

CarMax Endangers Lives in Massachusetts



**Passed the CarMax
125-point inspection**

**Consumers for Auto Reliability and Safety Foundation
MASSPIRG Education Fund
December, 2015**

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Cover photo: Angela Davidson of Nevada protests at CarMax dealership in Roseville, CA. Angela and her husband Clarence purchased a Dodge Ram from CarMax in Irvine, CA, that had an unrepaired safety recall that could cause the drive shaft to separate from the rear axle. Despite their attempt to get the recall repaired at a Chrysler dealership, 11 days after purchase the truck fell apart on the freeway and caught on fire, nearly killing them and their 12-year-old daughter.

Photo courtesy of Mike Norris

Introduction

CarMax, the nation's largest retailer of used cars, is selling recalled vehicles with dangerous and potentially lethal safety defects to Massachusetts car buyers. Those unsafe vehicles are hazardous not only to the people who buy them, but to the cars' passengers and everyone else who shares the roads and adjacent areas, including sidewalks, driveways and parking lots.

The Consumers for Auto Reliability and Safety (CARS) Foundation and MASSPIRG Education Fund reached this conclusion based on recent research into CarMax's sales practices in Massachusetts, compiling data from the CarMax store in North Attleboro. This is especially troubling because CarMax is expanding in the state, and is scheduled to open three new stores in the South Shore and Greater Boston area, competing with other dealers in the area who have more responsible safety policies.

Massachusetts CarMax Shoppers at Serious Risk of Being Sold Unsafe, Recalled Cars

Massachusetts used car buyers shopping at CarMax's dealership in North Attleboro faced an even higher risk of being sold unsafe, unrepaired recalled cars with potentially lethal safety defects than used car buyers in CarMax stores in California or Connecticut, based on research in those states.

Research conducted on October 28, 2015, found that over 17 percent of cars offered for sale at the CarMax North Attleboro dealership – 42 out of 243 – were subject to a federal safety recall that had not been repaired, despite the fact that repairs for many of these safety defects were readily available, at no cost to CarMax. While some of the recalls may involve delays due to parts shortages or temporary non-availability of a remedy, CarMax could have simply waited until the repair was provided by the manufacturer before offering the cars for sale.

Research earlier this year by the CARS Foundation and the CALPIRG Education Fund in California found that 10 percent of vehicles at the CarMax in Oxnard and 9 percent of the vehicles at CarMax's South Sacramento dealership had unrepaired safety recalls.¹ Research conducted in Connecticut found that 16 percent of CarMax cars offered for sale in East Haven and 10 percent of CarMax cars in Hartford had unrepaired safety recalls.²

¹ "CarMax's Sales Practices Endanger Lives in California," Consumers for Auto Reliability Safety (CARS) Foundation and CALPIRG Education Fund, 2015. Accessed at <http://www.carsfoundation.org/pdf/CarMax-Sales-Practices-Endanger-Lives.pdf>.

² "CarMax: Endangering Lives in Connecticut," Consumers for Auto Reliability Safety (CARS) Foundation and CONNPIRG Education Fund, 2015. Accessed at http://carconsumers.org/pdf/CarMax-CT-report_New-Haven_Hartford-6.pdf.

Auto Safety Recalls Involve Serious Risks to Safety

It is important not to confuse safety recalls with “service campaigns,” which involve components that do not pose a significant risk to safety, or with recalls of emissions components, like the recent high profile recall involving the emissions systems in Volkswagen diesels that failed to comply with U.S. air quality regulations.

According to the National Highway Traffic Safety Administration, which oversees vehicle safety recalls: “All safety recalls resulting from defects present an unreasonable risk to safety and we believe it is inappropriate to suggest that some defects are not risky enough to require repair. For the safety of the motoring public, all recalled vehicles should be fixed promptly.”³

Despite progress made in improving vehicle design, motor vehicle crashes remain a leading cause of death and injury among children, teenagers, and young adults in the U.S. According to NHTSA, “In 2014, 32,675 people were killed in motor vehicle crashes on U.S. roadways. An additional 2.3 million people were injured in crashes in 2014.”⁴ Also according to NHTSA, “Motor vehicle crashes impose a staggering human and economic toll in the United States. The price tag for crashes comes at a heavy burden for Americans at \$871 billion in economic loss and societal harm. This includes \$277 billion in economic costs – nearly \$900 for each person living in the United States based on calendar year 2010 data – and \$594 billion in harm from the loss of life and the pain and decreased quality of life due to injuries.”⁵

CarMax’s sales of unsafe, recalled cars in North Attleboro

Researchers found that over 17 percent of all cars offered for sale on October 28, 2015, at CarMax’s North Attleboro location had an unrepaired federal safety recall. According to a check of the Vehicle Identification Numbers (VINS) using data provided by the manufacturers to the National Highway Traffic Safety Administration, of the 243 total vehicles for sale at that dealership, 42 had unrepaired federal safety recalls.⁶ Five vehicles were subject to two or more recalls each.

