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April 2, 2015

TO: ASSEMBLY MEMBER RICHARD GORDON

FR: BRIAN CHASE, PRESIDENT
ADVOCATE CONTACT: NANCY PEVERINI

RE: AB 287 (GORDON) OPPOSE UNLESS AMENDED

Consumer Attorneys of California regrets to inform you of our opposition to AB 287, which has been referred to the Assembly Transportation and Assembly Privacy and Consumer Protection Committees. CAOC opposes Section 7, which adds Vehicle Code Section 11750, the “Consumer Automotive Recall Safety Act” and makes it legal for California car dealers to sell used cars with open recalls, including safety recalls with two exceptions: cars of the same line make as those of the dealer and if the recall is of the “Stop Sale-Don’t Drive” type.

While CAOC supports the authors’ intents related to consumer protection and the goal of getting more information to consumers, we cannot support the approach taken in this bill. We must oppose AB 287 for the following reasons:

- A seller or renter of a vehicle should not be able to sell or rent a vehicle subject to a recall (defective vehicle) merely by “notifying” the consumer of the recall. Dealers and rental car companies are in the **very best** position to get the necessary recall work performed as opposed to punting that to the consumer. Sellers and renters should be required to actually do the recall work in order to ensure upmost consumer protection. The burden of getting the recall fixed should not be shifted to the buyer.
- Sections 11754(b), (d), and (e), and 11756(b) and (c) shift to the consumer (buyer or renter) responsibility with respect to the recall. If the consumer, after being advised of the recall, and signing an acknowledgement, fails to take the vehicle in for the repair, defendants will argue that the consumer had some responsibility in any subsequent legal action involving injury or death. While this would not absolve the manufacturer of liability for the defect, it could certainly reduce recovery through the legal doctrine of comparative fault. This approach is commonly seen by CAOC members in recall cases, in that the manufacturer presents evidence that Notice of the Recall was sent to the registered owner, and the owner did not take the vehicle in for the repairs. Often there is a dispute about whether the Notice was received. This bill would eliminate that dispute in those instances where there was a signed acknowledgement, as required by the

Legislative Department

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bill. Therefore, in every instance where a consumer is harmed by the product and a legal action results, the dealer will argue that the consumer was comparatively at fault. This may or may not be successful, but the litigation surrounding this issue will be expensive and drawn out, harming the consumer's best chance of a fair result. CAOC members who represent consumers work on a contingency fee basis, not on an hourly basis like the dealers' attorneys who will have every incentive to argue the consumer knew about, and therefore should take responsibility, for the defect. To address this issue, we would respectfully request an amendment that clearly states that information related to the consumer signing a notice is inadmissible in any legal proceeding.

- The disclosures the dealers must provide the consumers are unclear. The bill states that the dealer must provide a copy of the manufacturer's recall data base report, but we are not clear that this would be clear and conspicuous to the average consumer.
- We believe that a rental car company should not rent any vehicle subject to any recall and would request an amendment so stating. When someone rents a car, they often check out at the gate and it just isn't practical for a renter to evaluate and sign a notice at that time. It is our understanding most rental car companies no longer rent recalled vehicles; that practice should be codified into California law.
- We are also concerned that this bill undermines other California consumer protection laws.

In summary, the bill allows dealers to sell recalled vehicles that have not been fixed. The dealers could and should take them in to be fixed before selling them for optimal consumer protection. But instead, they can play down the recall and tell the buyer they have reduced the price in consideration of the buyer taking the vehicle in to have the recall done or not, which can easily result in more unrepaired, recalled vehicles being sold. Second, with respect to rental cars, it is clear that a renter isn't going to take the time to take the vehicle to a dealer for repairs, and pay the rent on the car while it's sitting at the dealership. Thus, the bill authorizes the rental of knowingly defective vehicles, passing the risk off to a renter who won't be expected to have the repairs made. The rental company will most likely offer a discount on the rental charge and tell the renter that the recall is unimportant. Instead, why not require rental companies to have the repairs made before renting the vehicle? Last, this bill creates tiers of recalls into the "don't drive" vs. "ok to drive but defective." We would instead argue that the best practice is to fix all defects.

If you or a member of your staff would like to discuss this further, please contact us.

cc: Assembly Transportation Committee
Assembly Privacy and Consumer Protection Committee