

Introduced by Senator Sher

January 18, 2001

An act to repeal and add Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code, relating to electronic transactions.

LEGISLATIVE COUNSEL'S DIGEST

SB 97, as introduced, Sher. Electronic transactions.

The existing Uniform Electronic Transactions Act governs the effect of transactions entered into electronically, and provides, among other things, that a record or signature may not be denied legal effect or enforceability solely because it is in electronic format.

This bill would make various changes to the act.

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 1633.1) of
2 Part 2 of Division 3 of the Civil Code is repealed.

3 SEC. 2. Title 2.5 (commencing with Section 1633.1) is added
4 to Part 2 of Division 3 of the Civil Code, to read:

5

6 TITLE 2.5. UNIFORM ELECTRONIC TRANSACTIONS
7 ACT

8

9 1633.1. This title may be cited as the Uniform Electronic
10 Transactions Act.



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

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

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

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

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

20 (5) “Electronic” means relating to technology having
21 electrical, digital, magnetic, wireless, optical, electromagnetic, or
22 similar capabilities.

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

27 (7) “Electronic record” means a record created, generated,
28 sent, communicated, received, or stored by electronic means.

29 (8) “Electronic signature” means an electronic sound, symbol,
30 or process attached to or logically associated with a record and
31 executed or adopted by a person with the intent to sign the record.

32 (9) “Governmental agency” means an executive, legislative,
33 or judicial agency, department, board, commission, authority,
34 institution, or instrumentality of the federal government or of a
35 state or of a county, municipality, or other political subdivision of
36 a state.

37 (10) “Information” means data, text, images, sounds, codes,
38 computer programs, software, databases, or the like.



1 (11) “Information processing system” means an electronic
2 system for creating, generating, sending, receiving, storing,
3 displaying, or processing information.

4 (12) “Person” means an individual, corporation, business
5 trust, estate, trust, partnership, limited liability company,
6 association, joint venture, governmental agency, public
7 corporation, or any other legal or commercial entity.

8 (13) “Record” means information that is inscribed on a
9 tangible medium or that is stored in an electronic or other medium
10 and is retrievable in perceivable form.

11 (14) “Security procedure” means a procedure employed for
12 the purpose of verifying that an electronic signature, record, or
13 performance is that of a specific person or for detecting changes
14 or errors in the information in an electronic record. The term
15 includes a procedure that requires the use of algorithms or other
16 codes, identifying words or numbers, encryption, or callback or
17 other acknowledgment procedures.

18 (15) “State” means a state of the United States, the District of
19 Columbia, Puerto Rico, the United States Virgin Islands, or any
20 territory or insular possession subject to the jurisdiction of the
21 United States. The term includes an Indian tribe or band, or
22 Alaskan native village, which is recognized by federal law or
23 formally acknowledged by a state.

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

27 1633.3. (a) Except as otherwise provided in subdivision (b),
28 this title applies to electronic records and electronic signatures
29 relating to a transaction.

30 (b) This title does not apply to a transaction to the extent it is
31 governed by any of the following:

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

34 (2) Division 1 (commencing with Section 1101) of the Uniform
35 Commercial Code, except Sections 1107 and 1206.

36 (3) Divisions 3 (commencing with Section 3101), 4
37 (commencing with Section 4101), 5 (commencing with Section
38 5101), 8 (commencing with Section 8101), 9 (commencing with
39 Section 9101), and 11 (commencing with Section 11101) of the
40 Uniform Commercial Code.



1 (c) This title does not apply to any of the following:

2 (1) Any notice of the cancellation or termination of utility
3 services (including water, heat, and power).

4 (2) Any notice of default, acceleration, repossession,
5 foreclosure, or eviction, or the right to cure, under a credit
6 agreement secured by, or a rental agreement for, a primary
7 residence of an individual.

8 (3) Any notice of the cancellation or termination of health
9 insurance or benefits or life insurance benefits (excluding
10 annuities).

11 (4) Any notice of recall of a product, or material failure of a
12 product, that risks endangering health or safety.

13 (5) Any document required to accompany any transportation or
14 handling of hazardous materials, pesticides, or other toxic or
15 dangerous materials.

16 (d) This title applies to an electronic record or electronic
17 signature otherwise excluded from the application of this title
18 under subdivision (b) to the extent it is governed by a law other
19 than those specified in subdivision (b).

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

22 1633.4. This title applies to any electronic record or electronic
23 signature created, generated, sent, communicated, received, or
24 stored on or after January 1, 2002.

25 1633.5. (a) This title does not require a record or signature to
26 be created, generated, sent, communicated, received, stored, or
27 otherwise processed or used by electronic means or in electronic
28 form.

29 (b) This title applies only to transactions between parties each
30 of which has agreed to conduct transactions by electronic means.
31 Whether the parties agree to conduct a transaction by electronic
32 means is determined from the context and surrounding
33 circumstances, including the parties' conduct.

