

AMENDED IN ASSEMBLY MAY 14, 2015

AMENDED IN ASSEMBLY MAY 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1131

Introduced by Assembly Member Dababneh

February 27, 2015

An act to amend and repeal Section 1633.3 of the Civil Code, and to add and repeal Section 38.6 of the Insurance Code, relating to electronic records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1131, as amended, Dababneh. Insurance: electronic transmission.

Existing law generally requires that any required notice related to insurance transactions be made by mail. Existing law authorizes an insurer, under specified conditions, to provide by electronic transmission the required offer of renewal for automobile insurance, the required offer of renewal or conditional renewal for property insurance, the required offer of coverage or renewal or any disclosure required regarding earthquake insurance, and the offer of renewal for a workers' compensation policy.

Existing law also generally requires that, a record, signature, or contract may not be denied legal effect or enforceability because it is in electronic form. Existing law exempts from this requirement disability insurance and life insurance policies and certificates offered for sale to individuals 65 years of age or older, notice of an increase in premiums on an individual life insurance policy, individual life insurance policies with a face value of less than \$10,000, a policy of individual life insurance that is initially delivered or issued for delivery in the state on

and after January 1, 1990, applications for life insurance or annuity, and a policy replacement notice.

This bill would, for life insurance records, authorize additional persons to send records by electronic transmission by providing that an insurer, agent, broker, or any other person licensed by the Department of Insurance may send electronic records. This bill would expand the scope of electronic notice provisions by allowing the above licensees to send any written record by electronic transmission if not specifically excluded and if the licensee meets specified requirements. The bill would also require the commissioner to submit a report, as specified.

This bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1633.3 of the Civil Code, as amended
- 2 by Section 3 of Chapter 913 of the Statutes of 2014, is amended
- 3 to read:
- 4 1633.3. (a) Except as otherwise provided in subdivisions (b)
- 5 and (c), this title applies to electronic records and electronic
- 6 signatures relating to a transaction.
- 7 (b) This title does not apply to transactions subject to the
- 8 following laws:
- 9 (1) A law governing the creation and execution of wills, codicils,
- 10 or testamentary trusts.
- 11 (2) Division 1 (commencing with Section 1101) of the Uniform
- 12 Commercial Code, except Sections 1206 and 1306.
- 13 (3) Divisions 3 (commencing with Section 3101), 4
- 14 (commencing with Section 4101), 5 (commencing with Section
- 15 5101), 8 (commencing with Section 8101), 9 (commencing with
- 16 Section 9101), and 11 (commencing with Section 11101) of the
- 17 Uniform Commercial Code.
- 18 (4) A law that requires that specifically identifiable text or
- 19 disclosures in a record or a portion of a record be separately signed,
- 20 including initialed, from the record. However, this paragraph does
- 21 not apply to Section 1677 or 1678 of this code or Section 1298 of
- 22 the Code of Civil Procedure.
- 23 (c) This title does not apply to any specific transaction described
- 24 in Section 17511.5 of the Business and Professions Code, Section

1 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,
2 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of
3 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,
4 1789.16, or 1793.23 of, Chapter 1 (commencing with Section
5 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,
6 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,
7 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section
8 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section
9 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)
10 or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of
11 Division 3 of, Section 3071.5 of, Part 5 (commencing with Section
12 4000) of Division 4 of, or Part 5.3 (commencing with Section
13 6500) of Division 4 of this code, subdivision (b) of Section 18608
14 or Section 22328 of the Financial Code, Section 1358.15, 1365,
15 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,
16 Section 662, paragraph (2) of subdivision (a) of Section 663, 664,
17 667.5, 673, 677, paragraph (2) of subdivision (a) of Section 678,
18 subdivisions (a) and (b) of Section 678.1, Section 786 as it applies
19 to individual and group disability policies, Section 10192.18,
20 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1
21 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the
22 Public Utilities Code, or Section 9975 or 11738 of the Vehicle
23 Code. An electronic record may not be substituted for any notice
24 that is required to be sent pursuant to Section 1162 of the Code of
25 Civil Procedure. Nothing in this subdivision shall be construed to
26 prohibit the recordation of any document with a county recorder
27 by electronic means.

