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*via facsimile (916-319-2124)
and email (assemblymember.gordon@assembly.ca.gov)*

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 my firm; its clients; and Joan Claybrook, a former director of NHTSA and past president of Public Citizen; we write to inform you of our opposition to your bill, AB 287, which is backed by the California New Car Dealers Association. This bill would 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 and the end of the negotiation process to used car buyers. This bill would grant immunity to these dealers.

I have been in private practice since 1980, and before that in legal services programs representing low- and moderate-income individuals and groups in both Connecticut and California. I am a past President of the Consumer Attorneys of California. For 35 years, I have represented consumers and employees in a broad variety of subject matter litigation, mostly in class actions, to enforce their rights under federal and state statutes, as well as contracts, regarding their rights as consumer and employees. During this period, I have represented automobile purchases and have commented on a broad variety of proposed legislation, state and federal, involving defective products.

The most analogous legislation to AB 287 that I can think of would be the federal legislation referred to as The Sale of Rebuilt Wrecks that failed passage in the Congress many years ago. I opposed that legislation on the ground of the demonstrated likelihood that the sale of a car rebuilt with parts not manufactured for it would likely cause serious bodily injury and death, not only to the purchaser but to his or her family, friends, and other drivers.

Your bill has been brought to our attention and it appears similar to the defects I opposed with respect to the legislation involving rebuilt wrecks.

Used Cars

The bill would allow dealers to make a disclosure using a separate form which could be hidden in a stack of documents and presented to the consumer for his/her signature after he/she had already searched for a suitable car for several hours, test-driven cars, chosen one, and negotiated regarding the price, financing, and various add-on items. It would also allow dealers to obtain immunity for selling unsafe recalled used cars regardless of 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 purchase from them. The bill condones currently illegal practices such as "bait and switch," false advertising, violation of warranties, and fraud, which are all proscribed under current California law.

Disclosures made to consumers have never been the panacea they were advertised they were advertised to be. Disclosures of terms and pricing simply made the credit card industry adopt contracts, credit card agreements averaging 30 pages or more. At the same time, credit card company practices were concealed or written in deceptive ways which had the effect of harming the very individuals they were designed to educate. Multiple abuses finally led to legislation passed by Congress earlier this century entitled The Credit CARD Act of 2009, which prohibited certain practices outright and eliminated disclosures which could be argued to immunize credit card companies. In the case of automobiles, disclosures never reach the audience that comes into contact with the unsafe used car - the families of the buyer, his/her friends and guests, as well as members of the general public who come into contact with that automobile on our roads.

Automobiles are dangerous products when manufactured and repaired properly. All efforts to reduce current protections and requirements should be rejected on the basis of health and safety concerns.

AB 287 would be far worse than existing law in our state, which now prohibits dealers from selling used vehicles which 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 existing law, and protecting the motoring public by prohibiting dealers from selling unsafe, recalled used cars to consumers, this bill threatens to make California a market within which to sell cars with lethal safety defects.

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Rental Cars

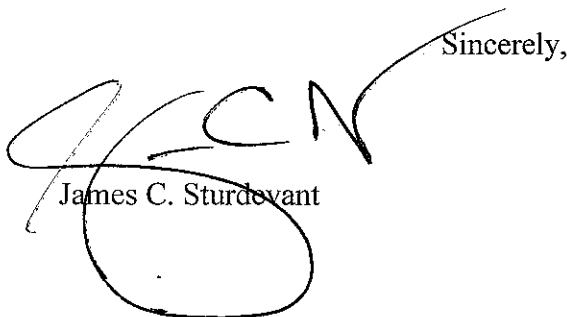
Regarding rental cars, AB 287 would be far worse than the prevailing practices in the rental car industry (with the exception of Rent-a-Wreck). All of the major rental car companies, including Enterprise, Hertz, Avis, Dollar-Thrifty, and many smaller rental car companies have already voluntarily adopted policies that are more consumer-friendly and safety-oriented than AB 287. These companies now ground 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.

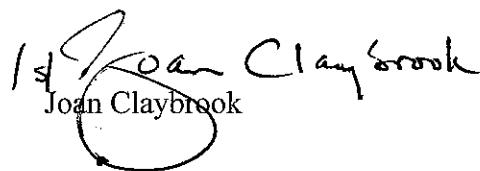
There is no standard for when a manufacturer must issue a "do not drive" warning. The auto manufacturers' decision to issue such a warning is generally not based on how unsafe the vehicle is, but on other factors, such as the number of affected vehicles and the level of negative publicity. Courts have 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.

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

Sincerely,



James C. Sturdevant



1st Joan Claybrook
Joan Claybrook