34 (c) A party that agrees to conduct a transaction by electronic
35 means may refuse to conduct other transactions by electronic
36 means. The right granted by this subdivision may not be waived
37 by agreement.

38 (d) Except as otherwise provided in this title, the effect of any
39 of its provisions may be varied by agreement. The presence in
40 certain provisions of this title of the words "unless otherwise



1 agreed', or words of similar import, does not imply that the effect
2 of other provisions may not be varied by agreement.

3 (e) Whether an electronic record or electronic signature has
4 legal consequences is determined by this title and other applicable
5 law.

6 1633.6. This title shall be construed and applied to do all of
7 the following:

8 (1) Facilitate electronic transactions consistent with other
9 applicable law.

10 (2) Be consistent with reasonable practices concerning
11 electronic transactions and with the continued expansion of those
12 practices.

13 (3) Effectuate its general purpose to make uniform the law with
14 respect to the subject of this title among states enacting it.

15 1633.7. (a) A record or signature may not be denied legal
16 effect or enforceability solely because it is in electronic form.

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

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

21 (d) If a law requires a signature, an electronic signature satisfies
22 the law.

23 1633.8. (a) If parties have agreed to conduct a transaction by
24 electronic means and a law requires a person to provide, send, or
25 deliver information in writing to another person, the requirement
26 is satisfied if the information is provided, sent, or delivered, as the
27 case may be, in an electronic record capable of retention by the
28 recipient at the time of receipt. An electronic record is not capable
29 of retention by the recipient if the sender or its information
30 processing system inhibits the ability of the recipient to print or
31 store the electronic record.

32 (b) If a law other than this title requires a record (i) to be posted
33 or displayed in a certain manner, (ii) to be sent, communicated, or
34 transmitted by a specified method, or (iii) to contain information
35 that is formatted in a certain manner, the following rules apply:

36 (1) The record must be posted or displayed in the manner
37 specified in the other law.

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



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

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

6 (d) The requirements of this section may not be varied by
7 agreement, except for the following:

8 (1) To the extent a law other than this title requires information
9 to be provided, sent, or delivered in writing but permits that
10 requirement to be varied by agreement, the requirement under
11 subdivision (a) that the information be in the form of an electronic
12 record capable of retention may also be varied by agreement.

13 (2) A requirement under a law other than this title to send,
14 communicate, or transmit a record by first-class mail, postage
15 prepaid, may be varied by agreement to the extent permitted by the
16 other law.

17 1633.9. (a) An electronic record or electronic signature is
18 attributable to a person if it was the act of the person. The act of
19 the person may be shown in any manner, including a showing of
20 the efficacy of any security procedure applied to determine the
21 person to which the electronic record or electronic signature was
22 attributable.

23 (b) The effect of an electronic record or electronic signature
24 attributed to a person under subdivision (a) is determined from the
25 context and surrounding circumstances at the time of its creation,
26 execution, or adoption, including the parties' agreement, if any,
27 and otherwise as provided by law.

28 1633.10. If a change or error in an electronic record occurs in
29 a transmission between parties to a transaction, the following rules
30 apply:

31 (1) If the parties have agreed to use a security procedure to
32 detect changes or errors and one party has conformed to the
33 procedure, but the other party has not, and the nonconforming
34 party would have detected the change or error had that party also
35 conformed, the conforming party may avoid the effect of the
36 changed or erroneous electronic record.

37 (2) In an automated transaction involving an individual, the
38 individual may avoid the effect of an electronic record that resulted
39 from an error made by the individual in dealing with the electronic
40 agent of another person if the electronic agent did not provide an



1 opportunity for the prevention or correction of the error and, at the
2 time the individual learns of the error, the individual does all of the
3 following:

4 (A) Promptly notifies the other person of the error and that the
5 individual did not intend to be bound by the electronic record
6 received by the other person.

7 (B) Takes reasonable steps, including steps that conform to the
8 other person's reasonable instructions, to return to the other person
9 or, if instructed by the other person, to destroy the consideration
10 received, if any, as a result of the erroneous electronic record.

11 (C) Does not use or receive any benefit or value from the
12 consideration, if any, received from the other person.

13 (3) If neither paragraph (1) nor paragraph (2) applies, the
14 change or error has the effect provided by other law, including the
15 law of mistake, and the parties' contract, if any.

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

17 1633.11. If a law requires a signature or record to be
18 notarized, acknowledged, verified, or made under oath, the
19 requirement is satisfied if the electronic signature of the person
20 authorized to perform those acts, together with all other
21 information required to be included by other applicable law, is
22 attached to or logically associated with the signature or record.

23 1633.12. (a) If a law requires that a record be retained, the
24 requirement is satisfied by retaining an electronic record of the
25 information in the record that does all of the following:

26 (1) Accurately reflects the information set forth in the record
27 after it was first generated in its final form as an electronic record
28 or otherwise.