28 (d) This title applies to an electronic record or electronic
29 signature otherwise excluded from the application of this title under
30 subdivision (b) when used for a transaction subject to a law other
31 than those specified in subdivision (b).

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

34 (f) The exclusion of a transaction from the application of this
35 title under subdivision (b) or (c) shall be construed only to exclude
36 the transaction from the application of this title, but shall not be
37 construed to prohibit the transaction from being conducted by
38 electronic means if the transaction may be conducted by electronic
39 means under any other applicable law.

1 (g) This section shall remain in effect only until January 1, 2019,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2019, deletes or extends that date.

4 SEC. 2. Section 1633.3 of the Civil Code, as amended by
5 Section 4 of Chapter 913 of the Statutes of 2014, is amended to
6 read:

7 1633.3. (a) Except as otherwise provided in subdivisions (b)
8 and (c), this title applies to electronic records and electronic
9 signatures relating to a transaction.

10 (b) This title does not apply to transactions subject to the
11 following laws:

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

14 (2) Division 1 (commencing with Section 1101) of the Uniform
15 Commercial Code, except Sections 1206 and 1306.

16 (3) Divisions 3 (commencing with Section 3101), 4
17 (commencing with Section 4101), 5 (commencing with Section
18 5101), 8 (commencing with Section 8101), 9 (commencing with
19 Section 9101), and 11 (commencing with Section 11101) of the
20 Uniform Commercial Code.

21 (4) A law that requires that specifically identifiable text or
22 disclosures in a record or a portion of a record be separately signed,
23 including initialed, from the record. However, this paragraph does
24 not apply to Section 1677 or 1678 of this code or Section 1298 of
25 the Code of Civil Procedure.

26 (c) This title does not apply to any specific transaction described
27 in Section 17511.5 of the Business and Professions Code, Section
28 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,
29 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of
30 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,
31 1789.16, or 1793.23 of, Chapter 1 (commencing with Section
32 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,
33 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,
34 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section
35 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section
36 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)
37 or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of
38 Division 3 of, Section 3071.5 of Part 5 (commencing with Section
39 4000) of Division 4 of, or Part 5.3 (commencing with Section
40 6500) of Division 4 of this code, subdivision (b) of Section 18608

1 or Section 22328 of the Financial Code, Section 1358.15, 1365,
2 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,
3 Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786 as it applies
4 to individual and group disability policies, 10192.18, 10199.44,
5 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1 of the
6 Insurance Code, Section 779.1, 10010.1, or 16482 of the Public
7 Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An
8 electronic record may not be substituted for any notice that is
9 required to be sent pursuant to Section 1162 of the Code of Civil
10 Procedure. Nothing in this subdivision shall be construed to
11 prohibit the recordation of any document with a county recorder
12 by electronic means.

13 (d) This title applies to an electronic record or electronic
14 signature otherwise excluded from the application of this title under
15 subdivision (b) when used for a transaction subject to a law other
16 than those specified in subdivision (b).

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

19 (f) The exclusion of a transaction from the application of this
20 title under subdivision (b) or (c) shall be construed only to exclude
21 the transaction from the application of this title, but shall not be
22 construed to prohibit the transaction from being conducted by
23 electronic means if the transaction may be conducted by electronic
24 means under any other applicable law.

25 (g) This section shall become operative on January 1, 2019.

26 (h) This section shall remain in effect only until January 1, 2021,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2021, deletes or extends that date.

29 SEC. 3. Section 1633.3 of the Civil Code, as amended by
30 Section 4 of Chapter 913 of the Statutes of 2014, is amended to
31 read:

32 1633.3. (a) Except as otherwise provided in subdivisions (b)
33 and (c), this title applies to electronic records and electronic
34 signatures relating to a transaction.

35 (b) This title does not apply to transactions subject to the
36 following laws:

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

39 (2) Division 1 (commencing with Section 1101) of the Uniform
40 Commercial Code, except Sections 1206 and 1306.

