

AMENDED IN ASSEMBLY AUGUST 31, 1999
AMENDED IN ASSEMBLY AUGUST 23, 1999
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
(Coauthors: Assembly Members Alquist and Wayne)

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, *and to amend Section 18608 of the Financial 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 Uniform 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. The bill would provide that a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation. It would provide that if a law requires a record to be in writing, or if a law requires a signature, an electronic record satisfies the law. 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.

Under existing law, a premium finance agreement may contain a power of attorney or other authority enabling a premium finance agency to cancel the insurance contract in the event of default. Existing law requires the agency, upon exercising the right to cancel, to mail a notice of intent to cancel the insurance contract to the insured at least 10 days prior to cancellation.

This bill would require the agency to also send a notice of its intent to cancel by electronic mail if the agency has the electronic mail address of the insured.

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 Uniform
8 Electronic Transactions Act.



1 1633.2. In this title the following terms have the
2 following definitions:

3 (a) “Agreement” means the bargain of the parties in
4 fact, as found in their language or inferred from other
5 circumstances and from rules, regulations, and
6 procedures given the effect of agreements under laws
7 otherwise applicable to a particular transaction.

8 (b) “Automated transaction” means a transaction
9 conducted or performed, in whole or in part, by
10 electronic means or electronic records, in which the acts
11 or records of one or both parties are not reviewed by an
12 individual in the ordinary course in forming a contract,
13 performing under an existing contract, or fulfilling an
14 obligation required by the transaction.

15 (c) “Computer program” means a set of statements or
16 instructions to be used directly or indirectly in an
17 information processing system in order to bring about a
18 certain result.

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

22 (e) “Electronic” means relating to technology having
23 electrical, digital, magnetic, wireless, optical,
24 electromagnetic, or similar capabilities.

25 (f) “Electronic agent” means a computer program or
26 an electronic or other automated means used
27 independently to initiate an action or respond to
28 electronic records or performances in whole or in part,
29 without review by an individual.

30 (g) “Electronic record” means a record created,
31 generated, sent, communicated, received, or stored by
32 electronic means.

33 (h) “Electronic signature” means an electronic sound,
34 symbol, or process attached to or logically associated with
35 an electronic record and executed or adopted by a person
36 with the intent to sign the electronic record.

37 (i) “Governmental agency” means an executive,
38 legislative, or judicial agency, department, board,
39 commission, authority, institution, or instrumentality of



1 the federal government or of a state or of a county,
2 municipality, or other political subdivision of a state.

3 (j) “Information” means data, text, images, sounds,
4 codes, computer programs, software, data bases, or the
5 like.

6 (k) “Information processing system” means an
7 electronic system for creating, generating, sending,
8 receiving, storing, displaying, or processing information.

9 (l) “Person” means an individual, corporation,
10 business trust, estate, trust, partnership, limited liability
11 company, association, joint venture, governmental
12 agency, public corporation, or any other legal or
13 commercial entity.

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

17 (n) “Security procedure” means a procedure
18 employed for the purpose of verifying that an electronic
19 signature, record, or performance is that of a specific
20 person or for detecting changes or errors in the
21 information in an electronic record. The term includes a
22 procedure that requires the use of algorithms or other
23 codes, identifying words or numbers, encryption, or
24 callback or other acknowledgment procedures.

25 (o) “Transaction” means an action or set of actions
26 occurring between two or more persons relating to the
27 conduct of business, commercial, or governmental affairs.

28 1633.3. (a) Except as otherwise provided in
29 subdivisions (b) and (c), this title applies to electronic
30 records and electronic signatures relating to a
31 transaction.

32 (b) This title does not apply to transactions subject to
33 the following laws:

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

36 (2) Chapter 2.5 (commencing with Section 1695) of
37 Title 5 of Part 2 of, and *Chapters 2b (commencing with*
38 *Section 2981) and 2d (commencing with Section 2985.7)*
39 *of Title 14 of Part 4 of, Division 3 of the Civil Code.*



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

4 (4) Divisions 3 (commencing with Section 3101), 4
5 (commencing with Section 4101), 5 (commencing with
6 Section 5101), 8 (commencing with Section 8101), 9
7 (commencing with Section 9101), and 11 (commencing
8 with Section 11101) of the Uniform Commercial Code.

