

Date of Hearing: April 13, 2015

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 287 (Gordon) – As Amended March 23, 2015

**SUBJECT:** Vehicle safety: recalls

**SUMMARY:** Establishes the Consumer Automotive Recall Safety Act (Act) and prohibits a motor vehicle dealer or rental car company from displaying, selling, or renting a used or rental vehicle unless specific conditions are met. Further establishes additional requirements and procedures to the Department of Motor Vehicles (DMV) and vehicle manufacturers relative to implementation of the Act. Specifically, **this bill:**

- 1) Makes legislative findings and declarations regarding the increasing number of vehicle recalls and the safety and economic impacts associated with vehicle recalls.
- 2) Requires the provisions specified in the Act to commence on or after July 1, 2016.
- 3) Establishes a claims and appeals process, as specified, between vehicle dealers and manufacturers regarding payment requirements and obligations identified in the Act.
- 4) Directs the DMV's New Motor Vehicle Board (Board) to hear and decide on disputes between vehicle dealers and manufacturers related to the Act's payment requirements and obligations.
- 5) Prohibits DMV from accepting the initial, renewal, or transfer of a vehicle registration if the applicant fails to provide DMV with a recall disclosure statement as specified in the Act.
- 6) Proclaims that it is unlawful and a misdemeanor violation for a manufacturer, as specified, to unfairly discriminate against a dealer based on certain provisions specified in the Act.
- 7) Provides clarifying definitions for a variety of terms relative to how they are applied in the Act.
- 8) Prohibits a dealer from displaying or offering for sale a used vehicle unless the dealer has obtained a recall database report within 30 days of the display of offer.
- 9) Prohibits a dealer from selling or leasing a used vehicle if the recall database report indicates the vehicle is subject to a "Stop Sale-Stop Drive" recall until the recall repair has been made.

- 10) Prohibits a dealer from selling or leasing a used vehicle if the recall database report indicates the vehicle is subject to a manufacturer's recall and the line make is the same as the dealer, until the recall repair has been made.
- 11) Allows a dealer to sell or lease a used vehicle that is subject to a manufacturer's recall, as specified, if the vehicle is not the same line make as the dealer if the following conditions are satisfied:
  - a) The dealer provides the recall database report to the consumer disclosing the manufacturer's recall; and,
  - b) The consumer signs a disclosure agreement acknowledging the manufacturer's recall, as specified.
- 12) Specifies that a recall database report and the disclosure agreement provided and signed by the consumer are to be provided separate from the conditional sales contract or other vehicle purchase agreement.
- 13) Prohibits a rental car company from renting a vehicle unless the company has obtained a recall database report within 30 days of the offer.
- 14) Prohibits a rental car company from renting a vehicle if the recall database report indicates the vehicle is subject to a "Stop Sale-Stop Drive" recall until the recall repair has been made.
- 15) Allows a rental car company to rent a vehicle that is subject to a manufacturer's recall, as specified, if the following conditions are satisfied:
  - a) The rental car company discloses the recall database report to the consumer disclosing the manufacturer's recall prior to rental; and,
  - b) The consumer signs a disclosure agreement acknowledging the manufacturer's recall, as specified.
- 16) Requires the seller of a motor vehicle, including private party sales, to disclose all recalls related to the vehicle being sold and requires the buyer to provide the an acknowledgement form to DMV indicating they have received all recall information in order to transfer vehicle registration, as specified.
- 17) Requires a vehicle manufacturer to provide all recall notifications on its website, as specified, and whether a vehicle is subject to a Stop Sale-Stop Drive recall.

- 18) Requires a vehicle manufacturer to provide a consumer, upon request, a rental or loaner vehicle when the consumer's vehicle is subject to a recall and the parts and/or procedures are not available, as specified.
- 19) Requires a vehicle manufacturer to compensate a dealer for costs associated with providing a rental or loaner vehicle and the storage of a recalled vehicle waiting to be repaired, as specified.
- 20) Provides that a dealer, rental car company, or private seller is not legally responsible for any errors or inaccuracies contained in the recall database report, as specified. Further identifies several vehicles not subject to provisions of the Act, as specified.