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

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

11 (c) This title does not apply to any specific transaction described
 12 in Section 17511.5 of the Business and Professions Code, Section
 13 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,
 14 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of
 15 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,
 16 1789.16, or 1793.23 of, Chapter 1 (commencing with Section
 17 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,
 18 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,
 19 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section
 20 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section
 21 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)
 22 or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of
 23 Division 3 of, Section 3071.5 of Part 5 (commencing with Section
 24 4000) of Division 4 of, or Part 5.3 (commencing with Section
 25 6500) of Division 4 of this code, subdivision (b) of Section 18608
 26 or Section 22328 of the Financial Code, Section 1358.15, 1365,
 27 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,
 28 Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086,
 29 10113.7, 10127.7, 10127.9, 10127.10, 10192.18, 10199.44,
 30 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or
 31 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482
 32 of the Public Utilities Code, or Section 9975 or 11738 of the
 33 Vehicle Code. An electronic record may not be substituted for any
 34 notice that is required to be sent pursuant to Section 1162 of the
 35 Code of Civil Procedure. Nothing in this subdivision shall be
 36 construed to prohibit the recordation of any document with a county
 37 recorder by electronic means.

38 (d) This title applies to an electronic record or electronic
 39 signature otherwise excluded from the application of this title under

1 subdivision (b) when used for a transaction subject to a law other
2 than those specified in subdivision (b).

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

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

11 (g) This section shall become operative on January 1, 2021.

12 SEC. 4. Section 38.6 is added to the Insurance Code, to read:

13 38.6. (a) (1) Any written record required to be given or mailed
14 to any person by a licensee relating to the business of life insurance,
15 as defined in Section 101 of this code may, if not excluded by
16 subdivision (b) or (c) of Section 1633.3 of the Civil Code, be
17 provided by electronic transmission pursuant to Title 2.5
18 (commencing with Section 1633.1) of Part 2 of Division 3 of the
19 Civil Code, if each party has agreed to conduct the transaction by
20 electronic means pursuant to Section 1633.5 of the Civil Code,
21 and if the licensee complies with the provisions of this section. A
22 valid electronic signature shall be sufficient for any provision of
23 law requiring a written signature.

24 (2) For purposes of this section, the definitions set forth in
25 Section 1633.2 of the Civil Code shall apply. The term “licensee”
26 means an insurer, agent, broker, or any other person who is required
27 to be licensed by the department.

28 (b) In order to transmit a life insurance record electronically, a
29 licensee shall comply with all of the following:

30 (1) A licensee, or licensee’s representative, acquires the consent
31 of the person to opt in to receive the record by electronic
32 transmission, and the person has not withdrawn that consent, prior
33 to providing the record by electronic transmission. A person’s
34 consent may be acquired verbally, in writing, or electronically. If
35 consent is acquired verbally, the licensee shall confirm consent in
36 writing or electronically. The licensee shall retain a record of the
37 person’s consent to receive the record by electronic transmission
38 with the policy information so that it is retrievable upon request
39 by the department while the policy is in force and for five years
40 thereafter.

1 (2) A licensee discloses, in writing or electronically, to the
2 person all of the following:

3 (A) The opt in to receive the record by electronic transmission
4 is voluntary.

5 (B) That the person may opt out of receiving the record by
6 electronic transmission at any time, and the process or system for
7 the person to opt out.

8 (C) A description of the record that the person will receive by
9 electronic transmission.

10 (D) The process or system to report a change or correction in
11 the person's email address.

12 (E) The licensee's contact information, which includes, but is
13 not limited to, a toll-free number or the licensee's Internet Web
14 site address.

15 (3) The opt-in consent form required by paragraph (2) may be
16 set forth in the application or in a separate document that is part
17 of the policy approved by the commissioner and shall be bolded
18 or otherwise set forth in a conspicuous manner. The person's
19 signature shall be set forth immediately below the person's opt-in
20 consent. If the licensee seeks consent at any time prior to the
21 completion of the application, consent and signature shall be
22 obtained before the application is completed. If the person has not
23 opted in at the time the application is completed, the licensee may
24 receive the opt in consent at any time thereafter, pursuant to the
25 same opt in requirements that apply at the time of the application.
26 The licensee shall retain a copy of the confirmation and electronic
27 signature, if either is required, with the policy information so that
28 each is retrievable upon request by the department while the policy
29 is in force and for five years thereafter.

