

**Consumers for Auto Reliability and Safety  
National Association of Consumer Advocates**

February 17, 2015

Honorable Paul D. Moriarty  
New Jersey General Assembly  
State House  
P.O. Box 098  
Trenton, NJ 08625-0098

Honorable Nilsa Cruz-Perez  
New Jersey Senate  
State House  
P.O. Box 099  
Trenton, NJ 08625-0098

**Re: A3725 and S2703: OPPOSITION**

Dear Assemblymember Moriarty and Senator Cruz-Perez:

On behalf of the above-listed consumer advocacy and safety organizations, we regret that we must oppose legislation that you are authoring, A3725 and S2703, which would for the first time make it legal in New Jersey for unscrupulous auto dealers to sell unsafe, recalled used cars to consumers, if the dealers merely provide information about the existence of an unrepainted safety recall to used car buyers, instead of ensuring that the cars are repaired and safe to drive before they leave the car lot.

Particularly now, when millions of unsafe, recalled used cars are flooding the automotive used car marketplace, and there are sometimes lengthy delays in the availability of parts for recall repairs, these measures threaten to put the entire motoring public at even greater risk and make New Jersey a dumping ground for unsafe recalled cars.

Tens of millions of vehicles are now under safety recalls due to lethal safety defects that pose a serious risk to American motorists and their families, including:

- Electrical fires
- Bursting into flames in low-speed rear-end collisions
- Exploding air bags that spew shrapnel, causing blindness or bleeding to death
- Faulty brakes
- Steering loss
- Wheels that fall off
- Axles that break
- Ignition switches that shut off and cause the car to die in traffic, lose power steering and brakes, and shut off the air bags right before they are needed
- Sticking accelerator pedals

To our knowledge, no other state has taken the drastic and unprecedented step of specifically allowing retail sales of ANY unsafe recalled products – let alone automobiles, which are the single most hazardous consumer product in our nation, in terms of fatalities and injuries, causing over 35,000 deaths and 3.8 million crash injuries requiring medical treatment each year, in addition to incalculable human loss and suffering, and a staggering economic toll, reaching over \$230 billion annually.

In fact, the U.S. Product Safety Improvement Act prohibits the sale of a myriad of other recalled products, such as toys containing lead, faulty toasters, and cribs. The public has a reasonable expectation that cars will be treated the same. Regarding automobiles: for many decades, federal law has prohibited car dealers from selling new cars that are under a safety recall, until the repairs have been completed. While no similar specific federal law prohibits dealers from selling recalled *used* cars, broader consumer protections are provided by *general* federal and state laws, which currently provide some level of protection for consumers from sales of unsafe, recalled cars.

For example, under existing law in New Jersey and other states, auto dealers have an affirmative common law duty as licensed professionals to ensure that the products they sell to the public are safe. In addition, other bedrock state and federal consumer protection laws that may apply include:

- Laws that prohibit committing fraud, including engaging in deception or trickery, or concealing a material fact – such as a potentially lethal safety defect that is subject to a federal safety recall
- Laws against violating express and / or implied warranties, including the implied warranty of merchantability
- Laws against engaging in unfair and deceptive trade practices
- Laws against false advertising
- Laws against engaging in “bait and switch” – such as advertising that vehicles have passed a rigorous inspection, and are “certified,” then after the consumer is on the lot, and has chosen a car and bargained for it, selling them a car with a lethal safety defect
- Laws against reckless endangerment or negligence

In addition, a whole body of case law exists, as Courts have interpreted various laws to prohibit dealers from unfair, deceptive, fraudulent, or negligent sales of defective vehicles.

Bottom line: the bills would allow the manufacturers of the defective, unsafe products and unscrupulous auto dealers to shift liability for deaths and injuries caused by their unsafe, defective products onto their victims -- including high-risk, vulnerable teenagers buying their first cars.

If the bills were enacted, and people were killed as a result, shady car dealers would have a new argument that they complied with the law, and the burden was on the consumer to prove that they had not voluntarily assumed the risk. Making matters worse, as a practical matter, it is often impossible to prove that “disclosure” was not given, or was accompanied by advertising or verbal representations that contradicted the disclosure, particularly if the buyer is deceased.

