

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 361 (Umberg)
Version: February 10, 2021
Hearing Date: April 6, 2021
Fiscal: No
Urgency: No
CK

SUBJECT

Electronic transactions: motor vehicle finance

DIGEST

This bill authorizes sellers of motor vehicles to offer buyers entering into a conditional sale or lease contract for the purchase or lease of a vehicle the option of signing their respective contracts electronically.

EXECUTIVE SUMMARY

The California Uniform Electronic Transactions Act (UETA) generally authorizes the transaction of business, commerce, and contracts by electronic means. (Civ. Code § 1633.1.) UETA does not apply to transactions that are subject to certain laws, such as laws governing the creation and execution of wills, codicils, or testamentary trusts. (Civ. Code § 1633.3(a).) UETA further lists a series of specific transactions that it does not apply to. Among the transactions exempted are the purchase and lease of motor vehicles. (Civ. Code § 1633.3(c).)

This bill eliminates the exclusion of conditional sale and lease contracts for motor vehicles from UETA. The bill is sponsored by the California New Car Dealers Association. It is supported by car dealers and technology companies involved in the automotive sales industry. The National Association of Consumer Advocates and Consumers for Auto Reliability and Safety (CARS) are opposed to the bill. The California Attorney General's Office has also written in with concerns about the bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Uniform Electronic Transactions Act (UETA), which generally authorizes the transaction of business, commerce, and contracts by electronic means. (Civ. Code § 1633.1 et seq.) UETA does not apply to transactions that are subject to certain laws, such as laws governing the creation and execution of wills, codicils, or testamentary trusts. (Civ. Code § 1633.3(a).)
- 2) Provides a series of specific transactions to which UETA does not apply. Among these exemptions are those transactions described in the Automobile Sales Finance Act and the Vehicle Leasing Act. (Civ. Code § 1633.3(c).)
- 3) Establishes, in federal law, the Electronic Signatures in Global and National Commerce Act (E-SIGN), which generally provides for the transmission of electronic signatures, but does not apply to a contract or other record that is governed by: (1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts; (2) a state statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or (3) the Uniform Commercial Code, as in effect in any State, as specified. (15 U.S.C. §§ 7001, 7003(a).)
- 4) Excludes from the application of E-SIGN the following specific transactions: (1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings; (2) any notice of (A) the cancellation or termination of utility services (including water, heat, and power), (B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual, (C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities), or (D) recall of a product, or material failure of a product, that risks endangering health or safety; or (3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials. (15 U.S.C. Sec. 7003(b).)
- 5) Establishes the Rees-Levering Act, which sets forth requirements with regard to disclosures required in a conditional sale contract for the sale of a motor vehicle, including specified disclosures regarding finance charges, and sets forth the permissible fees and charges in an automobile conditional sale contract for the sale of a motor vehicle. (Civ. Code § 2982.)

- 6) Establishes the Vehicle Leasing Act, which sets forth requirements with regard to terms and disclosures required in a lease contract for a motor vehicle. (Civ. Code § 2985.7.)

This bill strikes those provisions exempting motor vehicle conditional sales contracts and lease contracts from the scope of transactions governed by UETA.

COMMENTS

1. Electronic transactions

In 1999 with the passage of SB 820 (Sher, Ch. 428, Stats. 1999), California enacted the Uniform Electronic Transactions Act (UETA), which was based on a model law to set rules by which electronic commerce may be conducted across the country proposed by the National Conference of Commissioners on Uniform State Laws. One of the motivating factors for enacting a law validating electronic records was the Statute of Frauds, which requires that certain contracts be in writing. In California, the Statute of Frauds is codified at Section 1624 of the Civil Code, which expressly states that certain contracts are invalid (i.e., unenforceable) unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent. Such contracts include, for example: an agreement that by its terms is not to be performed within a year from its making; an agreement for a lease lasting for a period longer than one year; an agreement for the sale of real property, or of an interest therein; or specified contracts, promises, undertakings, or commitments to loan money or to grant or extend credit, in an amount greater than \$100,000.

Subsequent to UETA's passage, the Electronic Signatures in Global and National Commerce Act (E-SIGN) was enacted at the federal level. E-SIGN generally provides for the transmission of electronic signatures, but contains a number of exemptions. However, it does allow for vehicle sales to be conducted electronically.

