Congress Revives the Used Car Safety Recall Repair Act

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Several members of Congress are attempting to revive a legislation first introduced in 2015 that would require dealers to repair any outstanding recalls before selling or leasing used vehicles.

Introduced by Senator Richard Blumenthal (D-Conn.) and co-sponsored by Senator Edward Markey (D-Mass.) and Representative Jan Schakowsky (D-Ill.), the Used Car Safety Recall Repair Act would make it illegal to sell or lease a used passenger motor vehicle until after any defect or noncompliance determined by the Department of Transportation or discovered by the manufacturer has been remedied. The bill includes limited exceptions to this requirement-in cases where the recall information was not available at the time of sale or lease, or the recall notification requirements under federal law are set aside in a civil action.

Notably, the legislation treats all recalls the same. Safety-related or not, the sale of all used vehicles with an open recall would be prohibited. That differs from the current requirement for new vehicles. Only new vehicles subject to an open ***safety*** recall are prohibited from being sold. This ban was extended to rental cars in 2016, and again, applies only to open safety recalls.

The Used Car Safety Recall Repair Act was introduced in the Senate on July 26, 2017. No action has been taken since. Previous efforts in Congress to ban the sale of used vehicles subject to open recalls stalled in 2015, when a similar bill introduced by Senator Blumenthal died in committee. Given the current composition of Congress, this second attempt is not likely to get much further.

The best source of law on what is required of dealers selling used vehicles subject to open recalls is likely going to remain public enforcement actions taken by regulators using their authority to police unfair, deceptive, or abusive acts or practices. The Federal Trade Commission (FTC) recently settled with several auto dealer groups who sold certified pre-owned vehicles subject to open recalls. In their advertisements, the dealers claimed that their vehicles had been subject to a "rigorous inspection." The FTC alleged that using language to suggest vehicles subject to open recalls were safe was a deceptive practice.

Dealers should also look at the settlements Attorney General Schneiderman entered with 104 motor vehicle dealerships for selling vehicles without disclosing that they were subject to a recall for "dangerous unrepaired safety issues such as unintended acceleration, airbag problems, vehicle fires, steering and brake loss and more." These settlements are particularly instructive for dealers located in New York.

For now, especially given that the no agency has released formal guidance on the sale of used

vehicles subject to open recalls, the standards set out in the FTC consent orders are the best guide to what will be required of dealers. The primary area of exposure is advertising, so dealers must be very careful with what they say about their vehicles.

If a dealer makes any safety-related advertising claim, it must disclose that its vehicles may be subject to open recalls. It must also tell consumers how to obtain an individual vehicle's recall status. Note that "safety-related" in the context of advertising is very broad. For example, claims that vehicles have undergone an "exhaustive 160-point checkpoint Quality Assurance Inspection," a "rigorous and extensive quality inspection," a "172-Point Vehicle Inspection and Reconditioning Process," or similar language are considered "safety-related" and trigger these disclosures.

Dealers in New York must also contend with their AG's settlements *(and other dealers should take note)*, which impose additional disclosure requirements. The release announcing the settlements sets out specific guidelines for future sales by the settling New York motor vehicle dealers. For example, the settling dealers who advertise used vehicles online must include information that enables consumers to check the recall status of advertised vehicles, including directing consumers to the SaferCar.gov website operated by NHTSA. Dealers must also place a decal notice in the window of used vehicles that include information that allows consumers to check the recall status of the vehicles, including the SaferCar.gov website and mobile application operated by NHTSA.

While the new federal legislation is unlikely to be successful, the push to extend the prohibition on selling vehicles with open recalls into the used market may continue. There are dedicated supporters on this issue in Capitol Hill. Given the high-profile nature of recalls, dealers should continue to look to enforcement actions for guidance, and have a strong system in place to check inventory for recalls and provide appropriate disclosures to consumers.