



Consumers for Auto Reliability and Safety

April 26, 2016

Honorable Mark Stone
Chairperson, Assembly Committee on the Judiciary
California State Assembly
State Capitol
Sacramento, CA 95814

Re: AB 1743 (Dababneh): Electronic Motor Vehicle Sales Transactions: OPPOSE

Dear Chairperson Stone:

Consumers for Auto Reliability and Safety (CARS) is a national, award-winning non-profit auto safety and consumer advocacy organization dedicated to preventing motor vehicle-related fatalities, injuries and economic losses.

CARS regrets that we must oppose AB 1743 (Dababneh), sponsored by the California Motor Car Dealers Association, which would eliminate the protections for car buyers inherent in the exclusion of transactions involving conditional auto sales contracts from the California's Uniform Electronic Transactions Act. The Act currently excludes those contracts, as well as other contracts and legal notices, including safety recall notices, that have great import for consumers.

Existing law requires that consumers be provided with a completed, written document that includes all of the terms of the contract in a single document, in advance of their agreeing to the terms and signing the document. This is intended to ensure that consumers are not presented with the transactions in a piecemeal fashion, and are able to review and consider the document in its entirety prior to signing it.

However, if the transaction were conducted on a computer screen, the entire, completed document may not be visible at any point prior to signing. This is problematic, as a single clause may affect the entire contract. The most glaring example: an arbitration clause, which could deny the car buyer access to justice and the benefit of federal and state consumer protection laws, if they are defrauded or otherwise harmed.

A computer screen may also be under the control of the finance and insurance manager or other salesperson. Those dealership employees have a conflict of interest regarding how they present the

terms of the transaction. They are commonly paid commissions based on their sales of high-priced add-ons with little or no real value, the numbers of sales, and the amount of profits they extract from car buyers. Many F & I managers are paid over \$200,000 or \$300,000 a year in base pay plus commissions and bonuses.

There are a number of additional factors to consider that raise concerns. Among them:

- For most Californians, motor vehicles are the single-most expensive product they purchase, unless they are a homeowner, and in that instance, motor vehicles are generally the second-most expensive product. They represent an enormous, high-stakes commitment that can have lasting repercussions impacting the health, safety, and economic viability of car buyers, their families, and their communities.
- Auto sales transactions are complicated and complex, and usually involve several transactions, negotiations, and numerous decisions, so car buyers should not be rushed, and they should be allowed to review the completed contract, in its entirety, before entering into any agreement.
- Car dealers are the #1 most-complained-about businesses, based on consumer complaints to the Better Business Bureau.
- Auto sales and service complaints perennially top the charts among consumer complaints to state and local consumer protection agencies, and rank among the “Top Ten” in complaints to the Federal Trade Commission.
- New and used car dealers in California have a history of engaging in dangerous, deceptive and fraudulent practices that have been the subject of headlines worldwide, Congressional hearings and public enforcement actions, such as: forgery, switching car buyers from purchases to leases without their knowledge or consent, selling “used” cars as “new” cars, “yo-yo” financing, discriminatory lending, “loan packing” of overpriced items of little or no real value, “swallowing” traded-in vehicles, illegal price gouging, failing to provide filled-in Spanish-language (or other required language) copies of contracts, and knowingly loaning or selling vehicles with lethal safety defects, causing fatalities and injuries.
- Identity theft continues to be a serious problem at auto dealerships

Unfortunately, an unintended consequence of AB 1743 would be the increased cost and difficulty in protecting the public from a number of those practices, as it would require the victims and law enforcement officials to be able to obtain access to internal, computerized records, which may be available only pursuant to a court order. It may take a high-priced computer expert to decipher the software and ascertain whether the document reflects what was agreed upon – if that is possible, at all.

For example, in *Carl Stone et al. v. Raceway Ford*, the plaintiffs found, and were able to prove, based on paper contracts, that the dealer had repeatedly charged an illegal “smog check” fee for diesel cars that are not subject to the smog check program. When confronted with the evidence, the dealer admitted that the charges were not allowed and offered to refund the charges, blaming them on a computer glitch.

However, the Appellate Court in that case ruled that California car dealers should be permitted

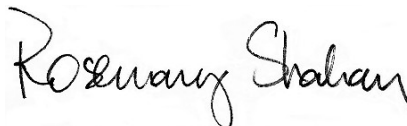
to charge any amount they wish, provided the amount is “disclosed” on the contract. This is a recipe for committing fraud, essentially eliminating existing statutory caps on fees such as “document” fees, tire recycling fees, smog check fees, and other similar fees. While the California Supreme Court has granted review in that case, it is very troubling that dealers may be permitted to charge excessive fees that the public tends to view as charges that are mandatory and approved by the government.

Under AB 1743, it would become prohibitively expensive for many victims of such practices, and for public law enforcement agencies that have had their budgets and staffing slashed, to prove what was disclosed to car buyers. Instead of a paper document, where there is a “wet” signature, there would be an electronic document solely in the possession of the dealer, which anyone could have signed by clicking on a computer screen or signing with an e-signature, making it difficult or impossible to prove forgery.

The difficulty and expense of obtaining the computerized records would put them out of reach for millions of California car buyers, particularly vulnerable low-income consumers, who may be attempting to obtain justice in small claims court. It may not be possible to access the records at all, if the case ends up being tossed into the privatized arbitration system, where discovery may not be granted.

For all the reasons stated above, we urge that you vote NO on AB 1743. Thank you for your consideration of our views. Should you or your staff have any questions regarding our position, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink that reads "Rosemary Shahan". The signature is written in a cursive, flowing style.

Rosemary Shahan
President

cc: Assemblymember Matt Dababneh
Members, California Assembly Committee on the Judiciary
Tom Clark, Staff Counsel, California Assembly Committee on the Judiciary