

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 596 (Grayson) – As Amended April 4, 2019

**SUBJECT:** Motor vehicles: recall notices: transactions

**SUMMARY:** This bill would, notwithstanding the Uniform Electronic Transactions Act (UETA), allow a new motor vehicle dealer to receive electronic authorization from consumers, as specified, to any repair of a manufacturer recall, and make other technical changes. Specifically, **this bill would:**

- 1) Allow, notwithstanding UETA, a new motor vehicle dealer to receive electronic authorization from consumers consistent with regulations adopted by the Bureau of Automotive Repair for any repair of a manufacturer recall.
- 2) Update a notice manufacturers are required by federal law to provide to consumers by:
  - Striking an obsolete address and telephone number for the National Highway Traffic Safety Administration (NHTSA); and,
  - Making other technical, non-substantive changes.

**EXISTING LAW:**

- 1) Requires generally, as a matter of federal law, upon final decision by the Secretary of Transportation that a motor vehicle or vehicle replacement equipment is subject to recall due to a safety defect or noncompliance with an applicable safety standard, that the manufacturer must both: (a) notify owners, purchasers, and dealers of the defect or noncompliance, as specified; and, (b) remedy the defect or noncompliance. (49 U.S.C. Sec. 30118.)
- 2) Requires notification to be sent in a manner prescribed by the Secretary by regulation to each person registered under state law as the owner and whose name and address are reasonably ascertainable by the manufacturer through state records or other available sources or to the most recent purchaser known to the manufacturer, as specified. (49 U.S.C. Sec. 30119(d).)
- 3) Requires the manufacturer of the defective or noncomplying motor vehicle or replacement equipment to remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy, except as specified. Also provides for the fair reimbursement of a dealer proving remedy without charge pursuant to this provision, if, at the time of providing service for each of the manufacturer's motor vehicles it services, the dealer notifies the owner or the individual requesting the service of any open recall, as defined; and the notification requirement is specified in a franchise, operating, or other agreement between the dealer and the manufacturer. (49 U.S.C. Sec. 30120.)
- 4) Requires motor vehicle and motor vehicle equipment manufacturers to provide to NHTSA copies of communications with dealers, rental companies, owners, and purchasers regarding

any defect, regardless of whether the defect is safety-related, or noncompliance with a motor vehicle safety standard. (49 U.S.C. Sec. 30166.)

- 5) Defines “service bulletin” as any notice issued by a motor vehicle manufacturer and filed with NHTSA relating to vehicle durability, reliability, or performance. (Civ. Code Sec. 1795.90(g).)
- 6) Requires dealers of new motor vehicles to provide notice to prospective purchasers and lessees on how to get copies of service bulletins. (Civ. Code Sec. 1795.91(a).)
- 7) Establishes UETA, as a matter of state law, to facilitate transactions by electronic means, except that 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. Specifically prohibits under UETA the provision of recall notices to the registered owner of a motor vehicle by electronic means. (Civ. Code Sec. 1633.3(a), (c); Veh. Code Sec. 9975.)
- 8) Provides that the exclusion of a transaction from UETA does not prohibit the transaction from being conducted by electronic means if so permitted by any other applicable law. (Civ. Code Sec. 1633.3(f).)
- 9) Establishes regulations, promulgated by the Bureau of Automotive Repair, to further govern automotive repair dealers within California. (Cal. Code of Regs. Secs. 3300 – 3395.5.)
- 10) Defines an “automotive repair dealer” to mean a person who engages in the business of repairing or diagnosing malfunctions of motor vehicles for compensation. (Bus. & Prof. Code Sec. 9880.1(a).)
- 11) Requires, with certain specified exceptions, an automotive repair dealer to give a customer an estimated price for the labor and parts necessary for an automotive repair, and to obtain the customer’s authorization before the dealer may begin the repair. Allows authorization to be given in written, oral, or electronic form. Permits an automotive repair dealer to obtain authorization from the customer if the price for a repair job increases above the original estimate. Allows the customer to provide authorization in oral, written, or electronic form, including by electronic mail or facsimile transmission. (Bus. & Prof. Code Sec. 9884.9(a); Cal. Code of Regs. Sec. 3353.1.)
- 12) Authorizes the California Bureau of Automotive Repair to specify in regulation the procedures to be followed by an automotive repair dealer if a customer provides consent or authorization for an increase in the original estimated price for a repair job using electronic mail or facsimile transmission. (Bus. & Prof. Code Sec. 9884.9(a).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to, among other things, update how consumers may authorize recall repairs their vehicles by allowing electronic authorization. This bill is sponsored by the California New Car Dealers Association.