30 (4) The email address of the person who has consented to
31 electronic transmission shall be set forth on the consent form and
32 on the policy declaration page or annual statement if sent to the
33 person who has consented.

34 (5) The licensee shall annually provide one free printed copy
35 of any record described in this subdivision upon request by the
36 person.

37 (6) If a provision of this code requires a licensee to transmit a
38 record by regular mail, does not specify a method of delivery, or
39 is a record that is required to be provided pursuant to Article 6.6
40 (commencing with Section 791), and if the licensee is not otherwise

1 prohibited from transmitting the record electronically under
2 subdivision (b) of Section 1633.8 of the Civil Code, then the
3 licensee shall maintain a process or system that can demonstrate
4 that the record provided by electronic transmission was both sent
5 and received consistent with Section 1633.15 of the Civil Code.
6 If a different method of sending or receiving is agreed upon by the
7 licensee and the person pursuant to Section 1633.15 of the Civil
8 Code, a licensee shall comply with the provisions of this
9 subdivision. The licensee shall retain and document information
10 so that the documentation and information is retrievable upon
11 request by the department while the current policy is in force and
12 for five years thereafter related to its process or system
13 demonstrating that the record provided by electronic transmission
14 was sent to the person by the applicable statutory regular mail
15 delivery deadlines and received electronically. The record provided
16 by electronic transmission shall be treated as if mailed so long as
17 the licensee delivers the record to the person in compliance with
18 the applicable statutory regular mail delivery deadlines.

19 (A) Acceptable methods for a licensee to demonstrate that the
20 record was sent to the person include simple mail transfer protocol
21 server log files indicating transmission, or other methodologies
22 indicating sent transmission consistent with the standards set forth
23 in Section 1633.15 of the Civil Code.

24 (B) Acceptable methods for the licensee to demonstrate that the
25 record was received by the person include server log files indicating
26 that the email or application has been received, or log files showing
27 that the person logged into his or her secured account with the
28 licensee or other methodologies indicating received transmission
29 consistent with the standards set forth in Section 1633.15 of the
30 Civil Code.

31 (7) Notwithstanding subdivision (b) of Section 1633.8 of the
32 Civil Code, if a provision of this code requires a licensee to
33 transmit a record by return receipt, registered mail, certified mail,
34 signed written receipt of delivery, or other method of delivery
35 evidencing actual receipt by the person, and if the licensee is not
36 otherwise prohibited from transmitting the record electronically
37 under Section 1633.3 of the Civil Code and the provisions of this
38 section, then the licensee shall maintain a process or system that
39 demonstrates proof of delivery and actual receipt of the record by
40 the person consistent with this paragraph. The licensee shall

1 document and retain information demonstrating delivery and actual
2 receipt so that it is retrievable, upon request, by the department at
3 least five years after the policy is no longer in force. The record
4 provided by electronic transmission shall be treated as if actually
5 received if the licensee delivers the record to the person in
6 compliance with applicable statutory delivery deadlines. A licensee
7 may demonstrate actual delivery and receipt by any of the
8 following:

9 (A) The person acknowledges receipt of the electronic
10 transmission of the record by returning an electronic receipt or by
11 executing an electronic signature.

12 (B) The record is made part of, or attached to, an email sent to
13 the email address designated by the person, and there is a
14 confirmation receipt, or some other evidence that the person
15 received the email in his or her email account and opened the
16 email.

17 (C) The record is posted on the licensee's secure Internet Web
18 site, and there is evidence demonstrating that the person logged
19 onto the licensee's secure Internet Web site and downloaded,
20 printed, or otherwise acknowledged receipt of the record.

21 (D) If a licensee is unable to demonstrate actual delivery and
22 receipt pursuant to this paragraph, the licensee shall resend the
23 record by regular mail to the person in the manner originally
24 specified by the underlying provision of this code.

