

# Car Buyers Protection Act Initiative for November, 2014 Ballot

The California Car Buyers Protection Act will help reduce the risks involved in buying a car from a car dealer, improve the safety of used cars, create new jobs for skilled auto mechanics, and also make newer, safer, more fuel-efficient vehicles more affordable.

Statewide polling shows that likely voters overwhelmingly support improving protections for new and used car buyers. Polling results are posted here:

[http://carconsumers.org/pdf/CA\\_CBPA\\_statewidepolling\\_10-2013.pdf](http://carconsumers.org/pdf/CA_CBPA_statewidepolling_10-2013.pdf)

The Car Buyers Protection Act will:

- Make it illegal for car dealers to sell, rent, lease, or loan used vehicles that are under a federal safety recall, unless the safety recall repairs have been performed
- Improve protections for car buyers who are victims of ID theft at auto dealerships
- Prohibit dealers from hiring people convicted of ID theft, forgery, or other fraud, for positions where they would have access to car buyers' personal financial information
- Prohibit dealers from engaging in "bait and switch" financing (also known as yo-yo financing)
- Prohibit dealer markups – hidden extra charges that raise the cost of financing car purchases and cost California car buyers over \$2.6 billion in a single year
- Require all dealers to provide at least a 30 day / 1,000 mile warranty (currently, only "buy here pay here" dealers are required to provide minimum warranties, so many other dealers continue to sell faulty vehicles "AS IS")
- Eliminate the New Motor Vehicle Board's authority to overrule the DMV when the agency disciplines an auto dealer or manufacturer for violating consumer protection laws

Each provision in more detail:

## **Prohibit dealers from selling unsafe, recalled used vehicles to consumers**

**88% of likely voters support**

Federal law prohibits auto dealers from selling unsafe, recalled vehicles to NEW car buyers. However, there is no similar prohibition against dealers selling unsafe, recalled USED cars. According to the U.S. Government Accountability Office, the non-partisan

research arm of the federal government:

*"NHTSA [the National Highway Traffic Safety Administration] cannot require used-car dealers, or franchised dealerships that sell used vehicles, to... get the defect remedied prior to sale... **With over 35 million used cars sold by used and franchised dealerships in the United States in 2009 alone, this could pose a significant risk to the safety of millions of vehicle drivers and may have a negative impact on recall completion rates.**"<sup>1</sup>*

Many news organizations, including the *Today Show*, *The CBS Early Show*, KOVR-TV in Sacramento, KABC-7 in Los Angeles, and other local TV stations, have broadcast undercover investigations showing auto dealers caught selling unsafe, unrepaired recalled used vehicles – claiming they had been thoroughly inspected and were perfectly safe.

Carfax has issued news alerts warning that millions of unrepaired recalled used cars are being offered for sale across the U.S.

The trade associations for new and used car dealers are opposing legislation in Sacramento, SB 686, authored by CA Senator Hannah-Beth Jackson, and sponsored by Consumers for Auto Reliability and Safety, to prohibit auto dealers from selling, renting, leasing, or loaning unsafe, recalled used cars to consumers unless the safety recall repairs have been performed. SB 686 is supported by Consumers Union, SAFE KIDS CA, State Farm Insurance Company, the Latino Business Association, the Firefighters Burn Institute, the Trauma Foundation, and many other pro-consumer / safety organizations.

SB 686 passed 23-12 in the Senate, but is stalled in the Assembly Business and Professions Committee, where it is now a "two-year" bill.

Like SB 686, the Car Buyers Protection Act is a reasonable measure that would simply require all auto dealers to do what some auto dealers have been doing for years. Retired California new car dealer Salvatore Cerrito, who testified before the Senate Judiciary and Appropriations Committees, wrote that he supports SB 686, and that he

*"...owned and managed major new car franchised auto dealerships in Northern and Southern California, including dealerships for Chevrolet, Pontiac, Cadillac, Oldsmobile, Lincoln, Mercury, Chrysler/Jeep/Dodge, Toyota, Honda, Nissan, Mitsubishi, Hyundai, SAAB, Rolls Royce and Bentley. During that time, I ensured that the safety of our customers was paramount. I established procedures for performing routine inspections on all the vehicles we offered for sale, including a check to identify vehicles with outstanding safety recalls and either get them fixed or sell them at wholesale, rather than putting my customers' safety at risk."<sup>2</sup>*

The dealers complained disingenuously that SB 686 does not go far enough, since it exempts rental car companies' rentals, while covering rental car companies' sales of recalled

<sup>1</sup> GAO Report, page 40 (emphasis added).

