

AMENDED IN SENATE MAY 13, 1999

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~~ *circumstances and from* rules,
13 regulations, and procedures given the effect of
14 agreements under laws otherwise applicable to a
15 particular transaction.

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

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



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

4 (e) “Electronic” means relating to technology having
5 electrical, digital, magnetic, wireless, optical,
6 electromagnetic, or similar capabilities.

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

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

16 (h) “Electronic signature” means an electronic sound,
17 symbol, or process attached to or logically associated with
18 an electronic record and executed or adopted by a person
19 with the intent to sign 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 information in~~ an electronic
4 record. The term includes a procedure that requires the
5 use of algorithms or other codes, identifying words or
6 numbers, encryption, callback or other acknowledgment
7 procedures.

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

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

15 (b) This title does not apply to transactions subject to
16 the following laws:

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

19 (2) *Chapter 2.5 (commencing with Section 1695) of*
20 *Title 5 of Part 2 of Division 3 of the Civil Code.*

21 (3) Division 1 (commencing with Section 1101) of the
22 Uniform Commercial Code, except Sections 1101 and
23 1206.

24 ~~(3)~~

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

31 ~~(4)~~

32 (5) A law that requires that specifically identifiable
33 text or disclosures in a record or a portion of a record be
34 separately signed from the record.

35 (c) *This title does not apply to any specific transaction*
36 *described in Section 2924b, 2924c, 2924f, 2945.3, 2945.11,*
37 *2954.5, 2983.2, or 2983.35 of the Civil Code.*

38 (d) This title applies to an electronic record or
39 signature otherwise excluded from the application of this
40 title under subdivision (b) when used for a transaction



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

3 ~~(d)~~

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

6 ~~1633.4. (a) If a law other than this title requires a~~
7 ~~record to be posted or displayed in a certain manner, to~~
8 ~~be sent, communicated, or transmitted by a specified~~
9 ~~method, or to contain information that is formatted in a~~
10 ~~certain manner, all of the following rules apply:~~

11 ~~(1) The record shall be posted or displayed in the~~
12 ~~manner specified in the other law.~~

13 ~~(2) Unless otherwise agreed by the parties, the record~~
14 ~~shall be sent, communicated, or transmitted by the~~
15 ~~method specified in the other law.~~

16 ~~(3) The record shall contain the information~~
17 ~~formatted in the manner specified in the other law.~~

18 ~~(b) Except as otherwise provided in paragraph (2) of~~
19 ~~subdivision (a), this section may not be varied by~~
20 ~~agreement.~~

21 ~~1633.5:~~

22 ~~1633.4. (a) This title does not require that a record or~~
23 ~~a signature be created, generated, sent, communicated,~~
24 ~~received, stored, or otherwise processed or used by~~
25 ~~electronic means or in electronic form.~~

26 (b) This title only applies to a transaction between
27 parties each of whom has agreed in an electronic record
28 to conduct the transaction electronically. An agreement
29 to conduct a transaction electronically is determined
30 from the context and surrounding circumstances,
31 including the conduct of the parties. An agreement to
32 conduct a transaction electronically may not be inferred
33 solely from the fact that a party has used electronic means
34 to pay an account or register a purchase or warranty. This
35 subdivision may not be varied by agreement.

36 (c) If a party agrees to conduct a transaction
37 electronically, ~~nothing in this title prohibits~~ *this title does*
38 *not prohibit* the party from refusing to conduct other
39 transactions electronically. This subdivision may not be
40 varied by agreement.



1 (d) Except as otherwise provided in this title, the
2 effect of any provision of this title may be varied by
3 agreement. The presence in certain provisions of this title
4 of the words “unless otherwise agreed,” or words of
5 similar import, does not imply that the effect of other
6 provisions may not be varied by agreement.

7 ~~1633.6.~~

8 1633.5. This title shall be construed and applied
9 according to all of the following:

10 (a) To facilitate electronic transactions consistent with
11 other applicable provisions of law.

12 (b) To be consistent with reasonable practices
13 concerning electronic transactions and with the
14 continued expansion of those practices.

15 ~~1633.7.~~

16 1633.6. (a) A record or signature may not be denied
17 legal effect or enforceability solely because it is in
18 electronic form.

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

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

25 (d) If a law requires a signature, or provides
26 consequences in the absence of a signature, the law is
27 satisfied with respect to an electronic record if the
28 electronic record includes an electronic signature.