**EXISTING LAW:**

- 1) Requires DMV to oversee motor vehicle registrations.
- 2) Prohibits any person from acting as a dealer, remanufacturer, manufacturer, or transporter, as specified, without having first been issued a license or temporary permit from DMV, as specified.
- 3) Requires new car dealers to enroll in the DMV-administered Business Automation Program and electronically transfer vehicle registration and titling transactions to DMV, as specified.
- 4) Establishes the New Motor Vehicle Board within DMV and requires the Board to hear and decide on certain appeals and protests presented by a motor vehicle franchisee pertaining to a dispute with a vehicle manufacturer.
- 5) Prescribes specific instances when DMV may refuse the initial registration, renewal, or transfer of registration for a vehicle, as specified.
- 6) Prohibits a vehicle manufacturer, manufacturer branch, distributor, and distributor branch, as defined, from engaging in specific practices and makes a violation of these prohibitions a misdemeanor.
- 7) Sets forth in federal regulations the requirements for when manufacturers must notify vehicle owners, dealers, and distributors about a defect that relates to motor vehicle safety or noncompliance with a federal motor vehicle safety standard.

- 8) At the federal level, prohibits a motor vehicle dealer from selling a new vehicle subject to a recall, as specified, unless and until the defect is repaired. Federal law does not afford similar prohibitions to used vehicles.
- 9) At the federal level, establishes the Moving Ahead for Progress in the 21st Century Act (MAP-21), and requires the Secretary of the United States Department of Transportation (U.S. DOT) to promulgate regulations by July 6, 2013, requiring motor vehicle safety recall information to be publicly available online and searchable by vehicle make, model, and vehicle identification number (VIN).

**FISCAL EFFECT:** Unknown

**COMMENTS:** In 2014, more than 60 million motor vehicles were subject to recalls totaling more than the prior three years combined. In total, 803 recalls were announced with 123 resulting from investigations from the Nation Highway Traffic Safety Administration (NHTSA) and the remaining 680 recalls initiated by auto manufacturers. These recalls encompassed a wide variety of vehicle defects; however, two of the more notable recalls involved faulty ignitions in General Motor vehicles and defects in Takata airbags used in a variety of vehicle models.

The federal government's ability to set and administer vehicle safety standards was established in 1966 under the National Traffic and Motor Vehicle Safety Act (NTMVSA). Specifically, NTMVSA created NHTSA and granted the agency the authority to investigate and require auto manufacturers to recall vehicles that have safety-related defects or do not meet federal safety standards. Generally, a safety-related defect is determined when a defect poses a risk to motor vehicle safety and exists in a group of vehicles of the same design or manufacture or items of equipment of the same type and manufacture.

Under a NHTSA-initiated safety recall, the agency may have received enough complaints and information about the operation of a vehicle that it finds there is a significant threat to public safety and initiates a mandatory recall. NHTSA may perform an investigation with a review by engineers and experts and work with the vehicle manufacturer to recall vehicles. These safety recalls are facilitated through direct relationships between manufacturers, franchised dealerships, and owners who purchased the new vehicles. Manufacturers may dispute a mandatory recall by petitioning NHTSA or bringing suit in court.

Conversely, auto manufacturers also have the ability to voluntarily initiate both safety and non-safety recalls. Auto manufacturers carry out their own vehicle testing and inspection procedures and run information gathering systems to evaluate vehicle performance. If a safety defect is discovered, the manufacturer must notify NHTSA, as well as vehicle or equipment owners, dealers, and distributors. The manufacturer is then required to remedy the problem at no charge to the owner (for vehicles sold up to 10 years before the recall). NHTSA is responsible for monitoring the manufacturer's corrective action to ensure successful completion of the recall campaign. Additionally, a manufacturer may administer a non-safety recall such as a recalling a vehicle for defective air conditioners or radios. The process is similar to safety recalls in that the manufacturer notifies the appropriate parties, the defect is repaired at no cost to the owner, and the manufacturer provides information of the recall on its website.

Aside from the recall notification processes described above, vehicle owners and consumers also have the opportunity to research vehicles through various recall databases. In 2012, Congress enacted MAP-21, a funding and authorization bill to govern federal transportation spending that contains a provision requiring motor vehicle safety recall information about outstanding recalls to be posted online in a format that preserves consumer privacy and is searchable by vehicle make, model, and VIN. In August of 2013, NHTSA issued a final rule that will require all major manufacturers (those who produce more than 25,000 vehicles per year) to provide the public with online access to recall information searchable by a VIN and without requiring additional information to allow consumers to instantly determine whether action is required to address an uncompleted safety recall. The online database, [www.safercar.gov](http://www.safercar.gov), is required to be updated with vehicle recall information on a weekly basis. Additional online recall research tools include an auto manufacturer's website or obtaining a vehicle history report through a variety of providers.