One vehicle, a 2008 Toyota Tacoma, had four unrepaired safety recalls, including:

- Suspension component may fracture and puncture the fuel tank, causing a fire
- Seat belts may not work, causing increased risk of injury in severe crash
- Tire pressure monitoring system may fail to warn of low tire pressure, increasing risk of crash due to tire problems – fails to comply with Federal Motor Vehicle Safety Standard for monitoring tire pressure

³ Official statement issued by the National Highway Traffic Safety Administration April 4, 2011.

⁴ Data issued by the National Highway Traffic Safety Administration and National Center for Statistics and Analysis, posted at: <http://www.nhtsa.gov/NCSA>

⁵ “The heavy toll of crashes in the U.S.” U.S. Department of Transportation. Posted at: <https://www.transportation.gov/fastlane/heavy-toll-motor-vehicle-crashes>

⁶ See Table 1 for the full list of vehicles for sale at CarMax’s store in North Attleboro, MA, with unrepaired safety recalls, including year / make / model, specific recall numbers and more complete descriptions of the defects.

- Accelerator pedal may stick in open throttle position, causing vehicle to careen out of control

According to Toyota, a “remedy,” or repair, for the suspension fracturing defect was “not yet available.”

The safety defects in the unrepaired recalled CarMax cars in North Attleboro included:

- Seat belt cable may break, so seat belt may fail in a crash
- Lift gate may collapse and injure people by striking them without warning
- Vehicle may remain “on” while appearing to be “off” and cause carbon monoxide poisoning
- Engine may stall or transmission may shift into neutral in traffic
- Head restraints may not deploy in rear-end collision – fails to comply with Federal Motor Vehicle Safety Standard No. 202 – head restraints
- Window switch may overheat and cause fire in driver's door
- Door may unlatch and open while driving
- Frontal air bags and seat belt pretensioners may not function in a crash
- Steering gear motor may malfunction and cause a loss of power steering
- Air bag inflators may rupture and propel metal fragments which can strike people riding in the car, seriously injuring or killing them
- Short circuit may cause stalling
- Transmission may allow vehicle to continue moving and it may strike people exiting the car or others in its path when it rolls away after being placed in “park”
- Side air bags may deploy without a crash, causing injuries
- Power lift gate control may short circuit and cause a fire
- Windshield wipers could fail without warning and limit driver's visibility, causing a crash
- Fuel pump relay may fail, causing stalling in traffic and a crash
- Cybersecurity – risk of someone hacking into software that controls the vehicle
- Accelerator pedal may fracture and increase risk of crash
- Ball joint subject to corrosion due to salt and water, causing steering loss
- Center console panel may interfere with “transition from accelerator pedal to brake pedal”
- In states including Massachusetts, corrosion due to salt can cause front coil spring to fracture and damage front tire, causing a crash
- Front passenger air bag may not inflate in a crash if the passenger plugs in electronic equipment or devices, or if device touches metal part of the vehicle
- Power windows may catch on fire
- Windshield wiper motor can separate from wiper crank arm and make windshield wipers inoperable, reducing driver visibility and causing a crash
- Suspension leaf may fracture due to stress or corrosion and puncture fuel tank, causing a fire
- Tire pressure monitoring system may not function; fails to comply with Federal Motor Vehicle Safety Standard #138, failing to warn of dangerously low tire pressure
- Accelerator pedal may stick, causing vehicle to accelerate out of control and crash
- Rear axle trailing arm, if damaged and not repaired properly, could fracture and cause loss of steering and a crash without warning
- Faulty steering component could cause air bag to fail to deploy in a crash

Recall Repair “Not Yet Available”

CarMax advises consumers to get safety recalls repaired by taking them to a franchised dealership for repairs, *after* purchase.⁷ However, for some unfortunate CarMax customers, that would be an exercise in frustration that could still leave them, their families and the driving public at risk. That is because, according to the manufacturers, for some of the safety recalls, a “remedy is not yet available.”