9 (5) A law that requires that specifically identifiable
10 text or disclosures in a record or a portion of a record be
11 separately signed, including initialed, from the record.
12 *However, this paragraph does not apply to Section 1677*
13 *or 1678 of this code or Section 1298 of the Code of Civil*
14 *Procedure.*

15 (c) This title does not apply to any specific transaction
16 described in *Section 17511.5 of the Business and*
17 *Professions Code*, Section 56.11, 56.17, 798.14, 1133, or 1134
18 of, Sections 1350 to 1376, inclusive, of, ~~or~~ Section 1689.6,
19 1689.7, 1689.13, 1720, 1785.15, 1789.14, 1789.16, 1789.33,
20 ~~1793.23, 1806.2, 1806.4, 1810.11, 1812.2, 1812.3, or 1793.23 of,~~
21 *Chapter 1 (commencing with Section 1801) of Title 2 of*
22 *Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712,*
23 *1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,*
24 *2924j, 2924.3, 2937, 2945.3, 2945.11, 2954.5, 2963, ~~2983.2,~~*
25 *~~2983.35, 2987,~~ or 3071.5 of, the Civil Code, ~~Section 18608~~*
26 *or subdivision (b) of Section 18608 or Section 22328 of the*
27 *Financial Code*, Section 1358.15, 1365, 1368.01, 1368.1,
28 1371, or 18035.5 of the Health and Safety Code, Section
29 658, 662, 663, 664, 666, 667.5, 673, 677, 678, 678.1, 786, 10083,
30 10086, 10087, 10102, 10113.7, 10127.7, 10127.9, 10127.10,
31 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4,
32 10509.7, 11624.09, or 11624.1 of the Insurance Code,
33 Section 779.1, 10010.1, or 16482 of the Public Utilities
34 Code, or Section 9975 of the Vehicle Code. An electronic
35 record may not be substituted for any notice that is
36 required to be sent pursuant to Section 1162 of the Code
37 of Civil Procedure. Nothing in this subdivision shall be
38 construed to prohibit the recordation of any document
39 with a county recorder by electronic means.



1 (d) This title applies to an electronic record or
2 electronic signature otherwise excluded from the
3 application of this title under subdivision (b) when used
4 for a transaction subject to a law other than those
5 specified in subdivision (b).

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

8 (f) *The exclusion of a transaction from the application*
9 *of this title under subdivision (b) or (c) shall be construed*
10 *only to exclude the transaction from the application of*
11 *this title, but shall not be construed to prohibit the*
12 *transaction from being conducted by electronic means if*
13 *the transaction may be conducted by electronic means*
14 *under any other applicable law.*

15 1633.4. This title applies to any electronic record or
16 electronic signature created, generated, sent,
17 communicated, received, or stored on or after January 1,
18 2000.

19 1633.5. (a) This title does not require a record or
20 signature to be created, generated, sent, communicated,
21 received, stored, or otherwise processed or used by
22 electronic means or in electronic form.

23 (b) This title applies only to a transaction between
24 parties each of which has agreed to conduct the
25 transaction by electronic means. Whether the parties
26 agree to conduct a transaction by electronic means is
27 determined from the context and surrounding
28 circumstances, including the parties' conduct. —~~An~~
29 *Except for a separate and optional agreement the*
30 *primary purpose of which is to authorize a transaction to*
31 *be conducted by electronic means, an agreement to*
32 *conduct a transaction—electronically by electronic means*
33 *may not be contained in a standard form contract that is*
34 *not an electronic record, and an. An agreement in such*
35 *a standard form contract may not be conditioned upon an*
36 *agreement to conduct transactions—electronically by*
37 *electronic means. An agreement to conduct a transaction*
38 *electronically by electronic means may not be inferred*
39 *solely from the fact that a party has used electronic means*



1 to pay an account or register a purchase or warranty. This
2 subdivision may not be varied by agreement.

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

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

21 1633.6. This title shall be construed and applied
22 according to all of the following:

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

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

28 (3) To effectuate its general purpose to make uniform
29 the law with respect to the subject of this title among
30 states enacting it.

31 1633.7. (a) A record or signature may not be denied
32 legal effect or enforceability solely because it is in
33 electronic form.

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

37 (c) If a law requires a record to be in writing, an
38 electronic record satisfies the law.

39 (d) If a law requires a signature, an electronic
40 signature satisfies the law.



1 1633.8. (a) If parties have agreed to conduct a
2 transaction by electronic means and a law requires a
3 person to provide, send, or deliver information in writing
4 to another person, that requirement is satisfied if the
5 information is provided, sent, or delivered, as the case
6 may be, in an electronic record capable of retention by
7 the recipient at the time of receipt. An electronic record
8 is not capable of retention by the recipient if the sender
9 or its information processing system inhibits the ability of
10 the recipient to print or store the electronic record.

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

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

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

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

23 (c) If a sender inhibits the ability of a recipient to store
24 or print an electronic record, the electronic record is not
25 enforceable against the recipient.

26 (d) The requirements of this section may not be varied
27 by agreement, except as follows:

28 (1) To the extent a law other than this title requires
29 information to be provided, sent, or delivered in writing
30 but permits that requirement to be varied by agreement,
31 the requirement under subdivision (a) that the
32 information be in the form of an electronic record
33 capable of retention may also be varied by agreement.

