

Assembly Bill No. 2591

CHAPTER 617

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

[Approved by Governor September 25, 2016. Filed with
Secretary of State September 25, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2591, 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 change or cancellation notice by the named insured and a written notice of nonrenewal of the policy from the above exemptions, making those notices subject to the specified provisions of the Civil Code. The bill, commencing January 1, 2021, would reinstate certain 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 notice of conditional renewal for commercial 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 additional persons licensed by the Department of Insurance to send those records electronically, as specified. The bill, as of January 1, 2021, would no longer authorize the notice of conditional renewal for commercial insurance to be sent electronically. As of January 1, 2021, the bill would permit a notice of lapse, nonrenewal, cancellation, or termination, as specified, to be transmitted electronically if it is also transmitted by mail, as prescribed by statute.

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

SECTION 1. Section 1633.3 of the Civil Code, as amended by Section 1.5 of Chapter 638 of the Statutes of 2015, is repealed.

SEC. 2. Section 1633.3 of the Civil Code, as amended by Section 2.5 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.

(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 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.

(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 662, paragraph (2) of subdivision (a) of Section 663, Section 664, 673, or 677, paragraph (2) of subdivision (a) of Section 678, Section

678.1 or 786, paragraph (2) of subdivision (a) of Section 10086, or Section 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.

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 Section 38.5 of the Insurance Code, as amended by Section 4 of Chapter 369 of the Statutes of 2013, is repealed.

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 Section 38.5 of the Insurance Code, as added by Section 5 of Chapter 369 of the Statutes of 2013, is repealed.

SEC. 6. Section 38.6 of the Insurance Code is amended 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 cancellation requested by the insured as required by Section 667.5, the notice of conditional renewal required by Section 678.1, the offer of coverage or renewal or any disclosure required by Section 10086, the offer of renewal for a workers' compensation policy, Section 662, paragraph (2) of subdivision (a) of Section 663, Section 664, 667.5, 673, 677, paragraph (2) of subdivision (a) of Section 678, subdivisions (a) and (b) of Section 678.1, or any written record required to be given or mailed to any person by a licensee relating to the business of life insurance, as defined in Section 101 of this code may, if not excluded by subdivision (b) or (c) of Section 1633.3 of the Civil Code, be provided by electronic transmission pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each party has agreed to conduct the transaction by electronic means pursuant to Section 1633.5

of the Civil Code, and if the licensee complies with the provisions of this section. A valid electronic signature shall be sufficient for any provision of law requiring a written signature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The person acknowledges receipt of the electronic transmission of the record by executing an electronic signature.

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

(C) The record is transmitted to the named insured through an application on a personal electronic device that is secured by password, biometric identifier, or other technology, and there is evidence demonstrating that the person logged into the application and viewed or otherwise acknowledged receipt of the record.

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

(8) Notwithstanding any other law, a notice of lapse, nonrenewal, cancellation, or termination of any product subject to this section may be transmitted electronically if the licensee demonstrates proof of delivery as

set forth in paragraph (7) and complies with the other provisions in this section.

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

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

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

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

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

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

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

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

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

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

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

(d) (1) On or before January 1, 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, relating to the business of life insurance, 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, relating to the business of life insurance, as authorized by this section.

(2) On or before January 1, 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. 7. 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 paragraph (1) of subdivision (a) of Section 663 and Section 678, the notice of policy

change or cancellation requested by the insured as required by Section 667.5, the offer of coverage or renewal or any disclosure required by paragraph (1) of subdivision (a) of Section 10086, and the offer of renewal for a workers' compensation policy may, if not excluded by subdivision (b) or (c) of Section 1633.3 of the Civil Code, be provided by electronic transmission pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each party has agreed to conduct the transaction by electronic means pursuant to Section 1633.5 of the Civil Code, and if the licensee complies with the provisions of this section. A valid electronic signature shall be sufficient for any provision of law requiring a written signature.

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

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

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

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

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

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

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

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

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

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

(3) The opt-in consent disclosure required by paragraph (2) may be set forth in the application or in a separate document that is part of the policy approved by the commissioner and shall be bolded or otherwise set forth in a conspicuous manner. The person's signature shall be set forth immediately below the opt-in consent disclosure. If the licensee seeks

consent at any time prior to the completion of the application, consent and signature shall be obtained before the application is completed. If the person has not opted in at the time the application is completed, the licensee may receive the opt-in consent at any time thereafter, pursuant to the same opt-in requirements that apply at the time of the application. The licensee shall retain a copy of the signed opt-in consent disclosure with the policy information so that each is retrievable upon request by the department while the policy is in force and for five years thereafter.

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

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

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

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

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

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

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

(B) If the licensee sends the first electronic record within the time period required by law and the licensee complies with both paragraph (5) and subparagraph (A) of this paragraph, the record sent pursuant to clause (i)

or (ii) of subparagraph (A) shall be treated as if mailed in compliance with the applicable statutory regular mail delivery deadlines.

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

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

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

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

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

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

(d) 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.

(e) 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.

(f) This section does not apply to a written record that is required to be given or mailed to any person by a licensee and that relates to the business of life insurance, as defined in Section 101.

(g) A notice of lapse, nonrenewal, cancellation, or termination required by a section of this code that is excluded by subdivision (b) or (c) of Section 1633.3 of the Civil Code may be transmitted electronically if it is also transmitted by mail, as prescribed by statute.

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