29 ~~1633.8.~~

30 1633.7. (a) If parties have agreed to conduct a
31 transaction electronically and a law requires a person to
32 provide, send, or deliver information in writing to
33 another person, that requirement is satisfied if the
34 information is provided, sent, or delivered, as the case
35 may be, in an electronic record, and the information is
36 capable of retention by the recipient at the time the
37 information is received.

38 ~~(b) If information is provided, sent, or delivered in an~~
39 ~~electronic record under subdivision (a), the requirement~~



1 ~~that the information must be capable of retention may~~
2 ~~not be varied by agreement.~~

3 (b) *If a law other than this title requires a record to be*
4 *posted or displayed in a certain manner, to be sent,*
5 *communicated, or transmitted by a specified method, or*
6 *to contain information that is formatted in a certain*
7 *manner, all of the following rules apply:*

8 (1) *The record shall be posted or displayed in the*
9 *manner specified in the other law.*

10 (2) *Except as otherwise provided in paragraph (2) of*
11 *subdivision (d), the record shall be sent, communicated,*
12 *or transmitted by the method specified in the other law.*

13 (3) *The record shall contain the information*
14 *formatted in the manner specified in the other law.*

15 (c) *An electronic record may not be sent,*
16 *communicated, or transmitted by an information*
17 *processing system that inhibits the ability to print or*
18 *download the information in the electronic record.*

19 (d) *This section may not be varied by agreement,*
20 *except as follows:*

21 (1) *A requirement under a law other than this title to*
22 *provide information in writing may be varied by*
23 *agreement to the extent permitted by the other law.*

24 (2) *A requirement under a law other than this title to*
25 *send, communicate, or transmit a record by first class*
26 *mail, postage prepaid, may be varied by agreement to the*
27 *extent permitted by the other law.*

28 ~~1633.9.~~

29 1633.8. (a) *An electronic record or electronic*
30 *signature is attributable to a person if it was the act of the*
31 *person. The act of ~~the person~~ a person may be proved in*
32 *any manner, including a showing of the efficacy of any*
33 *security procedure applied to determine the person to*
34 *which the electronic record or electronic signature was*
35 *attributable.*

36 (b) *The effect of an electronic record or electronic*
37 *signature attributed to a person under subdivision (a)*
38 *shall be determined from the context and surrounding*
39 *circumstances at the time of its creation, execution, or*



1 adoption, including the parties' agreement, if any, and
2 otherwise as provided by law.

3 ~~1633.10.~~

4 1633.9. If a change or error in an electronic record
5 occurs in a transmission between parties to a transaction,
6 the following rules apply:

7 (1) If the parties have agreed to use a security
8 procedure to detect changes or errors and one party had
9 confirmed changes or errors and one party has
10 conformed to the procedure, but the other party has not,
11 and the nonconforming party would have detected the
12 change or error had that party also conformed, the effect
13 of the changed or erroneous electronic record is
14 avoidable by the conforming party.

15 (2) In an automated transaction involving an
16 individual, the individual may avoid the effect of an
17 electronic record that resulted from an error by the
18 individual made in dealing with the electronic agent of
19 another person if the electronic agent did not provide an
20 opportunity for the prevention or correction of the error
21 and, at the time the individual learns of the error, all of
22 the following conditions are met:

23 (i) The individual promptly notifies the other person
24 of the error and that the individual did not intend to be
25 bound by the electronic record received by the other
26 person.

27 (ii) The individual takes reasonable steps, including
28 steps that conform to the other person's reasonable
29 instructions, to return to the other person or, if instructed
30 by the other person, to destroy the consideration
31 received, if any, as a result of the erroneous electronic
32 record.

33 (iii) The individual has not used or received any benefit
34 or value from the consideration, if any, received from the
35 other person.

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

39 (4) Paragraphs (2) and (3) may not be varied by
40 agreement.



1 ~~1633.11.~~

2 *1633.10.* If a law requires that a signature be
3 notarized, the requirement is satisfied with respect to an
4 electronic signature if an electronic record includes, in
5 addition to the electronic signature to be notarized, the
6 electronic signature of a notary public together with all
7 other information required to be included in a
8 notarization by other applicable law.

9 ~~1633.12.~~

10 *1633.11.* (a) If a law requires that certain records be
11 retained, that requirement is met by retaining an
12 electronic record of the information in the record, if the
13 electronic record reflects accurately the information set
14 forth in the record after it was first generated in its final
15 form as an electronic record or otherwise, and the
16 electronic record remains accessible for later reference.