If those shoppers take CarMax's advice and contact a franchised dealer to schedule a repair, not only would the dealer not have the parts available, but the manufacturer has not yet devised a fix. It sometimes takes weeks or months for manufacturers to figure out an effective repair, then design, produce and distribute the parts, and train their dealerships' automotive technicians how to perform the repair. Meanwhile, the car would not be safe to drive. This is particularly troubling, since entire families can be injured or killed *within hours* of when a dealer hands them the keys to an unsafe car.⁸

At the CarMax store in North Attleboro, 15 cars had unrepaired safety recalls where the manufacturer advised that a remedy, or repair, was “not yet available.” Among those defects:

- Faulty windshield wipers may fail without warning, limiting the driver's view and causing a crash
- Defective seat belts – may not provide protection in a crash
- Liftgates may collapse and strike heads or other body parts
- Ball joint problem that may result in steering loss
- Short circuit could cause a fire
- Suspension may fracture and puncture the gas tank, causing a fire
- Faulty steering component may cause air bag to fail to deploy when needed in a crash

CarMax's advertising creates the impression all their cars are safe

CarMax is the largest used car dealership chain in the nation. In 2014, their revenues totaled over \$12 billion.⁹ They advertise that “We provide only vehicles of superior quality that

⁷ CarMax website, at: <http://www.carmax.com/enus/faq/owners-faq.html#Does-CarMax-fix-open-recalls-> and CarMax news release, issued in response to news reports exposing its sales of recalled vehicles: <http://phx.corporate-ir.net/phoenix.zhtml?c=232927&p=irol-newsArticle&ID=1991333>

⁸ In one tragic crash, near San Diego, California Highway Patrol Officer Mark Saylor, his wife Cleofe Lastrella, their 13-year-old daughter Mahala, and Cleofe's brother Chris Lastrella were all killed by a faulty Lexus loaner car within hours of when the dealer, Bob Baker Lexus, loaned the Lexus to Mark Saylor while his own Lexus was at the dealership for routine maintenance. While the loaner Lexus was not subject to a safety recall, it led to the massive Toyota sudden acceleration recall, and to Toyota's admission that it had illegally concealed the safety defect from the National Highway Traffic Safety Administration.

⁹ Per CarMax's Annual income statements, posted here: <http://amigobulls.com/stocks/KMX/income-statement/annual>

meet our high standards.”¹⁰ They make the claim that “Every CarMax used car undergoes a rigorous 125+ point inspection.”¹¹ Among the claims advertised on their website:

- **“From before we acquire it to before you drive it home, a CarMax car is scrutinized like no other.”**
- **“It takes 12 hours, on average, to recondition a CarMax car to our high standards.”**
- **“CarMax inspections are ongoing to ensure your car meets our high standards.”**
- **“We invest time and money renewing every car so you don’t have to.”**¹²

In addition, CarMax lists numerous specific components and systems that it inspects, such as brakes, axles, and safety restraint systems. That raises the question: How does CarMax decide that a component that is defective and subject to a federal safety recall meets their standards?

Unfortunately, CarMax’s Certified 125+ point inspection and “reconditioning” often fail to ensure that safety defects already identified in federal safety recalls are repaired. Under federal law, auto manufacturers are required to foot the bill for safety recall repairs for 10 model years from when the safety defect or noncompliance with a federal motor vehicle safety standard is determined to exist. So for CarMax, the repairs would be free.¹³

However, CarMax makes money based on the number of transactions, and is eager to “move the iron” to maximize its profits.¹⁴ Instead of waiting until the safety defects have been repaired, as some of its competitors do,¹⁵ CarMax rushes hazardous cars off its lots without bothering to get the safety recalls repaired. Typically, CarMax stores are located within blocks of franchised car dealers who can perform the repairs. With \$12.6 billion in revenue, they can easily afford to ensure every safety recall is fixed before they sell vehicles to consumers. Or if they choose not to get the cars repaired, they could sell the defective cars to other dealers who will. In fact, CarMax already sells many vehicles at wholesale.

However, instead of doing its job as a licensed dealer and getting safety recalls repaired prior to selling cars to consumers, CarMax shifts responsibility onto its customers for getting the safety recall repairs performed -- *after* they have already purchased a dangerous car. Unfortunately, when CarMax sells someone an unsafe, recalled car, they are playing “recalled car roulette” with their lives and jeopardizing the safety of the motoring public.

¹⁰ CarMax website, at: <http://www.carmax.com/enus/company-info/about-us.html>, date of search: Dec.7, 2015

¹¹ CarMax website, at: http://www.carmax.com/enus/popup/carmax_quality.html?k=01#, date of search: Dec. 7, 2015.

¹² CarMax website, posted here: http://www.carmax.com/enus/popup/carmax_quality.html?k=01# Date of search: Dec. 7, 2015.

¹³ The National Traffic and Motor Vehicle Safety Act (Title 49, Chapter 301) requires auto manufacturers to provide safety recall repairs at no charge to vehicle owners, including car dealers like CarMax and consumers.

