



Consumer Federation of America

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Memorandum in Opposition

S7545A (Funke)/A8268B (Pheffer Amato) Relates to safety recalls on used motor vehicles

On behalf of each of our organizations, which together represent millions of consumers nationwide, we write to oppose passage of S7545A (Funke) and A8268B (Pheffer Amato).

These measures, which are backed by unscrupulous auto dealers who seek to maximize their profits by knowingly and deliberately selling vehicles with dangerous safety recall defects, would drastically weaken the existing laws in New York that currently protect the public from unsafe vehicles with known safety defects by holding auto dealers liable if they engage in false advertising or bait and switch; fail to comply with express and / or implied warranties; engage in unfair and deceptive acts and practices or fraud; fail to comply with the common law duty of care; or act with negligence, resulting in damage, injuries, or wrongful death.

They would shift legal liability onto victims of unsafe vehicles, and give auto dealers a new, unprecedented "safe harbor" for knowingly and deliberately selling vehicles with lethal safety defects, if they merely "disclose" that a vehicle has an unrepaired safety recall. As car dealers themselves have stated publicly, they seek enactment of laws such as this in order to evade legal liability when such sales result in fatalities or injuries.

These measures poses a serious threat to the safety of used car buyers, their families, other passengers, and others who share the roads, including bicyclists and pedestrians, and will result in increased deaths and injuries due to motor vehicle safety defects.

They are similar to other special-interest measures dealers have sought to get enacted in other states, that were either defeated or amended to remove the harmful provisions, including California,

New Jersey, Virginia, and Maryland. Because these bills would make New York's laws weaker than the laws in other states, they would make New York into a dumping ground for unsafe recalled cars.

As polling by Public Policy Polling has repeatedly shown, in state after state, likely voters overwhelmingly oppose allowing dealers to sell unrepaired recalled cars, with or without "disclosure," with over 90% opposing such legislation.

It is a violation of federal law for dealers to sell recalled vehicles as "new" cars. It is also a violation of federal law – the Raechel and Jacqueline Houck Safe Rental Car Act, named for two sisters who were killed by a recalled rental car – for rental car companies with fleets of 35 or more vehicles to rent, loan, or sell used vehicles that are subject to a federal safety recall.

Used recalled cars sold by car dealers are equally unsafe, and we believe that used car buyers deserve to have the same level of safety, even if they cannot afford to purchase a new car, or simply choose to purchase a vehicle that is used. But by opening the floodgates for car dealers to sell used vehicles with unrepaired safety recall defects, and undermining existing state law protections, these bills would allow auto dealers to pick and choose who gets cars with lethal safety defects -- discriminating on the basis of race, gender, religion, legal status, or other perceived vulnerabilities, and targeting certain individuals.

These measures would also allow dealers to sell vehicles with defects like exploding Takata airbags, where there are severe shortages of repair parts, and the dealers are well aware there is no way the car buyers can get the recall repairs performed, for months after purchase.

There is no other recalled product that can be sold legally by either a corporation or an individual. To the contrary, the Consumer Product Safety Act prohibits the sale, distribution, or importation of consumer products such as toys, computers, heaters, toasters, table saws, lawn mowers, or other household products that have been recalled. Therefore the American public has a reasonable expectation that used vehicles they purchase or lease from a licensed auto dealership are also free from unrepaired safety recall defects, and are entitled to that protection.

In sum, we strongly urge that these dangerous, profoundly anti-consumer, anti-safety special interest bills be defeated. Thank you for your consideration of our views.

Sincerely,

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Ira Rheingold, Executive Director
National Association of Consumer Advocates

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