UETA provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form, that a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation, and that an electronic record or signature satisfies a requirement in the law that a record be in writing or a signature be affixed or if a law provides consequences if there is no record or signature.

UETA, however, does not apply to all contracts. For example, expressly excluded from UETA are: transactions that are subject to a law governing the creation and execution of wills, codicils, or testamentary trusts; specified transactions in the Uniform Commercial Code that were specifically drafted in consideration of electronic records; and transactions subject to a law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed or initialed, such as real estate

transactions. Also specifically excluded from UETA are conditional sale contracts for the purchase of a motor vehicle (Civ. Code § 2981, et seq.) and contracts to lease a motor vehicle (Civ. Code § 2985.7).

The Attorney General's Office details the benefits of this model:

Under UETA, California car sales and leases must proceed via signed paper contracts. This means that a paper copy is provided to consumers and they are allowed a moment of calm reflection prior to signing. It provides an opportunity for consumers to appreciate the complexity of the transaction, focus on particular terms and conditions, and view such terms and conditions in the context of the complex multi-page document. For some consumers, it provides an opportunity to leave with the contract and seek the advice of others.

This bill eliminates the exclusion of conditional sale and lease contracts for motor vehicles from UETA, paving the way for vehicle sales and leases to be conducted electronically. Electronic transactions provide a level of convenience for all parties involved and have become a part of consumers' everyday lives. However, the purchase of a vehicle is often one of a person's biggest purchases and concerns have been raised in the past about whether this transition to electronic transactions for these high-end purchases is wise and whether additional protections need to be tied into such a change.

2. Support for the bill

According to the author:

SB 361 would align California and federal law and modernize the vehicle retailing process by striking the prohibition in CalUETA barring e-signatures in vehicle sales and lease transactions. SB 361 is necessary to allow dealers to meet the needs of consumers in a retail environment that is becoming increasingly digital. Furthermore, due to the Covid-19 pandemic, dealers are increasingly transacting with consumers fully online and delivering cars to the customer's home. Lastly, electronic documents are more secure than paper documents, and mitigates against the amount of paper being needlessly wasted with respect to the environment as well. With almost 2 million new car sales and 4 million used car sales transactions in California each year, SB 361 provides necessary clean-up to CalUETA, thereby making the provisions of the act applicable to conditional sale and lease contracts for motor vehicles. SB 361 therefore, facilitates a pathway forward for dealers to be included in the robust retail economy that a myriad of businesses are operating in today.

The California New Car Dealers Association, the sponsor of this bill, write: “SB 361 provides necessary clean-up to CalUETA, which is now over 20 years old. The digital retailing landscape has changed dramatically since the original law was signed in 1999.”

Cox Automotive, Inc. writes in support of the bill:

Cox Auto is committed to serving the needs of California’s drivers. Our Dealertrack Registration and Titling Solutions (“RTS”) business is a First-Line Service Provider in the California Department of Motor Vehicles Business Partner Automation Program. RTS facilitates the electronic registration and titling of vehicles operated in California by providing software to automotive dealers and registration services to the California motoring public and out-of-state fleet lease and rental companies. And our Dealertrack Collateral Management Services (“CMS”) business provides comprehensive vehicle title administration services to financial institutions operating in California and nationwide. CMS holds over 15 million motor vehicle paper titles and manages over 20 million electronic titles in our Sacramento vault for many of the largest financial institutions.

Much has changed since the Legislature adopted CalUETA 22 years ago, including the utilization of electronic documents in many facets of our life. Electronic documents incorporate enhanced security features that paper-based documents cannot replicate. Additionally, electronic signatures can be authenticated using available technologies like encryption and blockchain. Electronic contracting also provides enhanced privacy because the customer’s data and related documents, including credit applications, are securely stored electronically and cannot be easily accessed.

3. Consumer protection concerns

Various consumer organizations have opposed measures that attempted to remove this exemption in the past. Both AB 380 (Dababneh, 2017) and AB 1743 (Dababneh, 2016) sought to do just that. Opponents argued that allowing automobile sale and lease contracts to be entered into electronically will undermine the effect mandatory disclosures have in such contracts, and will harm the ability of consumers to read and understand what they are signing. Purchasing an automobile is often a stressful and confusing experience for consumers. Having paper contracts to read and review provides consumers with some space to contemplate these large purchases. Consumer groups have asserted in the past that this may disappear if electronic contracting is adopted in this industry, especially where customers feel pressure to scroll quickly through an electronic document without reading or understanding its contents.