<sup>2</sup> Letter of retired California auto dealer Salvatore Cerrito to Senator Noreen Evans, April 10, 2013, posted here: <http://carconsumers.org/pdf/formercardealer-safetyrecallseasytofind.pdf>

used vehicles. What the dealers did not tell California legislators: the dealers themselves are opposing the federal legislation that would prohibit rental car companies from renting recalled vehicles, unless the repairs have been performed. All of the major rental car companies, and many of the smaller ones, including the American Rental Car Association, are supporting enactment of the Raechel and Jacqueline Houck Rental Car Safety Act, S 921. It's the *dealers* who are blocking enactment, while they seek a special exemption for dealers who also rent vehicles. If the dealers were truly concerned about the safety of vehicle renters, they would drop their opposition to the federal legislation.

## **Improve protections for victims of ID theft perpetrated by dealerships**

**72% of likely voters support**

Identity theft perpetrated by car dealer employees is a serious problem.

According to a report in *Automotive News*, "Dealerships are targets for identity thieves — those working from both the inside and outside." The report quotes Dave Robertson, executive director of the Association of Finance and Insurance Professionals: "It's still a major problem, but it's not growing as fast." The report also quotes the Chief of the Fraud and Identity Theft Bureau of the Maricopa County Attorney's Office, regarding car dealerships: "I hate to say it, but it's a pretty common ground where information is breached."<sup>3</sup>

In an attempt to curb identity theft at car dealerships and among other creditors, the Federal Trade Commission has issued "Red Flag" rules that apply to dealers. The FTC urges car dealers to train their employees to be on the lookout for identity thieves, including checking to see if the person in front of them looks like the photo on their driver's license.

Case in point: The Orange County District Attorney cracked down on an identity theft ring operating out of a major Nissan dealership, that falsified documents and purchased vehicles in the names of people who had not done any business with the dealership.<sup>4</sup>

News release issued by the Orange County District Attorney:

California's identity theft statute fails to provide recourse for victims of ID theft against car dealers, when the dealers sell vehicles to ID thieves, then assign the sales contracts to third-party lenders, who then pursue the victims for payment.

The Car Buyers Protection Act will:

- Provide victims of ID theft at auto dealerships the same recourse they now have against lenders or others who make a claim seeking payment, closing a loophole that

<sup>3</sup> *Automotive News*, Dec. 5, 2011

<sup>4</sup> News Release issued by the Orange County District Attorney Tony Rackauckas, Sept. 25, 2008. [http://www.orangecountyda.com/templates/printer\\_version.asp?type=news&page=8&recordid=1015](http://www.orangecountyda.com/templates/printer_version.asp?type=news&page=8&recordid=1015)

unscrupulous auto dealers now exploit.

## **Reduce the risk of ID thieves operating out of auto dealerships**

**85% of likely voters support**

California law allows dealers to hire employees who have a record of prior convictions for ID theft, forgery, or other frauds for positions where they will have access to customers' personal financial information.

The Car Buyers Protection Act will:

- Require car dealers to check available criminal records, and prohibit them from hiring employees with prior convictions for ID theft, forgery, or other fraud for positions where they would have access to consumers' personal financial information.

## **Prohibit dealer “markups” that cost California car buyers billions**

**82% of likely voters support**

Auto dealers charge billions of dollars in hidden extra fees, known as dealer “markups” or “dealer reserve.” Dealers receive kickbacks from lenders, in exchange for increasing the interest rate the consumer is charged for an auto loan above the rate the consumer would otherwise pay, based on their creditworthiness. According to the Center for Responsible Lending, during 2009 alone, dealer markups cost California car buyers more than \$2.6 billion. The Center also found that consumers whose loans were inflated by the added charges were more likely to default on their loans.