2) **Author's statement:** According to the author:

AB 596 is addressing two problems in existing law: the ability for new car dealers to get electronic authorization to conduct recall repairs and updating a statutorily prescribed posting at every dealership that is inaccurate.

The California Uniform Electronic Transactions Act (UETA) authorizes the transactions of business, commerce and contracts by electronic means, except for transactions that are prohibited. One of the transactions that is prohibited from electronic transactions relates to the repair of vehicle that are subjected to federal recalls. [...]

Vehicle Code Section 9975 provides that every vehicle manufacturer who furnishes a recall notice shall correct such defect without charge to the registered owner of the vehicle or to reimburse the registered owner for the costs of making such correction. Currently, vehicle manufacturers do not repair recalls themselves and relay on their franchisee, new car dealer, to make the necessary repair.

Since [] UETA prohibits electronic communications and repairs of federal motor vehicle recalls, it is unclear if new car dealers - as the manufacturer's agent, can receive authorization from consumers to repair their recalls electronically. This uncertainty leaves dealers with the option of having consumers physically come into the dealership to authorize the recall repair. Unfortunately, this might lead to some consumers choos[ing] to put off their recall repair.

3) **Allowing electronic authorization for recall related repairs is convenient and consistent with existing law:** In 1999, based on the model law proposed by the National Conference of Commissioners on Uniform State Laws to set rules by which electronic commerce may be conducted across the country, California enacted UETA. (SB 820 (Sher, Ch. 428, Stats. 1999).) One of the critical motivators for enacting a law validating electronic records was the Statute of Frauds, which requires that certain contracts be in writing.

Today, California's 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. This act, however, does not apply to all contracts. For example, expressly excluded from the 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, including initialed, from the record (such as real estate transactions). Most pertinent to this bill, existing law also excludes from UETA the provision of recall notices to the registered owner of a motor vehicle. As a result, those notices cannot be provided by electronic means. (Civ. Code Sec. 1633.3(a), (c); Veh. Code Sec. 9975.)

This bill seeks to ensure, despite existing law related to vehicle recalls and UETA, that vehicle owners may authorize repair of their vehicles by new car dealers, pursuant to a manufacturer recall, electronically. As a practical matter, this would allow owners to

approve such repairs via text, instead of having to authorize such repairs in person. This is arguably consistent with existing law which: 1) provides that the exclusion of a transaction from UETA *does not* prohibit the transaction from being conducted by electronic means if so permitted by any other applicable law; and 2) allows automotive repair dealers to obtain the customer's authorization for general service-type repairs in written, oral, *or* electronic form. (Civ. Code Sec. 1633.3(f); Bus. & Prof. Code Sec. 9884.9(a).)

As introduced, this bill would have exempted Vehicle Code Section 9975, in its entirety, from UETA, which would have arguably had a much broader effect than simply allowing consumers to authorize recall repairs via text message or email. The introduced version of the bill would have allowed dealers to send customers *notice* of manufacturer recalls electronically, which raises serious concerns regarding consumer protection. The bill was recently amended to instead specifically authorize consumers to authorize recall repairs electronically.

