



## **Memorandum in Opposition to A. 4292 / S.2740**

***Instead of simply asking dealers to fix unsafe, recalled used cars before they are sold, this legislation would shift additional responsibility for safety onto consumers, and limit recovery of damages and attorneys' fees***

**Consumers Union, the advocacy division of Consumer Reports, strongly opposes Assembly bill A.4292 and Senate bill S.2740. 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. While dealers and consumers alike should carefully research the vehicle history of used cars -- including by checking for open recalls -- this bill would shift additional responsibility for safety onto consumers and potentially place them at greater risk. The bill also limits the ability of consumers and the Attorney General to challenge unfair auto dealer sales practices in court, by limiting recovery of damages and attorneys' fees. We strongly urge you to oppose this bill.**

Consumer and highway safety advocates are concerned that A.4242 and S.2740 will expand and legitimize the sale of used cars with dangerous safety recall defects, such as unrepaired components for steering, braking, or the vehicle's air bags. Under the bill, dealers can continue to sell used cars with open safety recalls, provided they notify the consumer about the recall and provide a printed copy of the recall information in English, prior to sale or transfer of the vehicle.

While the bill provides that a dealer may not sell a vehicle subject to a "stop sale" or "do not drive" designation from the National Highway Traffic Safety Administration, this creates a false expectation for safety for both car dealers and consumers, because only a very small fraction of vehicles with serious safety defects are actually subject to that designation. In addition, NHTSA does not classify safety recalls based upon risk, so there is no way for a consumer to know whether the vehicle is even safe to be driven off the dealer's lot. By creating a routine process for sales of vehicles with open safety recalls, this bill might lead to more used cars with safety defects being sold and driven on New Jersey 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. Safety recalls may involve defective airbags that fail to open in a collision or 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.

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## **Memo in Opposition to A.4292 and S.2740, page 2**

The risks for consumers of exposure to automobile safety defects are particularly high at present, because of the large number and scope of safety recalls in recent years. According to NHTSA, since 1997 over 680 million vehicles have been subject to a safety recall. Recalls involving Takata airbags alone -- including planned recalls yet to be formally announced -- include approximately 50 million affected airbags in an estimated 37 million vehicles. As of July 2018, fewer than half of the affected airbags have been replaced.

New Jersey consumers should be protected against potentially 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.

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. By contrast, A.4292 and S.2740 would permit used car dealers in New Jersey to shift additional responsibility for fixing recalls onto consumers, from the dealer. This change would be unwise and unfair, not only because buyers of used cars deserve the same standard of safety protection as is provided to new car buyers and rental car users, but also because it is reasonably foreseeable that it might lead to more used cars with safety defects being sold and driven on New Jersey roads, potentially resulting in avoidable deaths and injuries.

Clear disclosure of a defect at the beginning of the sale process COULD help some buyers understand a safety risk, but crucially, **it does not cure the problem**. Instead, this disclosure would hand off additional 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 properly repaired. In addition, consumers are frequently overwhelmed with paperwork in the car purchasing process.

As the bill is currently written, however, it doesn't even provide clear disclosure at the beginning of the sale process. Under the bill, notification of the recall could come at a vulnerable point late in the purchasing process, after the consumer may have already spent considerable time making plans to purchase a specific make and model of a used car, and negotiating a price. Consumers may not realize or appreciate the serious risks involved in driving a car with open safety recalls, 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 some cases, parts for the necessary repairs may not be available, and the car buyer would 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, 75 percent of automobile sales in the U.S. involve used vehicles. Approximately 40 million used cars are sold nationally every year -- about 2.5 times the number of new cars. A.4292 and S.2740 would in effect ratify and enshrine a low standard of safety protection for a majority of New Jersey car buyers: those who purchase used cars in the state. 90% of New Jersey consumers believe that car dealers should not be allowed to sell used cars that have been recalled without fixing them first, according to a 2015 poll carried out by Public Policy Polling.

**A.4292 and S.2740 would also undermine safety and fairness in the marketplace by weakening consumers' ability to achieve effective legal accountability for used car sales under the New Jersey Consumer Fraud Act (CFA).** The NJ CFA and other related laws help protect the car-buying public, by holding dealers liable if they engage in false advertising or "bait and switch" practices; fail to comply

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**Memo in Opposition to A.4292 and S.2740, page 3**

with express and/or implied warranties; or otherwise engage in unfair or deceptive acts or practices, or fraud. They also protect consumers by holding dealers liable if they fail to comply with the common law duty of care; or act with negligence, resulting in damage, injuries or death.

Under current law, a car dealer found guilty of sales practices declared unlawful under the Consumer Fraud Act is required to pay a plaintiff's attorney's fees and court costs, in addition to triple the damages incurred by the plaintiff. Under the new bill, a car dealer would still face a potential penalty of triple damages, but be required only to pay attorneys' fees "in an amount of up to \$1,000 or up to one-third of the amount of damages awarded." Because the recovery for attorneys' fees would be sharply limited, the bill would make it very hard for consumers to obtain representation and file successful claims through the Consumer Fraud Act. Section 2 of the bill also inserts the word "egregious" in describing the violations subject to civil penalties, potentially forcing plaintiffs to meet *much* higher standards of proof as to the dealer's conduct or intent. In addition, the bill states that plaintiffs "may" receive triple damages and attorneys' fees, rather than "shall" as the current law says, creating unjustifiable exceptions to how the Consumer Fraud Act treats cases involving other goods and services.

A.4292 and S.2740 would also weaken consumer rights and the Attorney General's right to challenge unfair sales practices by limiting the ability to obtain damages and attorney's fees under the state's consumer protection law, P.L. 1960, c.39. Taken as a whole, these provisions would make it harder for consumers to obtain fair legal representation, and for the Attorney General to provide effective state oversight of used car sales.

New Jersey 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 A.4292/S. 2740, 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.

Sincerely,



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