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 by agreement to the extent permitted
37 by the other law.

38 1633.9. (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 the person may be shown in any



1 manner, including a showing of the efficacy of any
2 security procedure applied to determine the person to
3 which the 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) is
7 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 1633.10. 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 has
16 conformed to the procedure, but the other party has not,
17 and the nonconforming party would have detected the
18 change or error had that party also conformed, the
19 conforming party may avoid the effect of the changed or
20 erroneous electronic record.

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

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

33 (ii) The individual takes reasonable steps, including
34 steps that conform to the other person's reasonable
35 instructions, to return to the other person or, if instructed
36 by the other person, to destroy the consideration
37 received, if any, as a result of the erroneous electronic
38 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) nor (2) applies, the
5 change or error has the effect provided by other law,
6 including the law of mistake, and the parties' contract, if
7 any.

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

10 1633.11. (a) If a law requires that a signature be
11 notarized, the requirement is satisfied with respect to an
12 electronic signature if an electronic record includes, in
13 addition to the electronic signature to be notarized, the
14 electronic signature of a notary public together with all
15 other information required to be included in a
16 notarization by other applicable law.

17 (b) *If a law requires that a statement be signed under*
18 *penalty of perjury, the requirement is satisfied with*
19 *respect to an electronic signature, if an electronic record*
20 *includes, in addition to the electronic signature, all of the*
21 *information as to which the declaration pertains together*
22 *with a declaration under penalty of perjury by the person*
23 *who submits the electronic signature that the information*
24 *is true and correct.*

25 1633.12. (a) If a law requires that a record be
26 retained, the requirement is satisfied 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 at the time it was first generated in its
30 final form as an electronic record or otherwise, and the
31 electronic record remains accessible for later reference.

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

36 (c) A person may satisfy subdivision (a) by using the
37 services of another person if the requirements of
38 subdivision (a) are satisfied.

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



1 not retained in its original form, that law is satisfied by an
2 electronic record retained in accordance with
3 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 a law requiring
10 a person to retain a record for evidentiary, audit, or like
11 purposes, unless a law enacted after the effective date of
12 this title specifically prohibits the use of an electronic
13 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 a record subject to the agency's jurisdiction.

17 1633.13. In a proceeding, evidence of a record or
18 signature may not be excluded solely because it is in
19 electronic form.

20 1633.14. (a) In an automated transaction, the
21 following rules apply:

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

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

34 (b) The terms of the contract are determined by the
35 substantive law applicable to it.

36 1633.15. (a) Unless the sender and the recipient
37 agree to a different method of sending that is reasonable
38 under the circumstances, an electronic record is sent
39 when the information is addressed properly or otherwise
40 directed properly to the recipient and either (1) enters



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

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

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

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

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

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

34 (e) An electronic record is received under subdivision
35 (b) even if no individual is aware of its receipt.

36 (f) Receipt of an electronic acknowledgment from an
37 information processing system described in subdivision
38 (b) establishes that a record was received but, by itself,
39 does not establish that the content sent corresponds to the
40 content received.



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

8 1633.16. If a law other than this title requires that a
9 notice of the right to cancel be provided or sent, an
10 electronic record may not substitute for a writing under
11 that other law unless, in addition to satisfying the
12 requirements of that other law and this title, the notice of
13 cancellation may be returned by electronic means. This
14 section may not be varied by agreement.

15 1633.17. No state agency, board, or commission may
16 require, prohibit, or regulate the use of an electronic
17 signature in a transaction in which the agency, board, or
18 commission is not a party unless a law other than this title
19 expressly authorizes the requirement, prohibition, or
20 regulation.

21 *SEC. 2. Section 18608 of the Financial Code is*
22 *amended to read:*

23 18608. (a) A premium finance agreement may
24 contain a power of attorney or other authority enabling
25 the company to cancel the insurance contract or
26 contracts listed in the agreement in the event of default
27 in the terms thereof. ~~Upon~~

28 (b) *Upon* the exercise of such a right to cancel, the
29 company shall mail to the insured, to his *or her* last known
30 address or to the address shown on the premium finance
31 agreement at least 10 days prior to cancellation, a notice
32 of its intent to cancel the insurance contract or contracts.
33 *If the company has the electronic mail address of the*
34 *insured, the company shall also send a notice of its intent*
35 *to cancel by electronic mail at least 10 days prior to the*
36 *cancellation.*

37 (c) The liability of a company to any person or
38 corporation upon the exercise of such a right or authority
39 of cancellation shall be limited to the amount of the
40 principal balance, except in the event of willful failure by



1 the company to mail the ~~notice~~ *notices* required by this
2 section.

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