

AMENDED IN SENATE MAY 6, 1999
AMENDED IN SENATE APRIL 15, 1999

SENATE BILL

No. 820

Introduced by Senators Sher and Bowen

February 25, 1999

An act to add Title 2.5 (commencing with Section 1633.1) to Part 2 of Division 3 of the Civil Code, relating to electronic transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 820, as amended, Sher. Electronic transactions.

Existing law contains provisions regulating contracts and requires certain contracts to be in writing and signed. Existing law contains certain special provisions applicable to electronic transactions, such as provisions relating to electronic funds transfer, but does not generally set forth the effect of transactions entered into electronically.

This bill would enact the Electronic Transactions Act. It would generally apply to electronic transactions, except that it would not apply to the creation and execution of wills and testamentary trusts, and would not apply to certain other transactions.

The bill would provide that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. It would provide that if a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law. It would also provide that if a law requires a signature, or provides consequences in

the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature. The bill would enact related provisions. The bill would authorize the provision of written information by electronic record. The bill would set forth provisions governing changes and errors, the effect of electronic signatures, and admissibility in evidence.

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. Title 2.5 (commencing with Section
2 1633.1) is added to Part 2 of Division 3 of the Civil Code,
3 to read:

4
5 TITLE 2.5. ELECTRONIC TRANSACTIONS
6 1633.1. This title may be cited as the Electronic
7 Transactions Act.

8 1633.2. In this title the following terms have the
9 following definitions:

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

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

22 (c) "Computer program" means a set of statements or
23 instructions to be used directly or indirectly in an
24 information processing system in order to bring about a
25 certain result.

26 (d) "Contract" means the total legal obligation
27 resulting from the parties' agreement as affected by this
28 title and other applicable law.



1 (e) “Electronic” means ~~of, or relating to,~~ *relating to*
2 technology having electrical, digital, magnetic, wireless,
3 optical, electromagnetic, or similar capabilities.

4 (f) “Electronic agent” means a computer program;
5 ~~electronic, or an electronic~~ or other automated means
6 used to initiate or respond to electronic records or
7 performances in whole ~~or in part without review by an~~
8 ~~individual in the ordinary course of a transaction.~~ *or in*
9 *part without intervention by an individual at the time of*
10 *the action or response.*

11 (g) “Electronic record” means a record created,
12 ~~generated, received, stored, or communicated by~~
13 *generated, sent, communicated, received, or stored by*
14 electronic means.

15 (h) “Electronic signature” means ~~a signature in an~~
16 electronic sound, symbol, or process attached to or
17 logically associated with an electronic record and
18 executed or adopted by a person with the intent to sign
19 the electronic record.

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

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

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

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

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

39 (n) “Security procedure,” means a procedure
40 employed for the purpose of verifying that an electronic



1 signature, record, or performance is that of a specific
2 person or for detecting changes or errors in the
3 informational content of an electronic record. The term
4 includes a procedure that requires the use of algorithms
5 or other codes, identifying words or numbers, encryption,
6 callback or other acknowledgment procedures.

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

11 1633.3. (a) Except as otherwise provided in
12 subdivision (b), this title applies to electronic records and
13 electronic signatures that relate to any transaction.

14 (b) This title does not apply to ~~electronic records and~~
15 ~~electronic signatures when used for purposes of~~
16 transactions subject to the following laws:

17 (1) A law governing the creation and execution of
18 wills, codicils, ~~and~~ or testamentary trusts.

19 (2) *Division 1 (commencing with Section 1101) of the*
20 *Uniform Commercial Code, except Sections 1101 and*
21 *1206.*

22 (3) Divisions 3 (commencing with Section 3101), 4
23 (commencing with Section 4101), 5 (commencing with
24 Section 5101), 7 (commencing with Section 7101), 8
25 (commencing with Section 8101), 9 (commencing with
26 Section 9101), and 11 (commencing with Section 11101)
27 of the Uniform Commercial Code.

