



consumer action
Education and advocacy since 1971



Consumer Federation of America



July 23, 2018

The Honorable Phil Murphy
Governor, State of New Jersey
Office of the Governor
PO Box 001
Trenton, NJ 08625

RE: S 2740 (Beach) / A 4292 (Greenwald) Request for Veto

Dear Governor Murphy:

On behalf of each of our organizations, which together represent millions of consumers nationwide, we write to respectfully request that you VETO S 2740 (Beach) / A 4292 (Greenwald), should those measures reach your desk.

As the New Jersey State Bar Association has stated, those measures are “not really consumer protection bill[s]” and “should those measures become law, New Jersey consumers will be afforded less protection and little recourse when confronted with fraudulent business practices.”

S 2740 and A 4292 are backed by unscrupulous auto dealers who seek to maximize their profits by knowingly and deliberately selling vehicles with dangerous safety recall defects. They would drastically weaken the existing laws in New Jersey 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.

These bills 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 pose 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.

S 2740 (Beach) and A 4292 (Greenwald) would also give car dealers a special-interest carve-out, exempting them from New Jersey's anti-fraud statutes, and radically restrict attorneys fees. That would make it prohibitively expensive for individual consumers to act on their own behalf, or for New Jersey's Attorney General to act on behalf of the state's citizens, regardless how egregious or widespread, harmful, and fraudulent a car dealer's practices are. These provisions would be an open invitation for large dealership chains such as CarMax and AutoNation, that are publicly traded on Wall Street, take in billions of dollars each year, and have vast legal resources at their disposal, to flout the law.

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 (in 2015), Virginia, and Maryland. Because they would make New Jersey's laws weaker than the laws in other states, enactment would make New Jersey 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.

The bills also make a false distinction between “do not drive” recalls and all other safety recalls. As the National Highway Traffic Safety Administration continues to warn the American public on a regular basis, “**Every** safety recall is serious.” According to NHTSA, “Manufacturers rarely issue 'do not drive' recalls. In fact, the members of the Alliance of Automobile Manufacturers reported only 29 vehicle recalls since 2000 in which 'do not drive' instructions were issued with a recall notice. For the years 2010-2013, the Alliance reported only six 'do not drive' recalls, representing just 0.24 percent of the total recalls (2,459) of this period, and encompassing 0.07 percent of the total number of vehicles recalled (73.9 million) over these same years.”¹

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 you veto these dangerous, profoundly anti-consumer, anti-safety special interest bills, if they reach your desk. Thank you for your consideration of our views.

Sincerely,

Jack Gillis, Director of Public Affairs
Consumer Federation of America

Ira Rheingold, Executive Director
National Association of Consumer Advocates

Sean Kane, President and Founder
The Safety Institute

Ken McEldowney, Executive Director
Consumer Action

Rosemary Shahan, President
Consumers for Auto Reliability and Safety

¹ Letter from David J. Friedman, Deputy Administrator, National Highway Traffic Safety Administration, to U.S. Senator Barbara Boxer, November 5, 2014.