Another complicating factor: among shady car dealers, forgery is a very common practice. It

would be naïve in the extreme to assume that a dealer who is willing to deliberately sell unsafe cars to the public would hesitate to forge signatures on documents, in order to evade being held liable, even if no disclosure was actually made at the time of sale. It is costly and sometimes difficult to prove forgery, which can become an added barrier to holding lawbreakers accountable.

What is perhaps most troubling: there is no way to predict when the safety defect may occur. In one tragic case in California, an-off-duty Highway Patrol officer, his wife, their 13-year-old daughter, and his brother-in-law, were all killed by a runaway Toyota Lexus THE SAME DAY, within hours after a dealer handed him the keys to a used Lexus. That is the crash that led to the massive Toyota recall due to floor mats and sticky brake pedals. That tragic crash makes it painfully clear: it would be a mistake to assume that consumers who are sold unsafe, recalled used cars will have sufficient time to get them repaired before catastrophe strikes, particularly when it may take weeks or months before repair parts are available.

Another practical consideration: many new car dealers require consumers to leave their cars for recall repairs for at least a day. The bills would shift the burden onto car buyers to take time from work, deliver the car to the dealership, manage to return to work without their car, and return to the dealership after the repairs have been completed. Particularly for struggling low-income consumers who lack transportation options, have difficulty getting any time off from work, and would lose desperately needed income if they are absent from work, this poses a serious barrier to having the repairs completed, especially when the only franchised dealer for a particular make may be hundreds of miles from where the car owners live and work.

For a state concerned with improving safety, it would make no sense to impose a new, additional burden on car buyers to essentially do the job of the dealers, who have employees who can perform those tasks, or who can sell the cars at wholesale, if they choose not to bother making their products safe enough to sell at retail. Note: large, publicly-traded dealership chains who would benefit the most from these bills take in billions of dollars each year, and are certainly able to hire more employees to perform those tasks.

Instead of protecting consumers, these bills would protect unscrupulous car dealers and companies like General Motors, Takata, Honda, and Toyota, who have engaged in criminal activities, repeatedly lying to the National Highway Traffic Safety Administration and concealing safety defects while hundreds or thousands of their customers died, or suffered horrific debilitating injuries, while the manufacturers continued to crank out millions of vehicles with the same lethal safety defects.

According to a recent news report in the *Courier-Post*, "The bill [A3725] has the backing of the New Jersey Independent Automobile Dealers Association, which believes it offers protection to the **dealer**, said Paula Frendel, the association's executive director." ("Auto-related bills roll through Assembly," *Courier-Post*, February 8, 2015). Unfortunately, the dealers are correct. The bills would protect them – not consumers.

Enactment of this ill-advised legislation would also create a double standard for auto safety in New Jersey, where people who purchase NEW cars would be protected from unsafe, recalled cars, under federal law, while the state would make it perfectly legal for dealers to engage in selling cars with the exact same safety defects to USED car buyers. Not because the cars are any safer, or the safety defects any less risky, but because the buyers are buying a used car instead of a new one.

As a real-world reality check: In cases where consumers have been victimized by the illegal

sales of recalled used cars, and they or their families and /or other survivors have litigated, and in cases that were not sealed or subject to confidentiality, they have been successful in pursuing claims under those existing laws. The bills would eliminate that existing protection for the public, without adding any new protections at all.

The bills would also further weaken existing law by creating a new “safe harbor” for dealers, even when they have actual knowledge of a safety defect and impending safety recall. For example, when a franchised new car dealer has received advance notice from the manufacturer – allowing them to dump unsafe, recalled used cars onto the market in New Jersey with impunity, and without even providing disclosure, if the recalls were not reported to the National Highway Traffic Safety Administration and available via the NHTSA VIN-lookup database prior to sale to a consumer.

Instead of weakening the law, New Jersey should strengthen it, and encourage dealers to hire more skilled, hard-working automotive technicians to perform safety recall repairs, to speed up the process of repairing recalled vehicles before they claim more lives and cause more injuries.

For example, California legislators have been seeking to enact legislation to create a bright-line prohibition against dealers selling, renting, or loaning unsafe recalled used cars to consumers. It would allow them to be sold at wholesale to other dealers, auto auctions, or in other wholesale transactions, which may be less profitable, but do not jeopardize public safety. That is a much better solution than allowing shady car dealers to sell unsafe, recalled used cars to consumers via a new, unprecedented, harmful “disclosure” loophole.

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

Sincerely,

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