28 (4) *A law that requires that specifically identifiable*
29 *text or disclosures in a record or a portion of a record be*
30 *separately signed from the record.*

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

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

38 1633.4. (a) If a law other than this title requires a
39 record to be posted or displayed in a certain manner, to
40 be sent, communicated, or transmitted by a specified



1 method, or to contain information that is formatted in a
2 certain manner, all of the following rules apply:

3 (1) The record shall be posted or displayed in the
4 manner specified in the other law.

5 (2) Unless otherwise agreed by the parties, the record
6 shall be sent, communicated, or transmitted by the
7 method specified in the other law.

8 (3) The record shall contain the information
9 formatted in the manner specified in the other law.

10 (b) Except as otherwise provided in paragraph (2) of
11 subdivision (a), this section may not be varied by
12 agreement.

13 1633.5. (a) This title does not require that ~~records or~~
14 ~~signatures be generated, received, stored, sent, or a~~
15 ~~record or a signature be created, generated, sent,~~
16 ~~communicated, received, stored, or~~ otherwise processed
17 or used by electronic means or in electronic form.

18 (b) *This title only applies to a transaction between*
19 *parties each of whom has agreed in an electronic record*
20 *to conduct the transaction electronically. An agreement*
21 *to conduct a transaction electronically is determined*
22 *from the context and surrounding circumstances,*
23 *including the conduct of the parties. An agreement to*
24 *conduct a transaction electronically may not be inferred*
25 *solely from the fact that a party has used electronic means*
26 *to pay an account or register a purchase or warranty. This*
27 *subdivision may not be varied by agreement.*

28 (c) *If a party agrees to conduct a transaction*
29 *electronically, nothing in this title prohibits the party*
30 *from refusing to conduct other transactions*
31 *electronically. This subdivision may not be varied by*
32 *agreement.*

33 (d) Except as otherwise provided in this title, the
34 effect of any provision of this title may be varied by
35 ~~agreement between parties involved in generating,~~
36 ~~sending, receiving, storing, or otherwise processing or~~
37 ~~using electronic records or electronic signatures. The~~
38 ~~agreement. The~~ presence in certain provisions of this title
39 of the words “unless otherwise agreed,” or words of



1 similar import, does not imply that the effect of other
2 provisions may not be varied by agreement.

3 1633.6. This title shall be construed and applied
4 according to all of the following:

5 (a) To facilitate electronic transactions *consistent with*
6 *other applicable provisions of law.*

7 (b) To be consistent with reasonable practices
8 concerning electronic transactions and with the
9 continued expansion of those practices ~~through custom,~~
10 ~~usage, and agreement.~~

11 1633.7. (a) A record or signature may not be denied
12 legal effect or enforceability solely because it is in
13 electronic form.

14 (b) A contract may not be denied legal effect or
15 enforceability solely because an electronic record was
16 used in its formation.

17 (c) If a law requires a record to be in writing, or
18 provides consequences if it is not, an electronic record
19 satisfies the law.

20 (d) If a law requires a signature, or provides
21 consequences in the absence of a signature, the law is
22 satisfied with respect to an electronic record if the
23 electronic record includes an electronic signature.

24 1633.8. (a) If *parties have agreed to conduct a*
25 *transaction electronically and* a law requires a person to
26 provide, send, or deliver information in writing to
27 another person, that requirement is satisfied if the
28 information is provided, sent, or delivered, as the case
29 may be, in an electronic record, and the information is
30 capable of retention ~~for subsequent reference by the~~
31 ~~recipient at the time the information is received.~~

32 ~~(b) The standards for the manner of providing~~
33 ~~information in an electronic record provided in~~
34 ~~subdivision (a) may not be varied by agreement.~~

35 *(b) If information is provided, sent, or delivered in an*
36 *electronic record under subdivision (a), the requirement*
37 *that the information must be capable of retention may*
38 *not be varied by agreement.*

39 1633.9. (a) An electronic record or electronic
40 signature is attributable to a person if it was the act of the



1 person. ~~Attribution~~ *The act of the person* may be proved
2 in any manner, including a showing of the efficacy of any
3 security procedure applied to determine the person to
4 which the electronic record or electronic signature was
5 attributable.