As recently amended, this bill retains the existing requirement under UETA that recall notices be provided by paper copy, but as envisioned by UETA's provision otherwise allowing express authorization for electronic means, this bill would allow for the consumer to authorize a repair pursuant to that paper recall notice, electronically. (*See* Civ. Code Sec. 1633.3(f).) Additionally, California consumers may already authorize car repairs through text or email, so long as the dealer provides required information to the owner, such as the estimated cost of the repair. The author argues that when a dealer, during the course of service, determines that a vehicle is subject to a recall, many customers are irritated at having to return to the dealership solely to consent to work on a recall item. The New Car Dealers Association, sponsor, writes in support:

Last year, the Bureau of Automotive Repair (BAR) approved new regulations that allows automotive repair dealers to receive electronic authorization for vehicle repairs. Before an automotive repair dealer begins work on any vehicle, the dealer must provide a consumer with a written estimate of the costs associated with the repair and the consumer has the choice to have the vehicle repaired. This authorization can be provided in writing, orally and now electronically with BAR's modernized regulations. These modernized regulations benefit both the repair shops and consumers by providing further explanation and verification of repair authorizations than the oral process.

Unfortunately, there is a question about whether recall repairs can be authorized electronically under the California Uniform Electronics Transactions Act (Cal UETA). Cal UETA provides authorization of business, commerce and contract transactions by electronic means, except for specified transactions that are prohibited by statute. One such transaction involves automotive recalls and their repairs, specifically those covered by Vehicle Code Section 9975. While this code section discusses recall notices, this code section also provides that every vehicle manufacturer who furnishes a recall notice shall correct such defects without charge to the registered owner of the vehicle. Currently, vehicle manufacturers do not repair recalls themselves and instead have their franchised new car dealers make these important safety repairs. AB 596 addresses this uncertainty by providing the necessary clarity for new car dealers to receive electronic authorization from consumers for recall repairs.

- 4) **Updating service bulletin information:** This bill would repeal obsolete information and otherwise update the required noticed/posting in new car dealerships regarding motor vehicle service bulletins. Service bulletins are notices governing motor vehicle defects relating to vehicle durability, reliability, or performance, but not rising to the level necessitating a recall. The statutorily prescribed notice contains the phone number and an address for NHTSA, to whom consumers traditionally could call or write and request service bulletins. The notice also informs consumers that they can ask the dealer for a toll-free number to their vehicle's manufacturer, who will be able to provide them with the relevant service bulletin information. The author describes the need to update the existing requirements in that notice as follows:

Motor vehicle dealers are required to give notice of how prospective purchasers and lessees should acquire service bulletins describing defects in motor vehicles. This notice is statutorily prescribed (posting) and must be conspicuously displayed at the dealership. [...]

While the posting of this service bulletin notice is occurring, the information that statutorily required is out-of-date. For example, all of the information about the National Highway Traffic Safety Administration (NHTSA) is inaccurate and the phone number is now a person's cell phone number. Furthermore, NHTSA no longer has any information on their website about service bulletins. Instead, in terms of vehicle safety, the website highlights the need to repair and how to check for any open recalls on your vehicles. Unfortunately, consumers are not given relevant information.

Accordingly, this bill would delete the obsolete address and incorrect phone number required in the notice. This should ensure that consumers are, at the very least, not receiving outdated and inaccurate information. The notice would still direct customers to the dealer for the purpose of obtaining the manufacturer's number, who consumers may call to request service bulletins.

- 5) **Prior legislation:** AB 380 (Dababneh, 2017) sought to strike UETA's electronic prohibition on vehicle sales and lease agreements. This bill was held in the Senate Judiciary Committee.

AB 1743 (Dababneh, 2016) sought to strike UETA's electronic prohibition on vehicle sales and lease agreements. This bill was held in the Senate Judiciary Committee.

AB 2591 (Dababneh, Ch. 617, Stats. 2016) allowed customers to opt-in to initiate changes to their automobile insurance policy online and receive non-renewal and cancellation notices for homeowners and automobile policies electronically.

AB 287 (Gordon, Ch. 682, Stats. 2016) enacted the Consumer Automotive Recall Safety Act, which prohibits auto dealers and car rental companies from loaning or renting vehicles subject to a recall until they are repaired.

SB 820 (Sher, Ch. 428, Stats. 1999) *See* Comment 3.

- 6) **Double-referral:** This bill was double-referred to the Assembly Judiciary Committee where it was heard on April 2, 2019, and passed out on a vote of 12 – 0.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California New Car Dealers Association (sponsor)

**Opposition**

None on file

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