

AMENDED IN ASSEMBLY JULY 15, 1999
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, 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.



1 (c) “Computer program” means a set of statements or
2 instructions to be used directly or indirectly in an
3 information processing system in order to bring about a
4 certain result.

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

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

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

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

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

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

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

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

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



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

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

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

16 1633.3. (a) Except as otherwise provided in
17 subdivisions (b) and (c), this title applies to electronic
18 records and electronic signatures that relate to any
19 transaction.

20 (b) This title does not apply to transactions subject to
21 the following laws:

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

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

26 (3) Division 1 (commencing with Section 1101) of the
27 Uniform Commercial Code, except Sections 1101 and
28 1206.

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

35 (5) A law that requires that specifically identifiable
36 text or disclosures in a record or a portion of a record be
37 separately signed, *including initialed*, from the record.

38 (c) This title does not apply to any specific transaction
39 described in Section 56.11, 56.17, 798.14, 1133, or 1134 of,
40 Sections 1350 to 1376, inclusive, of, or Section 1689.13,



1 1720, 1785.15, 1789.14, 1789.16, 1789.33, 1793.23, 1806.2,
2 1806.4, 1810.11, 1812.2, 1812.3, 1861.24, 1862.5, 1917.712,
3 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,
4 2924j, 2924.3, 2937, 2945.3, 2945.11, 2954.5, 2963, 2983.2,
5 2983.35, 2987, or 3071.5 of, the Civil Code, Section 18608
6 or 22328 of the Financial Code, Section 1358.15, 1365,
7 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety
8 Code, Section 658, 662, 663, 664, 666, 667.5, 673, 677, 678,
9 678.1, 786, 10083, 10086, 10087, 10102, 10113.7, 10127.7,
10 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16,
11 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the
12 Insurance Code, Section 779.1, 10010.1, or 16482 of the
13 Public Utilities Code, or Section 9975 of the Vehicle Code.
14 An electronic record may not be substituted for any
15 notice that is required to be sent pursuant to Section 1162
16 of the Code of Civil Procedure. Nothing in this
17 subdivision shall be construed to prohibit the recordation
18 of any document with a county recorder by electronic
19 means.

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

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

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

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



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

6 (c) If a party agrees to conduct a transaction
7 electronically, this title does not prohibit the party from
8 refusing to conduct other transactions electronically. *If a
9 seller sells goods or services by both electronic and
10 nonelectronic means and a buyer purchases the goods or
11 services by conducting the transaction electronically, the
12 buyer may refuse to conduct further transactions
13 regarding the goods or services electronically.* This
14 subdivision may not be varied by agreement.

15 (d) Except as otherwise provided in this title, the
16 effect of any provision of this title may be varied by
17 agreement. The presence in certain provisions of this title
18 of the words “unless otherwise agreed,” or words of
19 similar import, does not imply that the effect of other
20 provisions may not be varied by agreement.

21 1633.5. This title shall be construed and applied
22 according to all of the following:

23 (a) To facilitate electronic transactions consistent with
24 other applicable law.

25 (b) To be consistent with reasonable practices
26 concerning electronic transactions and with the
27 continued expansion of those practices.

28 1633.6. (a) A record or signature may not be denied
29 legal effect or enforceability solely because it is in
30 electronic form.

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

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

37 (d) If a law requires a signature, the law is satisfied
38 with respect to an electronic record if the electronic
39 record includes an electronic signature. If a law provides
40 consequences in the absence of a signature and an



1 electronic record does not contain an electronic
2 signature, the consequences provided by the other law
3 apply.

4 1633.7. (a) If parties have agreed to conduct a
5 transaction electronically and a law requires a person to
6 provide, send, or deliver information in writing to
7 another person, that requirement is satisfied if the
8 information is provided, sent, or delivered, as the case
9 may be, in an electronic record, and the information is
10 capable of retention by the recipient at the time the
11 information is received.

12 (b) If a law other than this title requires a record to be
13 posted or displayed in a certain manner, to be sent,
14 communicated, or transmitted by a specified method, or
15 to contain information that is formatted in a certain
16 manner, all of the following rules apply:

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

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

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

24 (c) An electronic record may not be sent,
25 communicated, or transmitted by an information
26 processing system that inhibits the ability to print or
27 download the information in the electronic record.

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

30 (1) Except as otherwise provided in subdivision (b), a
31 requirement under a law other than this title to provide
32 information in writing may be varied by agreement to the
33 extent permitted by the other law.

34 (2) A requirement under a law other than this title to
35 send, communicate, or transmit a record by first-class
36 mail may be varied, unless the other law prohibits the
37 variance.

38 1633.8. (a) An electronic record or electronic
39 signature is attributable to a person if it was the act of the
40 person. The act of a person may be proved in any manner,



1 including a showing of the efficacy of any security
2 procedure applied to determine the person to which the
3 electronic record or electronic signature was
4 attributable.

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

11 1633.9. If a change or error in an electronic record
12 occurs in a transmission between parties to a transaction,
13 the following rules apply:

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

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

30 (i) The individual promptly notifies the other person
31 of the error and that the individual did not intend to be
32 bound by the electronic record received by the other
33 person.

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



1 (iii)The individual has not used or received any benefit
2 or value from the consideration, if any, received from the
3 other person.

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

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

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

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

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

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

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

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

39 (f) A record retained as an electronic record in
40 accordance with subdivision (a) satisfies laws requiring a



1 person to retain records for evidentiary, audit, or like
2 purposes, unless a law enacted after the effective date of
3 this title specifically prohibits the use of an electronic
4 record for a specified purpose.

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

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

13 1633.13. (a) An acceptance by electronic means of an
14 offer will be effective, if at all, when 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 the
25 individual is free to refuse to perform and that the
26 individual knows or has reason to know will cause the
27 electronic agent to complete the transaction or
28 performance.

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

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



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

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

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

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

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

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

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

36 (g) If a person is aware that an electronic record
37 purportedly sent under subdivision (a), or purportedly
38 received under subdivision (b), was not actually sent or
39 received, the legal effect of the sending or receipt is
40 determined by other applicable law. Except to the extent



1 permitted by the other law, this subdivision may not be
2 varied by agreement.

3 1633.15. If a law other than this title requires that a
4 notice of the right to cancel be provided or sent, an
5 electronic record may not substitute for a writing under
6 that other law unless, in addition to satisfying the
7 requirements of that other law and this title, the notice of
8 cancellation may be returned by electronic means. This
9 section may not be varied by agreement.

10 1633.16. No state agency, board, or commission may
11 require, prohibit, or regulate the use of an electronic
12 signature in a transaction in which the agency, board, or
13 commission is not a party unless a law other than this title
14 expressly authorizes the requirement, prohibition, or
15 regulation.

16 1633.17. This title applies to any electronic record or
17 electronic signature created, generated, sent,
18 communicated, received, or stored on or after the
19 effective date of this title.

