

AMENDED IN ASSEMBLY JULY 7, 1999

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

(Coauthor: Assembly Member Alquist)

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
7 1633.1. This title may be cited as the Electronic
8 Transactions Act.

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

11 (a) "Agreement" means the bargain of the parties in
12 fact, as found in their language or inferred from other
13 circumstances and from rules, regulations, and
14 procedures given the effect of agreements under laws
15 otherwise applicable to a 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 in the ordinary course in forming a contract,
21 performing under an existing contract, or fulfilling any
22 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



1 information processing system in order to bring about a
2 certain result.

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

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

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

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

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

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

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

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

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

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



1 (n) “Security procedure,” means a procedure
2 employed for the purpose of verifying that an electronic
3 signature, record, or performance is that of a specific
4 person or for detecting changes or errors in the
5 information in an electronic record. The term includes a
6 procedure that requires the use of algorithms or other
7 codes, identifying words or numbers, encryption,
8 callback or other acknowledgment procedures.

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

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

17 (b) This title does not apply to transactions subject to
18 the following laws:

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

21 (2) Chapter 2.5 (commencing with Section 1695) of
22 Title 5 of Part 2 of Division 3 of the Civil Code.

23 (3) Division 1 (commencing with Section 1101) of the
24 Uniform Commercial Code, except Sections 1101 and
25 1206.

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

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. described in~~
38 *Section 56.11, 56.17, 798.14, 1133, or 1134 of, Sections 1350*
39 *to 1376, inclusive, of, or Section 1689.13, 1720, 1785.15,*
40 *1789.14, 1789.16, 1789.33, 1793.23, 1806.2, 1806.4, 1810.11,*



1 1812.2, 1812.3, 1861.24, 1862.5, 1917.712, 1917.713, 1950.5,
2 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, 2937,
3 2945.3, 2945.11, 2954.5, 2963, 2983.2, 2983.35, 2987, or 3071.5
4 of, the Civil Code, Section 18608 or 22328 of the Financial
5 Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or
6 18035.5 of the Health and Safety Code, Section 658, 662,
7 663, 664, 666, 667.5, 673, 677, 678, 678.1, 786, 10083, 10086,
8 10087, 10102, 10113.7, 10127.7, 10127.9, 10127.10, 10197,
9 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7,
10 11624.09, or 11624.1 of the Insurance Code, Section 779.1,
11 10010.1, or 16482 of the Public Utilities Code, or Section
12 9975 of the Vehicle Code. An electronic record may not
13 be substituted for any notice that is required to be sent
14 pursuant to Section 1162 of the Code of Civil Procedure.
15 Nothing in this subdivision shall be construed to prohibit
16 the recordation of any document with a county recorder
17 by electronic means.

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

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

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

29 (b) This title only applies to a transaction between
30 parties each of whom has agreed ~~in an electronic record~~
31 to conduct the transaction electronically. An agreement
32 to conduct a transaction electronically is determined
33 from the context and surrounding circumstances,
34 including the conduct of the parties. *An agreement to*
35 *conduct a transaction electronically may not be*
36 *contained in a standard form contract that is not an*
37 *electronic record, and an agreement in such a standard*
38 *form contract may not be conditioned upon an*
39 *agreement to conduct transactions electronically.* An
40 agreement to conduct a transaction electronically may



1 not be inferred solely from the fact that a party has used
2 electronic means to pay an account or register a purchase
3 or warranty. This subdivision may not be varied by
4 agreement.

5 (c) If a party agrees to conduct a transaction
6 electronically, this title does not prohibit the party from
7 refusing to conduct other transactions electronically. This
8 subdivision may not be varied by agreement.

9 (d) Except as otherwise provided in this title, the
10 effect of any provision of this title may be varied by
11 agreement. The presence in certain provisions of this title
12 of the words “unless otherwise agreed,” or words of
13 similar import, does not imply that the effect of other
14 provisions may not be varied by agreement.

15 1633.5. This title shall be construed and applied
16 according to all of the following:

17 (a) To facilitate electronic transactions consistent with
18 other applicable law.

19 (b) To be consistent with reasonable practices
20 concerning electronic transactions and with the
21 continued expansion of those practices.

22 1633.6. (a) A record or signature may not be denied
23 legal effect or enforceability solely because it is in
24 electronic form.

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

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

31 (d) If a law requires a signature, ~~or provides~~
32 ~~consequences in the absence of a signature,~~ the law is
33 satisfied with respect to an electronic record if the
34 electronic record includes an electronic signature. *If a*
35 *law provides consequences in the absence of a signature*
36 *and an electronic record does not contain an electronic*
37 *signature, the consequences provided by the other law*
38 *apply.*

39 1633.7. (a) If parties have agreed to conduct a
40 transaction electronically and a law requires a person to



1 provide, send, or deliver information in writing to
2 another person, that requirement is satisfied if the
3 information is provided, sent, or delivered, as the case
4 may be, in an electronic record, and the information is
5 capable of retention by the recipient at the time the
6 information is received.

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

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

14 (2) Except as otherwise provided in paragraph (2) of
15 subdivision (d), the record shall be sent, communicated,
16 or transmitted by the method specified in the other law.

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

19 (c) An electronic record may not be sent,
20 communicated, or transmitted by an information
21 processing system that inhibits the ability to print or
22 download the information in the electronic record.

