



Memorandum in Opposition to H.262 and S.179

An Act further regulating business practices between motor vehicle dealers, manufacturers, and distributors

Consumer Reports strongly opposes provisions in section 4 of H.262 and section 4 of S.179 that would allow the sale of used cars with an open recall, provided that written disclosure of the recall is made at the time of sale to the purchaser. Instead of simply asking dealers to fix unsafe, recalled used cars before they are sold, these provisions would shift additional responsibility for safety onto consumers, and place them at greater risk.

Federal law currently prohibits automobile dealers from selling new vehicles that are subject to a safety recall until they are repaired. In addition, in 2015, Congress largely prohibited rental cars with an open recall from being rented to consumers. Buyers of used cars deserve the same standard of safety protection as is provided to new car buyers and rental car users. Consumers should be able to trust that used vehicles for sale by auto dealers are reasonably safe, and that any safety defects have been fixed by the dealer, prior to sale. For these reasons, we strongly urge you to oppose section 4 of these bills.

Consumer and highway safety advocates are concerned that the relevant sections in H.262 and S.179 would expand and legitimize the sale of used cars under recall with dangerous safety defects, such as unrepaired components for steering, braking, or the vehicle's air bags. By facilitating the sale of vehicles with open safety recalls, this bill may lead to many more used cars with safety defects being sold and driven on Massachusetts roads, potentially resulting in avoidable deaths and injuries for drivers, passengers, and other road users.

Automobile safety recall notices are issued when a manufacturer or the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) determines that a motor vehicle, equipment, car seat, or tire creates an unreasonable safety risk or fails to meet federal safety standards. Manufacturers are required to fix the problem by repairing or replacing a vehicle at no cost to the consumer, or in rare instances, by offering a refund or repurchasing the vehicle. These recalls may involve defective airbags that fail to open in a collision or that explode with excessive force, shooting shrapnel into occupants; bad brakes; seat belts that fail to stay fastened in a crash; wheels that fall off; loss of steering control; and accelerator pedals that stick. Vehicle safety defects can have fatal consequences, and they must be taken seriously by consumers and dealers alike.

The large number and scope of automobile recalls in recent years only heighten the risks associated with these bills. According to NHTSA, in the decade between 2008 and 2017, these recalls have included over 390 million vehicles.¹ Recalls involving Takata airbags alone -- including planned recalls yet to be formally announced -- include approximately 50 million affected airbags in an estimated 37 million

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¹ National Highway Traffic Safety Administration (NHTSA), 2017 Recall Annual Report, updated 1/18/18, available at: https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/2017_recall_annual_report_updated011818_0.pdf.

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vehicles.² As of June 2019, approximately one-third of affected Takata airbags (15.9 million) still had not been replaced.³

Massachusetts consumers should be protected against dangerous used cars by ensuring that repairs for any used vehicle with an open safety recall are made **before** the car is offered for sale. Clear disclosure of a defect at the beginning of the sale process **does not cure the problem**. Instead, this disclosure would hand off all risk to the consumer, who generally has less time, knowledge, and logistical support than the used car dealer has to ensure the vehicle will be repaired properly. In addition, consumers frequently are overwhelmed with paperwork in the car purchasing process. Consumers may not realize or appreciate the serious risks involved in driving a car with an open safety recall, or the amount of additional time and effort that may be needed to get the car repaired before they can safely use the vehicle. In addition, parts for the necessary repairs may not even be available. This means the car buyer could be left with an unsafe vehicle that cannot be repaired for weeks or even many months as they use it to get to work, school, or other destinations.

According to industry sources, approximately 70 percent of automobile sales in the U.S. involve used vehicles. Approximately 40 million used cars are sold nationally every year – about 2.3 times the number of new cars.⁴ H.262 and S.179 would -- in effect -- enshrine a low standard of safety protection for a majority of Massachusetts car buyers: those who purchase used cars in the state.

Massachusetts has a long history of protecting consumers against unfair sales practices and dangerous products. The state should remain a leader in consumer protection and highway safety by resisting special interest pressure to pass H.262 and S.179, and by working for a comprehensive ban on the sale of used cars with open safety recalls. Consumers who buy used cars should not be asked to accept cars with dangerous defects so that dealers can complete a sale.

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2 Barry, K. and Plungis, J., *Takata Airbag Recall Adds More than 1.7 Million Vehicles*, Consumer Reports, 2/8/19, available at: <https://www.consumerreports.org/car-recalls-defects/takata-airbag-recall-adds-more-vehicles/>

3 NHTSA, *Takata Recall Spotlight*, available at: <https://www.nhtsa.gov/equipment/takata-recall-spotlight> (accessed August 8, 2019)

4 Muller, D., *6 Used Vehicle Trends to Watch in 2019*, Automotive News, 1/28/19, available at: <https://www.autonews.com/used-cars/6-used-vehicle-trends-watch-2019>