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April 2, 2014

Honorable Richard Gordon
Assemblymember
California State Assembly
State Capitol, Room 3013
Sacramento, CA 95814

Re: AB 287 (Gordon)
Position: OPPOSE

Dear Assemblymember Gordon:

On behalf of the above-listed organizations, we write to inform you of our opposition to your bill, AB 287, which is backed by the California New Car Dealers Association. This measure would, for the first time ever, make it legal in California for unscrupulous car dealers to sell defective, unsafe, recalled used cars to consumers, if the dealers merely “disclose” the existence of an unrepaired safety recall to used car buyers.

Further, it would allow dealers to make this disclosure using a separate form which could be hidden in a stack of documents and presented to the consumer for their signature AFTER they have already been shopping for several hours, test-driven some cars, chosen one, and negotiated regarding the price, financing, and various add-on items. It would also allow dealers to get away with selling

unsafe recalled used cars regardless how they advertise the condition of the vehicles they offer for sale, what warranties they may provide, or what claims or representations they make to induce car buyers to buy from them – basically condoning currently illegal practices such as “bait and switch,” false advertising, violation of warranties, and fraud.

Academic studies have found that disclosures become virtually meaningless in the context of such transactions, particularly given the time spent prior to the disclosure and the complexity of the transaction. It is also difficult, or impossible, for consumers to prove that disclosure was not provided – particularly if they were killed as a result.

AB 287 would be far worse than existing law in our state, which outright prohibits dealers from selling used vehicles that fail to meet federal motor vehicle safety standards, and from violating laws against engaging in unfair and deceptive practices, committing fraud, bait-and-switch, false advertising, or violating express or implied warranties; or if someone is injured or killed as a result of the dealer's malfeasance, existing laws against reckless endangerment or negligence.

Instead of strengthening and clarifying the law, and protecting the motoring public by prohibiting dealers from selling unsafe, recalled used cars to consumers, this bill threatens to make California a dumping ground for ticking time-bomb cars with lethal safety defects.

Regarding rental cars, AB 287 would be far worse than the prevailing practices in the rental car industry (with the exception of Rent-a-Wreck). All of the major rental car companies, including Enterprise, Hertz, Avis, Dollar-Thrifty, and many smaller rental car companies have already voluntarily adopted policies that are more consumer-friendly and safety-oriented than AB 287. For years, they have been grounding recalled cars until they are repaired, rather than renting or selling them to the public.

This bill would *allow* rental car companies to rent approximately 99% of unsafe recalled cars to consumers, regardless how unsafe the cars are, unless the manufacturer has, in its sole discretion, chosen to warn its customers not to drive the car, pending repairs.

There is no standard for when a manufacturer must issue a “do not drive” warning. The auto manufacturers' decision to issue such a warning is generally not based on how unsafe the vehicle is, but on other factors, such as the number of affected vehicles and the level of negative publicity. Courts have ruled that they lack the authority to mandate a “do not drive” warning, including most recently in the GM ignition switch case. Auto manufacturers themselves acknowledge that, since 2000, “do not drive” warnings have been issued in only about 1% – 5% of safety recalls.

This bill would do NOTHING to save the lives of innocent victims such as Raechel and Jacqueline Houck, who perished in a tragic crash in Santa Cruz, due to the safety defect in a 2004 Chrysler PT Cruiser that was being recalled by Chrysler. In fact, all this bill would accomplish would be to shift liability from the culpable companies – Chrysler and the rental car company – onto their victims. Chrysler did not issue a “do not drive” warning to its customers regarding the safety defect that killed Raechel and Jacqueline. So under AB 287, if the rental car company “disclosed” the defect to them, renting them the fatally defective car would have been perfectly legal.

One of the worst impacts of your bill is that it would place the lives of used car buyers and their passengers, families, and others who share the roads at risk of serious injury or death, pending the recall repairs. For millions of vehicles currently under a safety recall, such as Hondas with defective

Takata air bags that explode and spew shrapnel at drivers and passengers, there are no repair parts available, and they are not expected to become available for many months. Meanwhile, the bill would allow dealers to sell those unsafe used cars to consumers, knowing full well that the cars could not possibly be made safe to drive.

There is no assurance that the defect will not occur before the repairs can be performed. In some tragic cases, consumers have been injured or killed by an unsafe car within days, or even the same day the dealer put the keys into their hands.

While the bill would require that consumers who seek recall repairs be provided loaner cars pending completion of the repairs, there is no requirement that the loaner cars be any safer. What is the point of requiring loaners, if they could have the exact same safety defects, or other defects that led to a safety recall?

In sum, we strongly urge the Legislature to reject this unprecedented anti-consumer, anti-safety measure.

Sincerely,

Ken McEldowney
Executive Director
Consumer Action

Maeve Elise Brown
Executive Director
Housing and Economic Rights Advocates (HERA)

Amagda Perez
Executive Director
California Rural Legal Assistance Foundation

Carmen Balber
Executive Director
Consumer Watchdog

Eddie Kurtz
Executive Director
Courage Campaign

Emily Rusch
Executive Director
CALPIRG

CC: Assemblymembers Stone, Eggman, Wilk, and Jones
Members, Assembly Committee on Transportation
Manny S. Leon, Senior Consultant, Assembly Committee on Transportation