6 (b) The effect of an electronic record or electronic
7 signature attributed to a person under subdivision (a)
8 shall be determined from the context and surrounding
9 circumstances at the time of its creation, execution, or
10 adoption, including the parties' agreement, if any, and
11 otherwise as provided by law.

12 1633.10. ~~Unless otherwise agreed, if~~ *If* a change or
13 error in an electronic record occurs in a transmission
14 between parties to a transaction, the following rules
15 apply:

16 ~~(a)~~

17 (1) If the parties have agreed to use a security
18 procedure to detect changes or errors and one party had
19 confirmed changes or errors and one party has
20 conformed to the procedure, but the other party has not,
21 and the nonconforming party would have detected the
22 change or error had that party also conformed, the effect
23 of the changed or erroneous electronic record is
24 avoidable by the conforming party.

25 ~~(b)~~

26 (2) In an automated transaction involving an
27 individual, the individual may avoid the effect of an
28 electronic record that resulted from an error by the
29 individual made in dealing with the electronic agent of
30 another person if the electronic agent did not provide an
31 opportunity for the prevention or correction of the error
32 and, at the time the individual learns of the error, all of
33 the following conditions are met:

34 ~~(1)~~

35 (i) The individual promptly notifies the other person
36 of the error and that the individual did not intend to be
37 bound by the electronic record received by the other
38 person.

39 ~~(2)~~



1 (ii) The individual takes reasonable steps, including
2 steps that conform to the other person's reasonable
3 instructions, to return to the other person or, if instructed
4 by the other person, to destroy the consideration
5 received, if any, as a result of the erroneous electronic
6 record.

7 ~~(3)~~

8 (iii)The individual has not used or received ~~the~~ any
9 benefit or value ~~of~~ from the consideration, if any,
10 received from the other person.

11 ~~(e) If neither subdivision (a) or (b)~~

12 (3) If neither paragraph (1) or (2) applies, the change
13 or error has the effect provided by law, including the law
14 of mistake, and the parties' contract, if any.

15 (4) Paragraphs (2) and (3) may not be varied by
16 agreement.

17 1633.11. If a law requires that a signature be
18 notarized, the requirement is satisfied with respect to
19 ~~electronic records and electronic signatures if the~~ an
20 *electronic signature if* an electronic record includes, in
21 addition to the electronic signature to be notarized, the
22 electronic signature of a notary public together with all
23 other information required to be included in a
24 notarization by other applicable law.

25 1633.12. (a) If a law requires that certain records be
26 retained, that requirement is met by retaining an
27 electronic record of the information in the record, if the
28 electronic record reflects accurately the information set
29 forth in the record after it was first generated in its final
30 form as an electronic record or otherwise, and the
31 electronic record remains accessible for later reference.

32 (b) A requirement to retain records in accordance
33 with subdivision (a) does not apply to any information
34 whose sole purpose is to enable the record to be sent or
35 received.

36 (c) A person satisfies subdivision (a) by using the
37 services of any other person if the ~~conditions set forth in~~
38 *requirements of* subdivision (a) are met.

39 (d) If a law requires a record to be ~~presented or~~
40 retained in its original form, or provides consequences if



1 the record is not ~~presented or~~ retained in its original form,
2 that law is satisfied by an electronic record retained in
3 accordance with subdivision (a).

4 (e) If a law requires retention of a check, that
5 requirement is satisfied by retention of an electronic
6 record of the information on the front and back of the
7 check in accordance with subdivision (a).

