



Consumers for Auto Reliability and Safety

Memorandum in SUPPORT

S6059 (Thomas) /A5194 (DenDekker) Relates to safety recalls on used motor vehicles

Consumers for Auto Reliability and Safety (CARS) is a national, award-winning auto safety and consumer advocacy organization dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses.

CARS strongly supports enactment of S6059 (Thomas) /A5194 (DenDekker) as currently amended, which will enhance existing state law protections for used car buyers, their families and other passengers, and others who share the roads, by establishing a new, bright-line standard prohibiting car dealers from selling dangerous vehicles that the manufacturer and / or the National Highway Traffic Safety Administration have determined must be recalled and repaired in order to be safe to operate, or to comply with federal motor vehicle safety standards.

CARS worked closely with U.S. Senator Schumer and Cally Houck, mother of Raechel and Jacqueline Houck, for enactment of the federal law named in honor of the two sisters, who were ages 20 and 24 when they were killed by an unrepaired recalled rental car, the Raechel and Jacqueline Safe Rental Car Act. That Act prohibits rental car companies with fleets of 35 or more vehicles from renting, leasing, loaning, or selling them if they have an unrepaired safety recall.

That Act expanded the authority of the National Highway Traffic Safety Administration to curb such dangerous, life-threatening practices, by issuing fines or taking other appropriate action, in addition to the existing protections available to private individuals under various state laws.

Currently, auto dealers in New York who knowingly or negligently sell unsafe vehicles with defects that cause fatalities or injuries face serious liability for violations of various state laws, including laws against committing fraud or deceptive acts and practices, or violating the common law duty of care, acting with gross negligence, or causing wrongful death.

In addition, New York also requires auto dealers to “certify” that all of the used cars they offer for sale to consumers are “roadworthy.” New York City’s Department of Consumer Affairs cited that law when it cracked down on dealers under their jurisdiction to curb their sales of unrepaired recalled used cars, announcing that:

“Fortunately, City law, which DCA enforces, requires dealers to certify that their vehicles are ‘roadworthy,’ and prohibits dealers from misleading consumers as to the safety of their vehicles. Under City Law, **a car with recalled parts that are unrepaired is not deemed to be roadworthy.**”¹

¹ “NEW YORK CITY’S DEPARTMENT OF CONSUMER AFFAIRS LAUNCHES INVESTIGATION INTO THE SALE OF UNREPAIRED RECALLED USED CARS, AGGRESSIVELY PROTECTING NEW YORKERS FROM POTENTIALLY FATAL DEFECTS,” News release, issued July 30, 2014. Posted at:

Law-abiding car dealers comply with the existing laws, and with franchise agreements that typically prohibit franchised new car dealerships from selling recalled cars, whether they are new or used.

However, other car dealers such as CarMax openly flout those laws. CarMax persists in selling large volumes of dangerous recalled vehicles without getting the free safety recall repairs done first. CarMax not only is endangering public safety, but is also engaging in unfair competition that puts pressure on other dealers to violate the laws, in order to remain competitive in the marketplace and (for dealers that are part of dealership chains that are publicly traded), on Wall Street.

CarMax is the largest retailer of used cars in the nation. During 2018, its total revenues exceeded \$17 billion. But CarMax fails to hire the employees necessary to transport unsafe recalled vehicles to franchised new car dealerships for free safety recall repairs. Under federal law, auto manufacturers must cover the costs of recall repairs for at least 15 years from when the safety recalls are issued. Contrary to claims by some independent auto dealerships, auto manufacturers are required to cover the costs of repairs for any owner, including a dealer.

Therefore, enactment of S6059 (Thomas) /A5194 (DenDekker) is important for establishing a new, bright-line standard that is easy for law enforcement officials to enforce, and will send a strong message to rogue auto dealers such as CarMax, that they must comply with the law and cease and desist selling used cars with hazardous safety recall defects.

Passage will also help ensure that the vast majority of car buyers in New York, who purchase used vehicles, receive the same level of protection from unsafe vehicles with killer safety recall defects as New Yorkers who purchase new cars.

According to the National Highway Traffic Safety Administration, “Every recall is serious.” Common safety defects that lead to safety recalls:

- Faulty brakes
- Steering wheels that come off in the driver’s hands
- Catching on fire, sometimes burning people to death and causing enormous property damage
- Airbags that explode with excessive force, propelling shrapnel into the faces and necks of drivers and passengers, causing blindness or bleeding to death
- Child safety seat anchors that fail in a crash
- Accelerators that stick, causing vehicles to careen out of control
- Leakage that causes carbon monoxide poisoning
- Hoods that fly up and obscure the driver’s vision in traffic

Polling conducted by Public Policy Polling has found, in state after state, that typically 85--95% of voters support ensuring that car dealers are not allowed to sell recalled used cars, and oppose allowing dealers to sell recalled used vehicles, with or without “disclosure.”

The benefits of compliance with this legislation promise to be significant. According to the National Highway Traffic Safety Administration, vehicle “crashes continue to kill tens of thousands of Americans and injure millions more every year. Motor vehicle crashes remain a leading cause of death

for Americans of all ages and drain more than \$230 billion from the economy annually.”² By improving compliance with auto safety recalls, the new law can help save lives and prevent costly and debilitating injuries.

Thank you for your consideration of our views. Should you or your staff have any questions regarding our position, please do not hesitate to contact me directly.

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Rosemary Shahan, President

Consumers for Auto Reliability and Safety

1107 Ninth Street, Suite 560

Sacramento, CA 95814

530-759-9440

rs@carconsumers.org

<http://carconsumers.org/>

2 “This is NHTSA, People Saving People,” posted at: [DOT – NHTSA](#)