

## **Gordon AB 287 – Car Dealer Safety Recall Bill Dealer Myth vs. The Facts**

### **CAR DEALER MYTH:**

Car dealers in California are trying to trick the public, the media, and legislators by making the false claim that there are no laws to protect consumers from dealers who sell unsafe, recalled used cars. They make this false claim in order to portray their bill, which would in reality undermine existing law, as “better than nothing.”

### **FACTS:**

Federal law prohibits dealers from selling NEW vehicles that are subject to a safety recall until the recall repairs have been performed. While there is no similar, *specific federal* statute regarding dealers' sales of USED cars, there are other, broad federal laws and regulations against false advertising and deceptive acts and practices, enforceable by the Federal Trade Commission, that may apply to car dealers' sales of recalled used cars.

In addition, numerous state laws that have been on the books for decades, in every state, provide an important level of protection for car buyers from dealers who engage in the deceptive sales of unsafe, recalled used cars.

Some unscrupulous dealers have violated those laws. Consequently, auto safety / consumer groups have been working to improve the existing laws to make them more specific and easier to enforce.

Below are some of the state laws that apply in California to protect used car buyers. While the dealers may wish that they were exempt from these laws, they are not.

In fact, if they violate some of these laws, their license to sell vehicles to the public could be revoked. They could also be assessed a fine, or other penalties could be imposed. They may also be subject to other criminal sanctions. Unless, of course, legislators on Sacramento give them a new loophole that would allow them to get away with knowingly, deliberately selling consumers vehicles with lethal safety defects.

### **Existing California law**

#### **Unfair and Deceptive Acts and Practices**

CIVIL CODE

1770. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(9) Advertising goods or services with intent not to sell them as advertised.

(19) Inserting an unconscionable provision in the contract.

## **Fraud**

### **CIVIL CODE**

1571. Fraud is either actual or constructive.

1572. Actual fraud, within the meaning of this Chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

1573. Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

1574. Actual fraud is always a question of fact.

## **Failure to comply with a federal motor vehicle safety standard**

### **VEHICLE CODE**

24007. (a) (1) No dealer or person holding a retail seller's permit shall sell a new or used vehicle that is not in compliance with this code and departmental regulations adopted pursuant to this code, unless the vehicle is sold to another dealer, sold for the purpose of being legally wrecked or dismantled, or sold exclusively for off-highway use.

24011. Whenever a federal motor vehicle safety standard is established under federal law (49 U.S.C. Sec. 30101 et seq.), no dealer shall sell or offer for sale a vehicle to which the standard is applicable, and no person shall sell or offer for sale for use upon a vehicle an item of equipment to which the standard is applicable, unless:

- (a) The vehicle or equipment conforms to the applicable federal standard.
- (b) The vehicle or equipment bears thereon a certification by the manufacturer or distributor that it

complies with the applicable federal standards. The certification may be in the form of a symbol prescribed in the federal standards or, if there is no federal symbol, by a symbol acceptable to the department.

### **Rental Cars**

#### VEHICLE CODE

24010. (a) No person engaged in the rental of any vehicle, for periods of 30 days or less, shall rent, lease or otherwise allow the operation of such vehicle unless all of the following requirements are met:

(1) All necessary equipment required by this code and regulations adopted pursuant to this code for the operation of the vehicle upon a highway has been provided or offered to the lessee for his or her use.

(2) The vehicle conforms to all applicable federal motor vehicle safety standards established under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. Sec. 1381 et seq.) and the regulations adopted under that act.

(3) The vehicle is mechanically sound and safe to operate within the meaning of Section 24002.

### **Any motor vehicle**

#### VEHICLE CODE

24002. (a) It is unlawful to operate any vehicle or combination of vehicles which is in an unsafe condition, or which is not safely loaded, and which presents an immediate safety hazard.

(b) It is unlawful to operate any vehicle or combination of vehicles which is not equipped as provided in this code.

### **Vehicle Equipment – Minimum Standards**

Several Vehicle Code Sections establish minimum requirements for motor vehicle equipment, aimed at ensuring safe operation, such as Sections 27450, 24250, and 26452, regarding lighting, tires, and brakes.

### **Express Warranties**

#### COMMERCIAL CODE

2313. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation

merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

### **Implied Warranties**

#### COMMERCIAL CODE

2314. (1) Unless excluded or modified (Section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) Pass without objection in the trade under the contract description; and

(b) In the case of fungible goods, are of fair average quality within the description; and

(c) Are fit for the ordinary purposes for which such goods are used; and

(d) Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) Are adequately contained, packaged, and labeled as the agreement may require; and

(f) Conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2316) other implied warranties may arise from course of dealing or usage of trade.

2315. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

### **In addition to the Statutory protections listed above, Case Law establishes legal precedents regarding dealer sales of unsafe vehicles**

Case on point: *Falk v General Motors*, 496 F.Supp. 2d 1088 (N.D. Cal. 2007). The Court held that the sale of a vehicle with a safety defect is actionable under the Consumer Legal Remedies Act even when the vehicle is outside the factory warranty. The Court found that the dealer had a duty to disclose the defect.

#### ***Real-life Example***

***David Clayton of Fresno, CA sued Lampe Dodge, in Visalia, CA, after Lampe Dodge sold him a so-called "certified" 2010 Dodge Ram pickup truck without repairing the safety recall defect – a drive shaft that was prone to separating from the rear axle.***

***While Mr. Clayton was driving the truck on the freeway, going about 65 mph, the truck literally fell apart, and he was nearly killed. The truck could easily have collided with other vehicles and killed other motorists and their families, as well. The dealer admitted it had not repaired the safety recall, due to a shortage of repair parts. Mr. Clayton obtained legal counsel, and his attorney sued under various laws, including the federal Magnuson-Moss Warranty Act, and the California Consumer Legal Remedies Act. Subsequently, Mr. Clayton and Lampe Dodge settled the case. The terms of the settlement are confidential.***