¹⁴ “CarMax profits rise 12% on increased sales volume,” *Automotive News*, Sept. 12, 2015. “CarMax Inc.’s net earnings rose 12 percent to \$172.2 million in the fiscal second quarter on higher used-vehicle sales, even as the average selling price of used vehicles declined.”

¹⁵ “AutoNation Sets Auto Retail Industry Standard with Recall Policy,” PR Newswire. Sept. 8, 2015. <http://www.prnewswire.com/news-releases/autonation-sets-auto-retail-industry-standard-with-recall-policy-300138332.html>.

Disclosure is not adequate

Under pressure from media exposes that have repeatedly caught CarMax employees on undercover cameras denying that CarMax sells unrepaired recalled cars, and under fire from consumer groups who filed a petition with the Federal Trade Commission (FTC) seeking a crackdown over CarMax's deceptive advertising and sales practices, CarMax now admits that it sells recalled cars, and argues that it “discloses” the recall exists prior to completing the sale.¹⁶

However, CarMax's method of disclosure appears designed more to insulate CarMax from legal liability than to inform prospective car buyers. On their website, the disclosure is made in relatively small type and fine print, with an asterisk, while its TV ads trumpet that its cars are “the best” and “perfect” and must pass a “125+ point inspection.” Shoppers who search CarMax's website long enough may find the statement that “CarMax does not guarantee a recall-free vehicle.”¹⁷ However, CarMax omits the word “safety,” which could alarm prospective car buyers.



The screenshot shows a CarMax website interface. At the top right, there is a "Feedback" link. Below it, the text "CarMax Quality Certified" is displayed. To the right of this text are three buttons: "Select", "Renew", and "Protect". The main content area has a dark blue background with white and yellow text. It features the "02 RENEW" logo with the tagline "we renew each car". Below the logo, it states "Every CarMax used car undergoes a rigorous 125+ point inspection* including:" followed by a bulleted list of inspection items: engine and transmission, brakes, suspension, steering, lighting, electrical, heating, and A/C systems, and body and interior. It then states "It takes 12 hours, on average, to recondition a CarMax car to our high standards." and "CarMax inspections are ongoing to ensure your car meets our high standards." with another bullet point: "From before we acquire it to before you drive it home, a CarMax car is scrutinized like no other." A small asterisked note at the bottom left of the main content area reads: "*CarMax does not guarantee a recall-free vehicle." At the very bottom of the page, a white banner with dark blue text says: "We invest time and money renewing every car so you don't have to."

¹⁶ CarMax website, at: <http://www.carmax.com/enus/faq/owners-faq.html#Does-CarMax-fix-open-recalls-> and CarMax news release, issued in response to news reports exposing its sales of recalled vehicles: <http://phx.corporate-ir.net/phoenix.zhtml?c=232927&p=irol-newsArticle&ID=1991333>

¹⁷ CarMax Website, at: http://www.carmax.com/enus/popup/carmax_quality.html?k=01 at the bottom of the page. Date of search: Dec. 7, 2015.

CarMax advertises that all their vehicles are “CarMax Quality Certified.” This also misleads car buyers, particularly shoppers who have seen ads touting the “certified” used car sales offered by competing franchised new car dealerships. Those “certified” programs are designed to meet criteria established by auto manufacturers, who typically require their dealerships to ensure that any vehicle they offer for sale that is of the same brand, and particularly as a “certified” car, has had any outstanding safety recall repairs performed. For example, Fiat Chrysler has said that it requires all of its franchised dealers who sell used cars of the same brand / make to complete all recall repairs on those vehicles prior to sale.¹⁸

Further, it is too little, too late, to “disclose” that a specific car is being recalled AFTER CarMax lures shoppers onto the lot with the promise of a car that has passed a “rigorous 125+ point inspection,” and they have checked out multiple cars and taken them for test drives, negotiated over the price, and – several hours after arriving at CarMax's store – made a decision to buy.

Finally, consumers have a reasonable expectation that vehicles purchased from a licensed, regulated auto dealership are free from known safety defects that led to a safety recall. That is doubly true when the dealer makes specific claims about the condition of its vehicles, as CarMax does, attracting car buyers who might otherwise have gone to a dealership that guarantees a recall-free vehicle, as AutoNation dealerships do.¹⁹

Is CarMax Acting Illegally?

A number of broad, general state and federal consumer protection laws apply to sales of a whole range of consumer products and services. Those laws also apply to car dealers' sales of used cars to consumers. Any licensed dealer who deceives consumers or puts their lives in danger by selling them an unsafe, defective product risks being sanctioned by the Federal Trade Commission, U.S. Department of Justice, and / or state attorneys general or other law enforcement agencies, and also faces possible private litigation brought by victims or survivors of incidents caused by their illegal conduct.

