

Introduced by Senator Sher

January 20, 2000

An act to amend and renumber Section 1633.17 of, and to amend, renumber, and add Section 1633.16 to, the Civil Code, relating to electronic transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 1371, as introduced, Sher. Electronic transactions: transferable records.

Existing law sets forth the Uniform Electronic Transactions Act, as specified.

This bill would add to that act provisions defining transferable records, specifying who has control of a transferable record, and establishing the rights and obligations of a person who has control of a transferable record.

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. Section 1633.16 of the Civil Code is
2 amended and renumbered to read:
3 ~~1633.16.~~
4 *1633.17.* If a law other than this title requires that a
5 notice of the right to cancel be provided or sent, an
6 electronic record may not substitute for a writing under
7 that other law unless, in addition to satisfying the
8 requirements of that other law and this title, the notice of

1 cancellation may be returned by electronic means. This
2 section may not be varied by agreement.

3 SEC. 2. Section 1633.16 is added to the Civil Code, to
4 read:

5 1633.16. (a) In this section, “transferable record”
6 means an electronic record that (1) would be a note
7 under Division 3 (commencing with Section 3101) of the
8 Commercial Code or a document under Division 7
9 (commencing with Section 7101) of the Commercial
10 Code, if the electronic record were in writing, and that
11 (2) the issuer of the electronic record expressly has
12 agreed is a transferable record.

13 (b) A person has control of a transferable record if a
14 system employed for evidencing the transfer of interests
15 in the transferable record reliably establishes that person
16 as the person to which the transferable record was issued
17 or transferred.

18 (c) A system satisfies subdivision (b), and a person is
19 deemed to have control of a transferable record, if the
20 transferable record is created, stored, and assigned in
21 such a manner that all of the following apply:

22 (1) A single authoritative copy of the transferable
23 record exists which is unique, identifiable, and, except as
24 otherwise provided in paragraphs (4), (5), and (6),
25 unalterable.

26 (2) The authoritative copy identifies the person
27 asserting control as either (A) the person to which the
28 transferable record was issued, or (B) if the authoritative
29 copy indicates that the transferable record has been
30 transferred, the person to which the transferable record
31 was most recently transferred.

32 (3) The authoritative copy is communicated to and
33 maintained by the person asserting control or its
34 designated custodian.

35 (4) Copies or revisions that add or change an
36 identified assignee of the authoritative copy can be made
37 only with the consent of the person asserting control.

38 (5) Each copy of the authoritative copy and any copy
39 of a copy is readily identifiable as a copy that is not the
40 authoritative copy.



1 (6) Any revision of the authoritative copy is readily
2 identifiable as authorized or unauthorized.

3 (d) Except as otherwise agreed, a person having
4 control of a transferable record is the holder, as defined
5 in subdivision (20) of Section 1201 of the Commercial
6 Code, of the transferable record and has the same rights
7 and defenses as a holder of an equivalent record or
8 writing under the Commercial Code, including, if the
9 applicable statutory requirements under subdivision (a)
10 of Section 3302, Section 7501, or Section 9330 of the
11 Commercial Code are satisfied, the rights and defenses of
12 a holder in due course, a holder to which a negotiable
13 document of title has been duly negotiated, or a
14 purchaser, respectively. Delivery, possession, and
15 indorsement are not required to obtain or exercise any of
16 the rights under this subdivision.

17 (e) Except as otherwise agreed, an obligor under a
18 transferable record has the same rights and defenses as an
19 equivalent obligor under equivalent records or writings
20 under the Commercial Code.

21 (f) If requested by a person against which
22 enforcement is sought, the person seeking to enforce the
23 transferable record shall provide reasonable proof that
24 the person is in control of the transferable record. Proof
25 may include access to the authoritative copy of the
26 transferable record and related business records
27 sufficient to review the terms of the transferable record
28 and to establish the identity of the person having control
29 of the transferable record.

30 SEC. 3. Section 1633.17 of the Civil Code is amended
31 and renumbered to read:

32 ~~1633.17.~~

33 *1633.18.* No state agency, board, or commission may
34 require, prohibit, or regulate the use of an electronic
35 signature in a transaction in which the agency, board, or
36 commission is not a party unless a law other than this title
37 expressly authorizes the requirement, prohibition, or
38 regulation.

O

