

AMENDED IN ASSEMBLY MAY 4, 2016

AMENDED IN ASSEMBLY APRIL 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1743

**Introduced by Assembly Member Dababneh
(Coauthor: Assembly Member Wilk)**

February 1, 2016

An act to amend Section 1633.3 of, and to add Sections 2984.7, 2984.8, 2986, and 2986.1 to, the Civil Code, relating to electronic transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1743, as amended, Dababneh. Electronic transactions: motor vehicle finance.

Existing law, the Uniform Electronic Transactions Act (UETA), generally allows parties to contract to conduct transactions by electronic means, imposes specified requirements on electronic transactions in order to comply with the act, and provides specified protections for electronic transactions conducted pursuant to the act. Existing law defines and regulates the form and content of conditional sale contracts and lease contracts for motor vehicles and excepts these contracts from the application of the UETA.

This bill would delete the exemption from the UETA for conditional sale and lease contracts for motor vehicles. The bill would require sellers and lessors to offer buyers and lessees the option of signing their respective contracts and agreements electronically. The bill would require certain disclosures to be made in this regard and to be in a document separate from a conditional sale contract or lease contract.

The bill would prohibit a seller or lessor from charging a buyer or lessee for a decision not to sign electronically and would prohibit charging more or less for vehicles based on the decision to sign electronically. The bill would require that the disclosures described here be signed at the seller's or lessor's place of business.

This bill would provide, in the event of a discrepancy between an electronic contract in the possession of the seller and an executed contract in possession of the buyer, as specified, that there is no presumption regarding which is accurate or prevailing.

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 1633.3 of the Civil Code, as amended
2 by Section 1.5 of Chapter 638 of the Statutes of 2015, 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
25 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,
26 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of

Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Section 3071.5 of, Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, paragraph (2) of subdivision (a) of Section 663, 664, 667.5, 673, 677, paragraph (2) of subdivision (a) of Section 678, subdivisions (a) and (b) of Section 678.1, Section 786 as it applies to individual and group disability policies, Section 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

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

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

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

(g) Notwithstanding subdivisions (b) and (c), this title shall apply to electronic records and electronic signatures relating to transactions conducted by a person licensed, certified, or registered pursuant to the Alarm Company Act (Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions

Code) for purposes of activities authorized by Section 7599.54 of the Business and Professions Code.

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

SEC. 2. Section 1633.3 of the Civil Code, as amended by Section 2.5 of Chapter 638 of the Statutes of 2015, is amended to read:

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

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

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

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

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

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

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

1 18608 or Section 22328 of the Financial Code, Section 1358.15,
2 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety
3 Code, Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786 as
4 it applies to individual and group disability policies, 10192.18,
5 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or 11624.1
6 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the
7 Public Utilities Code, or Section 9975 or 11738 of the Vehicle
8 Code. An electronic record may not be substituted for any notice
9 that is required to be sent pursuant to Section 1162 of the Code of
10 Civil 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) Notwithstanding subdivisions (b) and (c), this title shall
26 apply to electronic records and electronic signatures relating to
27 transactions conducted by a person licensed, certified, or registered
28 pursuant to the Alarm Company Act (Chapter 11.6 (commencing
29 with Section 7590) of Division 3 of the Business and Professions
30 Code) for purposes of activities authorized by Section 7599.54 of
31 the Business and Professions Code.

32 (h) This section shall become operative on January 1, 2019.

33 (i) This section shall remain in effect only until January 1, 2021,
34 and as of that date is repealed, unless a later enacted statute, that
35 is enacted before January 1, 2021, deletes or extends that date.

36 SEC. 3. Section 1633.3 of the Civil Code, as added by Section
37 3.5 of Chapter 638 of the Statutes of 2015, is amended to read:

38 1633.3. (a) Except as otherwise provided in subdivisions (b)
39 and (c), this title applies to electronic records and electronic
40 signatures relating to a transaction.

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

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

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

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

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

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Section 3071.5 of Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, 663, 664, 667.5, 673, 677, 678, 678.1, 786, 10086, 10113.7, 10127.7, 10127.9, 10127.10, 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be

1 construed to prohibit the recordation of any document with a county
2 recorder by electronic means.