The Center's report, including a link to state-by-state figures:

<http://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/under-the-hood-dealer-rate-markups.html>

In class action litigation brought by civil rights organizations and the victims of markups, dealer markups were shown to have a discriminatory impact based on race. Car buyers of color tended to be charged more than their white counterparts, even when they had the same creditworthiness.

In 2005, in an effort to curb the discriminatory impact and overall cost of dealer markups, California enacted caps on dealer markups as part of the Car Buyers Bill of Rights. However, those caps – at 2.5% for loans up to 60 months and 2% for longer loans – still allow markups that can cost car buyers thousands of dollars extra, over the life of the loan.

In 2009, the U.S. Department of Justice brought an action against Nara Bank and two California dealerships, alleging that car buyers who were non-Asian-American were charged higher markups than other customers.

US DOJ news release: <http://www.justice.gov/opa/pr/2009/September/09-crt-1063.html>

Recently, the Consumer Financial Protection Bureau sent notices to major auto lenders warning them that the Bureau is concerned about disparities due to dealer markups.

U.S. Senator Edward Markey, a member of the Senate Commerce Committee, which has jurisdiction over the Federal Trade Commission, recently sent a letter to the Chairman of the FTC, Edith Ramirez, inquiring about the FTC's role in regulating dealer markups.

The Car Buyers Protection Act will:

- Prohibit dealer markups

## **Prohibit car dealers from engaging in “bait and switch” financing**

**76% of likely voters support**

Many unscrupulous auto dealers engage in “bait-and-switch” financing, (also known as “yo-yo” financing), luring car buyers into entering into contracts on favorable terms. Then shortly after the car buyers drives away in their newly purchased vehicles, the dealers contact them and mislead them into believing their financing “fell through.” Then the dealer demands that the car buyer enter into a second contract, typically requiring the car buyer to pay a larger down payment and /or higher interest, or larger monthly payments that may be unaffordable. Dealers often refuse to refund the car buyer's down payment or return any traded-in vehicle, a practice known in the trade as “de-horsing.”

If the car buyer balks at signing another contract, the dealers often threaten to repossess the car, or have the car buyer arrested for auto theft. Some dealers fail to submit documents for completing the registration, leaving the car buyer subject to arrest due to expired temporary tags.

Case in point: A consumer purchased a Toyota from a major Toyota dealer, who promised “0% financing.” She paid a \$3500 down payment, and signed a contract accepting the dealer's offer of 0% financing on a new Toyota. About 10 days later, the dealer called her and claimed that the financing had “fallen through” and demanded that she sign a new contract – at 16% interest.<sup>5</sup>

Many victims of “yo-yo” financing don't realize they have been scammed, since the

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<sup>5</sup> “Congress to weigh regulation of financing by auto dealers,” *Los Angeles Times*, June 19, 2010. <http://articles.latimes.com/2010/jun/19/business/la-fi-car-finance-20100619>

dealers often mislead them about their creditworthiness.

According to testimony by representatives of the Armed Forces before the California Assembly Banking Committee in 2005, “yo-yo” auto financing is the #1 financial readiness problem experienced by troops stationed in California.

The Center for Responsible Lending has issued a report documenting the prevalence of yo-yo financing based on surveys of those who provide assistance to car buyers as consumers.<sup>6</sup>

## **Require ALL auto dealers to offer minimum warranties on used vehicles**

**84% of likely voters support**

Over a dozen other states require ALL car dealers to offer minimum warranties on used vehicles offered for sale. Under legislation enacted in 2012, AB 1447, only “buy here pay here” dealers must offer warranties that last at least 1,000 miles or 30 days on each used vehicle they offer for sale. New car dealers and other dealers who sell used cars were exempted.

As a result, car buyers who purchase used vehicles may pay more at competing dealerships, but get less protection. New car dealers and other independent auto dealerships are still allowed to sell used vehicles “AS IS.” This means that used car buyers who shop at those dealerships may not even have the benefit of the most basic implied warranty -- that the vehicle is “merchantable” and fit for transportation. This also causes confusion in the used car market, since car buyers often have no way to know whether a dealer qualifies as a “buy here pay here” dealer, or whether the dealer is prohibited from selling them the car “AS IS.”