25 ~~(8) Any record required to be transmitted by first-class mail and
26 not otherwise prohibited from being transmitted electronically may
27 be transmitted under the provisions of paragraph (6), except that
28 any notice of nonrenewal, lapse, cancellation, or termination of a
29 policy of life insurance, as defined in Section 101, that is not
30 prohibited to be transmitted electronically by subdivision (a), may
31 be transmitted electronically, only if the licensee demonstrates
32 proof of electronic delivery and receipt as set forth in paragraph
33 (7). This paragraph applies to any law that requires notice of
34 nonrenewal, lapse, cancellation, or termination of a policy of life
35 insurance, including, but not limited to, subdivision (b) of Section
36 10113.71 and subdivision (e) of Section 10113.72.~~

37 *(8) Notwithstanding any other law, a notice of lapse,
38 nonrenewal, cancellation, or termination of any product subject
39 to this section may be transmitted electronically if the licensee
40 demonstrates proof of delivery as set forth in paragraph (7).*

1 (9) If the record is not delivered directly to the electronic address
2 designated by the person but placed at an electronic address
3 accessible to the person, a licensee shall notify the person in plain,
4 clear, and conspicuous language at the electronic address
5 designated by the person that describes the record, informs that
6 person that it is available at another location, and provides
7 instructions to the person as to how to obtain the record.

8 (10) (A) Upon a licensee receiving information indicating that
9 the record sent by electronic transmission was not received by the
10 person, the licensee shall, within five business days, comply with
11 either clause (i) or (ii):

12 (i) Contact the person to confirm or update the person's email
13 address and resend the record by electronic transmission. If the
14 licensee elects to resend the record by electronic transmission, the
15 licensee shall demonstrate the transmission was received by the
16 person, pursuant to paragraph (6), (7), or (8). If the licensee is
17 unable to confirm or update the person's email address, the licensee
18 shall resend the record by regular mail to the licensee at the address
19 shown on the policy, or if the underlying statute requires delivery
20 in a specified manner, send the record in that specified manner.

21 (ii) Resend the record initially provided by electronic
22 transmission by regular mail to the insured at the address shown
23 on the policy, or if the underlying statute requires delivery in a
24 specified manner, send the record in that specified manner.

25 (B) If the licensee sends the first electronic record within the
26 time period required by law and the licensee complies with both
27 paragraph (5) and subparagraph (A) of this paragraph, the record
28 sent pursuant to clause (i) or (ii) of subparagraph (A) shall be
29 treated as if mailed in compliance with the applicable statutory
30 regular mail delivery deadlines.

31 (11) The licensee shall not charge any person who declines to
32 opt in to receive a record through electronic transmission from
33 receiving a record electronically. The licensee shall not provide a
34 discount or an incentive to any person to opt in to receive electronic
35 records.

36 (12) The licensee shall verify a person's email address via paper
37 writing sent by regular mail when more than 12 months have
38 elapsed since the license's last electronic communication.

39 (c) On or before January 1, 2020, the commissioner shall submit
40 a report to the Governor and to the committees of the Senate and

1 Assembly having jurisdiction over insurance and the judiciary,
2 regarding the impact and implementation of the authorization of
3 the electronic transmission of certain insurance renewal offers,
4 notices, or disclosures as authorized by this section. The report
5 shall include input from insurers, consumers, and consumer
6 organizations, and shall include an assessment of the department's
7 experience pertaining to the authorization of the electronic
8 transmission of insurance renewals as authorized by this section.

9 (d) Notwithstanding paragraph (4) of subdivision (b) of Section
10 1633.3 of the Civil Code, for any policy of life insurance, as
11 defined in Section 101, any statutory requirement for a separate
12 acknowledgment, signature, or initial, which is not expressly
13 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,
14 may be transacted using an electronic signature, or by electronic
15 transaction, subject to all applicable provisions of this section.

16 (e) The department may suspend a licensee from providing
17 records by electronic transmission if there is a pattern or practices
18 that demonstrate the licensee has failed to comply with the
19 requirements of this section. A licensee may appeal the suspension
20 and resume its electronic transmission of records upon
21 communication from the department that the changes the licensee
22 made to its process or system to comply with the requirements of
23 this section are satisfactory.

24 (f) This section shall remain in effect only until January 1, 2021,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before January 1, 2021, deletes or extends that date.