This bill aims to establish a process that will prohibit the sale of motor vehicles for the most serious safety-related recalls, provide consumers with motor vehicle recall information under certain circumstances, and when recall parts are not available, provide motor vehicle owners the option of leaving their vehicle at the dealership and using a rental vehicle. Respectively, this bill also includes provisions that would expand the Board's oversight obligations and prohibits DMV from approving motor vehicle registration if specific recall information is not provided under certain circumstances.

Created in 1967 as the New Car Dealers Policy and Appeals Board, the Board's initial functions were limited to hearing appeals that arose from final decisions made by the DMV. In 1973, the Legislature passed the California Automobile Franchise Act, which gave the Board its present name and tasked it with regulating and settling disputes in the new motor vehicle industry. The Board's current mission is to enhance relations between dealers and manufactures of automobiles, RV's, and motorcycles by resolving disputes in the industry in an efficient, fair, and cost-effective manner. Under this bill, the Board would additionally be authorized to hear and decide on storage and vehicle rental reimbursement claims between dealers and manufacturers, which is consistent with the Board's existing practices.

Furthermore, the bill requires DMV to refuse the transfer of motor vehicle registration if the applicant transferring the registration fails to include, with all other required documentation, a signed statement acknowledging all motor vehicle recall information was disclosed to the applicant prior to acquiring the motor vehicle. Should this bill pass, several implementation provisions will need to be further clarified in the next policy committee.

Writing in support of this bill, the California New Car Dealers Association notes, "California already has the strongest consumer protection laws in the country for car buyers, but neither California nor federal law address the sale, lease, or rental of a recalled used vehicle. The CARS Act would comprehensively enhance California's existing consumer protections by ensuring the most pressing safety issues are fixed in a timely manner, improving the information made available to consumers about cars subject to recall and providing consumers with access to loaner vehicles at no cost if their vehicle is subject to recall and parts are not available to repair the vehicle."

In opposition, Consumers for Auto Reliability and Safety writes, "AB 287 would weaken existing consumer protection against unscrupulous car dealers who sell unsafe, recalled used cars

to consumers; undermine progress being made at the federal level in addressing rental car and used car safety; create even more confusion among owners of recalled cars regarding the seriousness of lethal safety defects; and set a harmful precedent for allowing retailers to foist unsafe products onto consumers." Additionally, "allowing for dealers to sell unsafe, recalled cars to consumers with 'disclosure,' AB 287 fails to recognize the broader public interest in ensuring that cars are safe to operate on public roads. Even if a consumer happens to see the recall notice prior to completing the sale, reads it, fully understands the risks involved, and decides to drive the car anyway, there is a strong public interest in protecting the safety of their passengers, others who share the roads, pedestrians, bicyclists, and potentially many other individuals."

*Previous legislation:* SB 686 (Jackson) of 2014, would have prohibited a vehicle dealer from selling a used vehicle if the dealer knew or should have known that the vehicle is subject to a manufacturer's safety recall and failed to correct the defect. SB 686 failed passage in the Assembly Business, Professions, and Consumer Protection Committee.

AB 753 (Monning) of 2011, would have prohibited rental car companies from renting a vehicle that is subject to a federal safety recall unless specific conditions are met. AB 753 would have also prohibited a rental car company from selling a vehicle subject to a federal safety recall. AB 753 was referred to the Senate Appropriations Committee but was not heard at the request of the author.

*Double referral:* This bill will be referred to the Assembly Privacy and Consumer Protection Committee should it pass out of this committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California New Car Dealers Association (Sponsor)  
Independent Automobile Dealers Association of California

### **Opposition**

Advocates for Highway and Auto Safety  
CALPIRG  
California Conference of Machinists  
California Rural Legal Assistance Foundation  
Center for Auto Safety  
Consumer Action  
Consumer Attorneys of California  
Consumers for Auto Reliability and Safety  
Consumers Union  
Consumer Watchdog  
Courage Campaign  
Housing and Economic Rights Advocates  
International Association of Machinists and Aerospace Workers  
The Sturdevant Law Firm  
The Trauma Foundation

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