17 (b) A requirement to retain records in accordance
18 with subdivision (a) does not apply to any information
19 whose sole purpose is to enable the record to be sent or
20 received.

21 (c) A person satisfies subdivision (a) by using the
22 services of any other person if the requirements of
23 subdivision (a) are met.

24 (d) If a law requires a record to be retained in its
25 original form, or provides consequences if the record is
26 not retained in its original form, that law is satisfied by an
27 electronic record retained in accordance with
28 subdivision (a).

29 (e) If a law requires retention of a check, that
30 requirement is satisfied by retention of an electronic
31 record of the information on the front and back of the
32 check in accordance with subdivision (a).

33 (f) A record retained as an electronic record in
34 accordance with subdivision (a) satisfies laws requiring a
35 person to retain records for evidentiary, audit, or like
36 purposes, unless a law enacted after the effective date of
37 this title specifically prohibits the use of an electronic
38 record for a specified purpose.

39 (g) This section does not preclude a governmental
40 agency from specifying additional requirements for the



1 retention of records, written or electronic, subject to the
2 agency's jurisdiction.

3 ~~1633.13.~~

4 *1633.12.* In a legal proceeding, evidence of an
5 electronic record or electronic signature may not be
6 excluded because it is an electronic record or electronic
7 signature or is not in its original form.

8 ~~1633.14.~~

9 *1633.13.* (a) If an offer in an electronic record evokes
10 an electronic record in response, a contract may be
11 formed in the same manner and with the same effect as
12 if the record was not electronic, except that an
13 acceptance of the offer will be effective, if at all, when
14 received.

15 (b) In an automated transaction, the following rules
16 apply:

17 (1) A contract may be formed by the interaction of
18 electronic agents of the parties, even if no individual was
19 aware of or reviewed the electronic agents' actions or the
20 resulting terms and agreements.

21 (2) A contract may be formed by the interaction of an
22 electronic agent and an individual, acting on its own
23 behalf or for another person, including by an interaction
24 in which the individual performs actions that it is free to
25 refuse to perform and that it knows or has reason to know
26 will cause the electronic agent to complete the
27 transaction or performance.

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

30 ~~1633.15.~~

31 *1633.14.* (a) Unless otherwise agreed between the
32 sender and the recipient, an electronic record is sent
33 when the information is addressed or otherwise directed
34 properly to the recipient and either (1) enters an
35 information processing system outside the control of the
36 sender or of a person that sent the electronic record on
37 behalf of the sender, or (2) enters a region of an
38 information processing system that is under the control
39 of the recipient.



1 (b) Unless otherwise agreed between the sender and
2 the recipient, an electronic record is received when the
3 electronic record enters an information processing
4 system that the recipient has designated or uses for the
5 purpose of receiving electronic records or information of
6 the type sent, in a form capable of being processed by that
7 system, and from which the recipient is able to retrieve
8 the electronic record.

9 (c) Subdivision (b) applies even if the place the
10 information processing system is located is different from
11 the place the electronic record is considered to be
12 received under subdivision (d).

13 (d) Unless otherwise expressly provided in the
14 electronic record or agreed between the sender and the
15 recipient, an electronic record is deemed to be sent from
16 the sender's place of business and is deemed to be
17 received at the recipient's place of business. For the
18 purposes of this subdivision, the following rules apply:

19 (1) If the sender or recipient has more than one place
20 of business, the place of business of that person is that
21 which has the closest relationship to the underlying
22 transaction.

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

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

28 (f) Receipt of an electronic acknowledgment from an
29 information processing system described in subdivision
30 (b) establishes that a record was received but, in itself,
31 does not establish that the content sent corresponds to the
32 content received.

33 (g) *If a law other than this title requires that a record*
34 *be sent or received, the requirement is satisfied by an*
35 *electronic record only if it is sent in accordance with*
36 *subdivision (a) or received in accordance with*
37 *subdivision (b). If a person is aware that an electronic*
38 *record purportedly sent under subdivision (a), or*
39 *purportedly received under subdivision (b), was not*
40 *actually sent or received, the legal effect of the sending*



1 *or receipt is determined by other applicable law. Except*
2 *to the extent permitted by the other law, this subdivision*
3 *may not be varied by agreement.*
4 *1633.15. This title applies to any electronic record or*
5 *electronic signature created, generated, sent,*
6 *communicated, received, or stored on or after the*
7 *effective date of this title.*

