

Assembly Bill No. 2296

CHAPTER 144

An act to amend Section 1633.2 of the Civil Code, and to amend Section 16.5 of the Government Code, relating to state government.

[Approved by Governor August 19, 2016. Filed with
Secretary of State August 19, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2296, Low. Digital signatures.

Existing law, the Uniform Electronic Transactions Act, provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form and defines an electronic signature for purposes of the act. Existing provisions of the Government Code authorize the use of a digital signature in any written communication with a public entity, and specifies that in those communications, the use of a digital signature has the same force and effect as the use of a manual signature if it complies with specified requirements.

This bill would express the intent of the Legislature to clarify that a digital signature may be used to satisfy the requirements of an electronic signature under the Uniform Electronic Transactions Act. The bill would, for purposes of the Uniform Electronic Transactions Act, provide that an electronic signature includes a digital signature under the above described provisions of the Government Code and that a digital signature under those provisions is a type of an electronic signature as set forth in the Uniform Electronic Transaction Act. The bill would also revise the above-described provisions of the Government Code by specifying that if a public entity elects to use a digital signature, that meets specified requirements, the digital signature has the same force and effect of a manual signature in any communication with the public entity.

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

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) California is a world leader in innovation and harnessing the power of new technologies to promote efficiency, consumer benefits, and economic growth.

(2) The Internet and digital technologies enable government to provide services to the public and to transact business more efficiently than with paper-based processes.

(3) In 1995, in order to promote e-commerce and digital transactions with public agencies, California enacted Section 16.5 of the Government Code, which authorizes use of a “digital signature” in any written communication with a public agency in which a signature is required or used, consistent with regulations to be adopted by the Secretary of State.

(4) In 1999, California enacted the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.2) of Part 2 of Division 3 of the Civil Code), which provides that an “electronic signature” is valid and enforceable under any law that requires a signature in any transaction between two or more persons, including a government agency.

(5) The definition of “digital signature” in Section 16.5 of the Government Code and the definition of “electronic signature” in the Uniform Electronic Transactions Act are similar, and neither statute includes any cross-reference to the other, leading to confusion in the marketplace and among public agencies as to what law governs.

(6) A lack of clarity in the law creates a barrier to public agencies utilizing fully digital transactions that require a signature, including contracts, permits, and forms to obtain service or participate in government programs. As a result, both government and the public may not realize the benefits of digital transactions and online services, including efficiency, cost savings, convenience, and paper reduction.

(b) It is the intent of the Legislature to amend current law to clarify that a “digital signature” authorized by Section 16.5 of the Government Code and subject to regulations adopted by the Secretary of State is one type of “electronic signature” that a public agency may choose to adopt under the Uniform Electronic Transactions Act.

SEC. 2. Section 1633.2 of the Civil Code is amended to read:

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

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

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

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

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

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

(f) “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond

to electronic records or performances in whole or in part, without review by an individual.

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

(h) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record. For purposes of this title, a “digital signature” as defined in subdivision (d) of Section 16.5 of the Government Code is a type of electronic signature.

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

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

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

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

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

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

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

SEC. 3. Section 16.5 of the Government Code is amended to read:

16.5. (a) In any written communication with a public entity, as defined in Section 811.2, in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. If a public entity elects to use a digital signature, that digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:

- (1) It is unique to the person using it.
- (2) It is capable of verification.
- (3) It is under the sole control of the person using it.
- (4) It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.

(5) It conforms to regulations adopted by the Secretary of State. Initial regulations shall be adopted no later than January 1, 1997. In developing these regulations, the secretary shall seek the advice of public and private entities, including, but not limited to, the Department of Information Technology, the California Environmental Protection Agency, and the Department of General Services. Before the secretary adopts the regulations, he or she shall hold at least one public hearing to receive comments.

(b) The use or acceptance of a digital signature shall be at the option of the parties. Nothing in this section shall require a public entity to use or permit the use of a digital signature.

(c) Digital signatures employed pursuant to Section 71066 of the Public Resources Code are exempted from this section.

(d) “Digital signature” means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. For purposes of this section, a digital signature is a type of “electronic signature” as defined in subdivision (h) of Section 1633.2 of the Civil Code.

(e) Nothing in this section shall limit the right of a public entity or government agency to use and accept an “electronic signature” as defined in subdivision (h) of Section 1633.2 of the Civil Code.

(f) Regulations adopted by the Secretary of State to implement this section apply only to a public entity’s use of a “digital signature” and not to use of any other type of “electronic signature” authorized in the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code).