronic
5 address accessible to the person, a licensee shall notify the person
6 in plain, clear, and conspicuous language at the electronic address
7 designated by the person that describes the record, informs that
8 person that it is available at another location, and provides
9 instructions to the person as to how to obtain the record.

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

14 (i) Contact the person to confirm or update the person's email
15 address and resend the record by electronic transmission. If the
16 licensee elects to resend the record by electronic transmission, the
17 licensee shall demonstrate the transmission was received by the
18 person, pursuant to paragraph (6). If the licensee is unable to
19 confirm or update the person's email address, the licensee shall
20 resend the record by regular mail to the licensee at the address
21 shown on the policy, or, if the underlying statute requires delivery
22 in a specified manner, send the record in that specified manner.

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

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

33 (9) The licensee shall not charge any person who declines to
34 opt in to receive a record through electronic transmission from
35 receiving a record electronically. The licensee shall not provide
36 a discount or an incentive to any person to opt in to receive
37 electronic records.

38 (10) The licensee shall verify a person's email address via paper
39 writing sent by regular mail when more than 12 months have
40 elapsed since the licensee's last electronic communication.

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

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

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

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

12 (d) Notwithstanding paragraph (4) of subdivision (b) of Section
13 1633.3 of the Civil Code, for any policy of life insurance, as defined
14 in Section 101, any statutory requirement for a separate
15 acknowledgment, signature, or initial, which is not expressly
16 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,
17 may be transacted using an electronic signature, or by electronic
18 transaction, subject to all applicable provisions of this section.

19 (e) The department may suspend a licensee from providing
20 records by electronic transmission if there is a pattern or practices
21 that demonstrate the licensee has failed to comply with the
22 requirements of this section. A licensee may appeal the suspension
23 and resume its electronic transmission of records upon
24 communication from the department that the changes the licensee
25 made to its process or system to comply with the requirements of
26 this section are satisfactory.

27 (f) This section shall become operative on January 1, 2021.