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

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

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

15 (g) Notwithstanding subdivisions (b) and (c), this title shall
16 apply to electronic records and electronic signatures relating to
17 transactions conducted by a person licensed, certified, or registered
18 pursuant to the Alarm Company Act (Chapter 11.6 (commencing
19 with Section 7590) of Division 3 of the Business and Professions
20 Code) for purposes of activities authorized by Section 7599.54 of
21 the Business and Professions Code.

22 (h) This section shall become operative on January 1, 2021.

23 SEC. 4. Section 2984.7 is added to the Civil Code, to read:

24 2984.7. (a) (1) Prior to the execution of a conditional sale
25 contract to which Section 1633.3 may apply, the seller shall offer
26 the buyer the option of signing electronically the conditional sale
27 contract and agreements as part of the transaction of the vehicle.
28 A person's consent to opt in to signing electronically may be
29 acquired in writing or electronically. The consent form for opting
30 in shall disclose, in writing or electronically, all of the following:

31 (A) The election to sign electronically the conditional sale
32 contract and other agreements as part of the transaction of the
33 vehicle is voluntary.

34 (B) The buyer may opt out at any time.

35 (2) The buyer's signature, in writing or electronically, shall be
36 set forth immediately below the opt-in consent disclosure.

37 (b) (1) The seller shall not charge a buyer for the decision not
38 to sign a conditional sale contract electronically.

1 (2) The seller shall not charge more or less for the purchase of
2 a vehicle to a buyer opting to sign a conditional sale contract
3 electronically.

4 (c) Notwithstanding Section 2981.9, the disclosure of the option
5 to sign electronically and the buyer's consent to it, if applicable,
6 as described in subdivision (a), shall be in a document separate
7 from the conditional sale contract.

8 *(d) In the event of a discrepancy between an electronic copy of*
9 *the executed contract in the possession of the seller and a copy of*
10 *the executed contract provided to the buyer pursuant to Section*
11 *2981.9, there shall be no presumption that either the seller's copy*
12 *or the buyer's copy is the accurate or prevailing copy for purposes*
13 *of determining the buyer's obligations. Any provision in a contract*
14 *that purports to provide otherwise is void.*

15 SEC. 5. Section 2984.8 is added to the Civil Code, to read:

16 2984.8. A conditional sale contract to which Section 1633.3
17 applies shall be signed at the seller's place of business.

18 SEC. 6. Section 2986 is added to the Civil Code, to read:

19 2986. (a) (1) Prior to the execution of a lease contract to which
20 Section 1633.3 may apply, the lessor shall offer the lessee the
21 option of signing electronically the lease contract and agreements
22 as part of the transaction of the vehicle. A person's consent to opt
23 in to signing electronically may be acquired in writing or
24 electronically. The consent form for opting in shall disclose, in
25 writing or electronically, all of the following:

26 (A) The election to sign electronically the lease contract and
27 other agreements as part of the transaction of the vehicle is
28 voluntary.

29 (B) The lessee may opt out at any time.

30 (2) The lessee's signature, in writing or electronically, shall be
31 set forth immediately below the opt-in consent disclosure.

32 (b) (1) The lessor shall not charge a lessee for the decision not
33 to sign a lease contract electronically.

34 (2) The lessor shall not charge more or less for the lease of a
35 vehicle to a lessee opting to sign a lease contract electronically.

36 (c) Notwithstanding Section 2985.8, the disclosure of the option
37 to sign electronically and the lessee's consent to it, if applicable,
38 as described in subdivision (a), shall be in a document separate
39 from the lease contract.

1 (d) *In the event of a discrepancy between an electronic copy of*
2 *the executed contract in the possession of the lessor and a copy of*
3 *the executed contract provided to the lessee pursuant to subdivision*
4 *(g) of Section 2985.8, there shall be no presumption that either*
5 *the lessor's copy or the lessee's copy is the accurate or prevailing*
6 *copy for purposes of determining the lessee's obligations. Any*
7 *provision in a contract that purports to provide otherwise is void.*

8 SEC. 7. Section 2986.1 is added to the Civil Code, to read:

9 2986.1. A lease contract to which Section 1633.3 applies shall
10 be signed at the lessor's place of business.