29 (2) Remains accessible for later reference.

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

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

37 (d) If a law requires a record to be presented or retained in its
38 original form, or provides consequences if the record is not
39 presented or retained in its original form, that law is satisfied by
40 an electronic record retained in accordance with subdivision (a).



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

4 (f) A record retained as an electronic record in accordance with
5 subdivision (a) satisfies a law requiring a person to retain a record
6 for evidentiary, audit, or like purposes, unless a law enacted after
7 January 1, 2002 specifically prohibits the use of an electronic
8 record for the specified purpose.

9 (g) This section does not preclude a governmental agency of
10 this state from specifying additional requirements for the retention
11 of a record subject to the agency's jurisdiction.

12 1633.13. In a proceeding, evidence of a record or signature
13 may not be excluded solely because it is in electronic form.

14 1633.14. In an automated transaction, the following rules
15 apply:

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

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

27 (3) The terms of the contract are determined by the substantive
28 law applicable to it.

29 1633.15. (a) Unless otherwise agreed between the sender and
30 the recipient, an electronic record is sent when all of the following
31 occur:

32 (1) The electronic record is addressed properly or otherwise
33 directed properly to an information processing system that the
34 recipient has designated or uses for the purpose of receiving
35 electronic records or information of the type sent and from which
36 the recipient is able to retrieve the electronic record.

37 (2) The electronic record is in a form capable of being
38 processed by that system.

39 (3) The electronic record enters an information processing
40 system outside the control of the sender or of a person that sent the



1 electronic record on behalf of the sender or enters a region of the
2 information processing system designated or used by the recipient
3 which is under the control of the recipient.

4 (b) Unless otherwise agreed between a sender and the recipient,
5 an electronic record is received when both of the following occur:

6 (1) The electronic record enters an information processing
7 system that the recipient has designated or uses for the purpose of
8 receiving electronic records or information of the type sent and
9 from which the recipient is able to retrieve the electronic record.

10 (2) The electronic record is in a form capable of being
11 processed by that system.

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

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

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

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

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

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

32 (g) If a person is aware that an electronic record purportedly
33 sent under subdivision (a), or purportedly received under
34 subdivision (b), was not actually sent or received, the legal effect
35 of the sending or receipt is determined by other applicable law.
36 Except to the extent permitted by the other law, the requirements
37 of this subdivision may not be varied by agreement.

38 1633.16. (a) In this section, "transferable record" means an
39 electronic record to which both of the following apply:



1 (1) The electronic record would be a note under Division 3
2 (commencing with Section 3101) of the Uniform Commercial
3 Code or a document under Division 7 (commencing with Section
4 7101) of the Uniform Commercial Code if the electronic record
5 were in writing.

6 (2) The issuer of the electronic record expressly has agreed that
7 it is a transferable record.

8 (b) A person has control of a transferable record if a system
9 employed for evidencing the transfer of interests in the
10 transferable record reliably establishes that person as the person to
11 which the transferable record was issued or transferred.

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

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

19 (2) The authoritative copy identifies the person asserting
20 control as either of the following:

21 (A) The person to which the transferable record was issued.

22 (B) If the authoritative copy indicates that the transferable
23 record has been transferred, the person to which the transferable
24 record was most recently transferred.

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

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

30 (5) Each copy of the authoritative copy and any copy of a copy
31 is readily identifiable as a copy that is not the authoritative copy.

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

34 (d) Except as otherwise agreed, a person having control of a
35 transferable record is the holder, as defined in subdivision (20) of
36 Section 1201 of the Uniform Commercial Code, of the
37 transferable record and has the same rights and defenses as a holder
38 of an equivalent record or writing under the Uniform Commercial
39 Code, including, if the applicable statutory requirements under
40 subdivision (a) of Section 3302, Section 7501, or Section 9308 of



1 the Uniform Commercial Code are satisfied, the rights and
2 defenses of a holder in due course, a holder to which a negotiable
3 document of title has been duly negotiated, or a purchaser,
4 respectively. Delivery, possession, and indorsement are not
5 required to obtain or exercise any of the rights under this
6 subsection.

7 (e) Except as otherwise agreed, an obligor under a transferable
8 record has the same rights and defenses as an equivalent obligor
9 under equivalent records or writings under the Uniform
10 Commercial Code.

11 (f) If requested by a person against which enforcement is
12 sought, the person seeking to enforce the transferable record shall
13 provide reasonable proof that the person is in control of the
14 transferable record. Proof may include access to the authoritative
15 copy of the transferable record and related business records
16 sufficient to review the terms of the transferable record and to
17 establish the identity of the person having control of the
18 transferable record.

19 1633.17. If any provision of this title or its application to any
20 person or circumstance is held invalid, the invalidity does not
21 affect other provisions or applications of this title which can be
22 given effect without the invalid provision or application, and to
23 this end the provisions of this title are severable.