The Car Buyers Protection Act will:

- Require ALL dealers to provide at least a 30-day / 1,000 mile warranty on all used cars they offer for sale. This will also provide car buyers with an implied warranty that the vehicles are “merchantable” – fit for their intended use, as transportation.

## **Eliminate the New Motor Vehicle Board's authority to overrule the DMV when the DMV attempts to protect car buyers from auto manufacturers or dealers who violate consumer protection laws**

**65% of likely voters support**

This obscure board was originally created to hear franchise disputes between auto

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<sup>6</sup> “Deal or No Deal: How Yo-Yo Scams Rig the Game against Car Buyers,” Center for Responsible Lending: <http://ftc.gov/os/comments/motorvehicleroundtable/00104-82860.pdf>

dealers and manufacturers. Four of the board members are car dealers. The board has stated that its mission is to protect car dealers – not the public. The New Motor Vehicle Board has the authority to overrule the Department of Motor Vehicles when the DMV attempts to discipline a dealership or manufacturer that engages in widespread violations of consumer protection laws. No other agency in state government allows an industry-dominated board to overrule a regulatory agency.

The DMV issues licenses to auto dealers and manufacturers. The DMV supposedly has the authority to suspend or revoke a manufacturer or dealer's license if they commit massive fraud. This form of discipline is necessary in order to deter widespread fraud that endangers public safety or results in other widespread harm to the public. However, that authority is often illusory, since dealers and manufacturers can appeal DMV decisions to the industry board, which can then allow them to go on the attack against the DMV, forcing the agency to spend taxpayer dollars defending itself. Dealers and manufacturers have a history of using the threat of an appeal to undermine the DMV's ability to protect the public.

In 2004, then-Senator Debra Bowen authored SB 1711, to prohibit the New Motor Vehicle Board from being able to overturn DMV discipline of dealers or manufacturers, while preserving their right to appeal DMV decisions to courts. In a news release, Sen. Bowen said:

"The Board's sole purpose is to protect car dealers at the expense of car buyers, plain and simple. An industry board shouldn't be handling complaints made against dealers, and it shouldn't be able to overturn fines and penalties the DMV slaps dealers with who are breaking the law."<sup>7</sup>

Former DMV Director Steven Gourley wrote in support of SB 1711:

"...it is clear to me, as former Director, as well as to all DMV personnel (when I was there) that the Board is thought of by new car dealers and RV dealers as an impediment to, as well as weapon against, DMV disciplinary actions....SB1711 is intended to protect the valuable mediation and arbitration functions of the Board, and to eliminate the Board's unprecedented, costly, and problematic jurisdiction over DMV's disciplinary actions..."

DMV Director Steven Gourley's letter is posted here:

<http://carconsumers.org/pdf/DMVdirector-NMVB.pdf>

Under heavy lobbying by car dealers, the legislature failed to enact the bill.

The Car Buyers Protection Act will:

- Eliminate the New Motor Vehicle Board's authority to overrule the DMV when the agency disciplines dealers or manufacturers for violating consumer protection laws

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<sup>7</sup> "CAR DEALERS FLEX THEIR MUSCLE, SHOOT DOWN BOWEN EFFORT TO PROTECT CAR BUYERS ON SENATE FLOOR," Press release issued March 18, 2004, by Senator Debra Bowen.

## POLLING:

Statewide poll, conducted by Anzalone Liszt Grove Research, Inc. Sept. 30 – October 3, 2013, in English and Spanish – 601 likely 2014 voters (481 landline / 120 cell phone).

Results: [http://carconsumers.org/pdf/CA\\_CBPA\\_statewidepolling\\_10-2013.pdf](http://carconsumers.org/pdf/CA_CBPA_statewidepolling_10-2013.pdf)

## NATIONAL SURVEYS

Car dealers are the #1 most-complained-about businesses, in terms of consumer complaints filed with the Better Business Bureau.

Auto sales and service complaints top the charts of consumer complaints made to state and local consumer protection agencies.

According to the Gallup poll, auto dealers rank rock bottom, even below Congress, in terms of public esteem for the profession.

Links to national surveys: <http://www.carconsumers.org/surveys.htm>