23 (d) This section may not be varied by agreement,
24 except as follows:

25 (1) ~~A~~ *Except as otherwise provided in subdivision (b),*
26 *a requirement under a law other than this title to provide*
27 *information in writing may be varied by agreement to the*
28 *extent permitted by the other law.*

29 (2) ~~A requirement under a law other than this title to~~
30 ~~send, communicate, or transmit a record by first-class~~
31 ~~mail, postage prepaid, may be varied by agreement to~~
32 ~~the extent permitted by the other law. *mail may be*~~
33 ~~*varied, unless the other law prohibits the variance.*~~

34 1633.8. (a) An electronic record or electronic
35 signature is attributable to a person if it was the act of the
36 person. The act of a person may be proved in any manner,
37 including a showing of the efficacy of any security
38 procedure applied to determine the person to which the
39 electronic record or electronic signature was
40 attributable.



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

7 1633.9. If a change or error in an electronic record
8 occurs in a transmission between parties to a transaction,
9 the following rules apply:

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

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

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

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

36 (iii) The individual has not used or received any benefit
37 or value from the consideration, if any, received from the
38 other person.



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

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

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

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

21 (b) A requirement to retain records in accordance
22 with subdivision (a) does not apply to any information
23 whose sole purpose is to enable the record to be sent or
24 received.

25 (c) A person satisfies subdivision (a) by using the
26 services of any other person if the requirements of
27 subdivision (a) are met.

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

33 (e) If a law requires retention of a check, that
34 requirement is satisfied by retention of an electronic
35 record of the information on the front and back of the
36 check in accordance with subdivision (a).

37 (f) A record retained as an electronic record in
38 accordance with subdivision (a) satisfies laws requiring a
39 person to retain records for evidentiary, audit, or like
40 purposes, unless a law enacted after the effective date of



1 this title specifically prohibits the use of an electronic
2 record for a specified purpose.

3 (g) This section does not preclude a governmental
4 agency from specifying additional requirements for the
5 retention of records, written or electronic, subject to the
6 agency's jurisdiction.

7 1633.12. In a legal proceeding, evidence of an
8 electronic record or electronic signature may not be
9 excluded because it is an electronic record or electronic
10 signature or is not in its original form.

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

16 1633.13. (a) *An acceptance by electronic means of an*
17 *offer will be effective, if at all, when received.*

18 (b) In an automated transaction, the following rules
19 apply:

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

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

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

34 1633.14. (a) ~~Unless otherwise agreed between the~~
35 ~~sender and the recipient~~ *agree to a different method of*
36 *sending that is reasonable under the circumstances,* an
37 electronic record is sent when the information is
38 ~~addressed or otherwise directed properly~~ *properly*
39 *addressed or otherwise properly directed* to the recipient
40 and either (1) enters an information processing system



1 outside the control of the sender or of a person that sent
2 the electronic record on behalf of the sender, or (2)
3 enters a region of an information processing system that
4 is under the control of the recipient.

5 (b) Unless ~~otherwise agreed between~~ the sender and
6 the recipient *agree to a different method of receiving*
7 *that is reasonable under the circumstances*, an electronic
8 record is received when the electronic record enters an
9 information processing system that the recipient has
10 designated or uses for the purpose of receiving electronic
11 records or information of the type sent, in a form capable
12 of being processed by that system, and from which the
13 recipient is able to retrieve the electronic record.

14 (c) Subdivision (b) applies even if the place the
15 information processing system is located is different from
16 the place the electronic record is considered to be
17 received under subdivision (d).

18 (d) Unless otherwise expressly provided in the
19 electronic record or agreed between the sender and the
20 recipient, an electronic record is deemed to be sent from
21 the sender's place of business and is deemed to be
22 received at the recipient's place of business *or, if the*
23 *recipient is an individual acting on his or her own behalf,*
24 *at the recipient's place of residence*. For the purposes of
25 this subdivision, the following rules apply:

26 (1) If the sender or recipient has more than one place
27 of business, the place of business of that person is that
28 which has the closest relationship to the underlying
29 transaction.

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

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

35 (f) Receipt of an electronic acknowledgment from an
36 information processing system described in subdivision

37 (b) establishes that a record was received but, in itself,
38 does not establish that the content sent corresponds to the
39 content received.



1 ~~(g) If a law other than this title requires that a record~~
2 ~~be sent or received, the requirement is satisfied by an~~
3 ~~electronic record only if it is sent in accordance with~~
4 ~~subdivision (a) or received in accordance with~~
5 ~~subdivision (b).~~

6 (g) If a person is aware that an electronic record
7 purportedly sent under subdivision (a), or purportedly
8 received under subdivision (b), was not actually sent or
9 received, the legal effect of the sending or receipt is
10 determined by other applicable law. Except to the extent
11 permitted by the other law, this subdivision may not be
12 varied by agreement.

13 1633.15. *If a law other than this title requires that a*
14 *notice of the right to cancel be provided or sent, an*
15 *electronic record may not substitute for a writing under*
16 *that other law unless, in addition to satisfying the*
17 *requirements of that other law and this title, the notice of*
18 *cancellation may be returned by electronic means. This*
19 *section may not be varied by agreement.*

20 1633.16. *No state agency, board, or commission may*
21 *require, prohibit, or regulate the use of an electronic*
22 *signature in a transaction in which the agency, board, or*
23 *commission is not a party unless a law other than this title*
24 *expressly authorizes the requirement, prohibition, or*
25 *regulation.*

26 1633.17. This title applies to any electronic record or
27 electronic signature created, generated, sent,
28 communicated, received, or stored on or after the
29 effective date of this title.