CARS writes in opposition to the bill and raises concerns about current practices among auto dealers who have already been engaging in e-contracting. It provides several

recommendations for amendments to the bill, including provisions that require the contract and any legally binding documents to be on the consumer's own device and that establish a presumption that a consumer's version of the electronically-signed contract is valid where there is any discrepancy between the seller's and buyer's versions.

The National Association of Consumer Advocates (NACA) writes in opposition to the bill:

SB 361 seeks to amend UETA to allow car dealerships to obtain an e-signature instead of a "wet ink" signature. Removal of the "wet ink" exception means consumers may be given even less opportunity than they already have to review the contract terms before signing. Instead, a small electronic tablet would be presented to the consumer, limiting the consumer's ability to scroll through and read all contract sections.

If UETA is amended as proposed in SB 361, NACA members predict a huge uptick in consumer fraud concerning car dealerships. Many car dealerships would take advantage of this rule to limit consumers' ability to review vehicle sales and lease contracts before they sign, leading to even greater incidents of illicit activity and abuse. Such cases may involve non-disclosure of serious safety defects, undisclosed recalls, or salvaged titles.

NACA urges that if the bill is to move forward that it include basic safeguards similar to those requested by CARS.

In addition to removing vehicle sales and leasing from UETA's list of exemptions, AB 380 and AB 1743 both included additional consumer protections to mitigate some of these concerns. This included provisions that required sellers to sign a consent form to opt in to electronically completing the transaction. The form would be separate from the sales or lease contract and would disclose the rights of the consumer so that the consumer was better informed before making the decision to sign electronically. As this bill moves through the process, the author may wish to consider whether any of these protections, including those suggested by opposition should be included to protect consumers.

The Attorney General's Office also expresses concerns as it believes "UETA's exception for auto transactions continues to serve the important consumer protection purpose that the Legislature originally intended and has reinforced as recently as 2017." It writes:

SB 361 would authorize auto dealers to consummate transactions electronically such that consumers likely would never see the full version of the contract before signing. In many cases, consumers would be asked

to “sign” on an unfamiliar computer monitor or touchscreen at the auto dealer’s office without ever reading the many terms and conditions to which the consumer is being prompted to agree. Under such circumstances, we are concerned the odds that consumers will enter into transactions without being aware of the contractual terms is greatly increased, as is the opportunity for fraud and consumer abuse.

In our experience, these concerns about misleading electronic transactions are neither hypothetical nor speculative. In fact, our office has prosecuted cases involving precisely this conduct. For instance, just this month, our office announced a settlement with the retailer Curacao for conduct related to the use of electronic monitors for reviewing contractual terms. Specifically, Curacao sales agents, among other things, tacked on unwanted “add-ons” to the contracts of consumers prior to getting their authorization via a small electronic monitor. These add-ons included warranties, accessories, and additional fees. These were all added without consumers’ knowledge or consent and were obscured both by the complicated nature of the financing transaction and the limited visual provided by an electronic monitor.

...

Although electronic transactions are more prevalent than when UETA was enacted, the consumer’s interaction with a new car dealer, the high-stakes and often high-pressure nature of the car-buying experience, and the potential for fraud remain unchanged. In our view, any purported advantages of convenience or record-keeping come at the expense of protections for consumers, and are far outweighed by the risk of abuse.

SUPPORT

California New Car Dealers Association (sponsor)
California Credit Union League
Californians Against Waste
Cox Automotive, Inc.
Ford Motor Company
TrueCar, Inc.
Vitu

OPPOSITION

Consumers for Auto Reliability and Safety
National Association of Consumer Advocates

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 380 (Dababneh, 2017) *See* Comment 1.

AB 1743 (Dababneh, 2016) *See* Comment 1.

AB 1097 (Holden, Ch. 439, Stats. 2015) permits alarm companies, upon the consent of the contracting customer, to execute home solicitation contracts electronically, as specified, and allows for the execution of a notice of cancellation by electronic means pursuant to UETA.

AB 1131 (Dababneh, Ch. 638, Stats. 2015) amended the UETA to authorize an insurer, agent, broker, or any other person licensed by the Department of Insurance to send life insurance records by electronic transmission. This bill also allowed these licensees to send any written record by electronic transmission if not specifically excluded and if the licensee meets specified requirements.

SB 820 (Sher, Ch. 428, Stats. 1999) *See* Comment 1.