8 (f) A record retained as an electronic record in
9 accordance with subdivision (a) satisfies laws requiring a
10 person to retain records for evidentiary, audit, or like
11 purposes, unless a law ~~promulgated~~ *enacted* after the
12 effective date of this title specifically prohibits the use of
13 an electronic record for a specified purpose.

14 (g) This section does not preclude a governmental
15 agency from specifying additional requirements for the
16 retention of records, ~~either~~ written or electronic, subject
17 to the agency's jurisdiction.

18 1633.13. In a legal proceeding, evidence of an
19 electronic record or electronic signature may not be
20 excluded because it is an electronic record or electronic
21 signature or ~~it~~ is not in its original form.

22 1633.14. (a) If an offer in an electronic record
23 ~~initiated by a person, or by its electronic agent,~~ evokes an
24 electronic record in response, a contract ~~is~~ *may be* formed
25 in the same manner and with the same effect as if the
26 ~~electronic records were not electronic, except that a~~
27 ~~contract is formed, if at all, when either:~~

28 (1) ~~When an acceptance is received.~~

29 (2) ~~If the response consists of electronic performance~~
30 ~~of the requested consideration in whole or in part, when~~
31 ~~a notice of commencement of performance, or the~~
32 ~~requested consideration, to be performed electronically,~~
33 ~~is received unless the initiating electronic record~~
34 ~~prohibited that form of response.~~ *record was not*
35 *electronic, except that an acceptance of the offer will be*
36 *effective, if at all, when received.*

37 (b) In an automated transaction, the following rules
38 apply:

39 (1) A contract may be formed by the interaction of
40 electronic agents of the parties, even if no individual was



1 aware of or reviewed the electronic agents' actions or the
2 resulting terms and agreements.

3 (2) A contract may be formed by the interaction of a
4 ~~person's electronic agent and an individual, including by~~
5 *an electronic agent and an individual, acting on its own*
6 *behalf or for another person, including by* an interaction
7 in which the individual performs actions that it is free to
8 refuse to perform and that it knows or has reason to know
9 will cause the electronic agent to complete the
10 transaction or performance.

11 (c) The terms of a contract are determined by the
12 substantive law applicable to the particular contract.

13 1633.15. (a) Unless otherwise agreed between the
14 sender and the recipient, an electronic record is sent
15 when the information is addressed or otherwise directed
16 properly to the recipient and *either (1) enters an*
17 *information processing system outside the control of the*
18 *sender or of a person that sent the electronic record on*
19 *behalf of the sender, or (2) enters a region of an*
20 *information processing system that is under the control*
21 *of the recipient.*

22 (b) Unless otherwise agreed between the sender and
23 the recipient, an electronic record is received when the
24 electronic record enters an information processing
25 system that the recipient has designated or uses for the
26 purpose of receiving electronic records or information of
27 the type sent, in a form capable of being processed by that
28 system, and from which the recipient is able to retrieve
29 the electronic record.

30 (c) Subdivision (b) applies even if the place the
31 information processing system is located is different from
32 the place the electronic record is considered to be
33 received under subdivision (d).

34 (d) Unless otherwise expressly provided in the
35 electronic record or agreed between the sender and the
36 recipient, an electronic record is deemed to be sent from
37 the sender's place of business and is deemed to be
38 received at the recipient's place of business. For the
39 purposes of this subdivision, the following rules apply:



1 (1) If the sender or recipient has more than one place
2 of business, the place of business of that person is that
3 which has the closest relationship to the underlying
4 transaction.

5 (2) If the sender or the recipient does not have a place
6 of business, the place of business is the sender's or
7 recipient's residence, as the case may be.

8 (e) An electronic record is effective when received
9 even if no individual is aware of its receipt.

10 (f) Receipt of an electronic acknowledgment from an
11 information processing system described in subdivision

12 (b) establishes that a record was received but, in itself,
13 does not establish that the content sent corresponds to the
14 content received.