“Used car dealers have a responsibility to make sure they are selling safe vehicles, which includes identifying open recalls and working to get them repaired,” said Steve Jordan, chief executive officer of the National Independent Automobile Dealers in Arlington, Texas.” – “Fatal Houston Fender-Bender Shows Shortcomings of Recalls,” Bloomberg, Feb. 1, 2015.

¹⁸ SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION “EXAMINING TAKATA AIRBAG DEFECTS AND THE VEHICLE RECALL PROCESS” NOVEMBER 20, 2014 QUESTIONS FOR THE RECORD POSED BY U.S. SENATOR BILL NELSON FOR MR. SCOTT KUNSELMAN (CHRYSLER): “Do you include a provision in the franchise agreements with your dealerships that requires them to perform safety recall repairs prior to offering used cars of your brand/make for sale to consumers? Reply: Yes, this requirement is included in Chrysler’s Dealer Policy Manual, which is incorporated into Chrysler’s franchise agreements by reference.”

¹⁹ “AutoNation Sets Auto Retail Industry Standard with Recall Policy,” PR Newswire.
<http://www.prnewswire.com/news-releases/autonation-sets-auto-retail-industry-standard-with-recall-policy-300138332.html>.

In addition, more-specific existing laws in all 50 states prohibit licensed dealers, including those that sell used cars, from engaging in various practices such as bait and switch, false advertising, unfair and deceptive acts and practices, and fraud and deception. Also, when dealers sell vehicles with express and / or implied warranties, as CarMax does, selling them without repairing the defects may be a violation of those warranties.

Some states have specific laws prohibiting the sale of cars with unrepaired safety defects. For example, California's Vehicle Code prohibits dealers from selling any vehicle that fails to comply with a Federal Motor Vehicle Safety Standard.²⁰ According to the New York Department of Consumer Affairs, "City law, which DCA enforces, requires dealers to certify that their vehicles are 'roadworthy,' and prohibits dealers from misleading consumers as to the safety of their vehicles. Under City law, a car with recalled parts that are unrepaired is not deemed to be roadworthy."²¹

Massachusetts has regulations in effect that prohibit false or misleading advertising or unfair and deceptive acts and practices. 940 CMR 3.02 prohibits false advertising, and states that "no statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value...of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another. Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception."

940 CMR 3.05 prohibits general misrepresentations and states that "No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, **safety**, strength, condition, or life expectancy of such product, or the ease with which such product may be operated, [or] repaired..."

²⁰ "California Vehicle Code Section 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."

²¹ "New York City's Department of Consumer Affairs Launches Investigation into the sale of unrepaired recalled used cars, aggressively protecting New Yorkers from Potentially Fatal Defects," News Release issued by New York City Department of Consumer Affairs, July 30, 2014.

In addition, the Massachusetts Used Vehicle Warranty Law, G.L. c. 90, § 7N ¼ (General Laws chapter 90, section 7 N ¼) specifically requires car dealers to warrant the safety of the vehicles they sell.

CarMax's practices may violate those provisions and may also violate implied warranties that their products are "merchantable" and fit for the purpose for which they are intended, since the manufacturer has issued a safety recall due to defects which render the vehicles in need of repair in order to be safe to operate.

In addition, the Federal Trade Commission has authority over car dealers' sales and advertising practices. Recently, the FTC stated that it has initiated an investigation into sales of so-called "certified" recalled used vehicles by General Motors and / or its dealers.²² Consumer groups have petitioned the Federal Trade Commission to crack down on CarMax over its sales of so-called "certified" unsafe recalled cars.²³ The FTC responded that it is taking the petition seriously.²⁴

Individual consumers who have been sold unsafe recalled cars have succeeded in bringing legal cases, and obtaining settlements, under broad, general state consumer protection statutes. Unfortunately, most settled cases are confidential, hiding this information from the public and regulators. In some tragic cases that have been made public, where victims of defective recalled cars have been injured or killed, they or their survivors have successfully sued auto sellers/dealers, using existing laws against negligence or wrongful death.

"Even while there's no [specific, federal] regulatory requirement for dealerships to conduct repairs on recalled vehicles or parts, it doesn't get them off the hook for lawsuits over injuries or deaths," said Robert Ammons, the Solis family attorney. ***'They have a common law duty to exercise ordinary care for the safety of consumers.'*** [Carlos Solis bought an unrepaired recalled used Honda from a car dealer in Texas, and was killed when the defective Takata air bag exploded, spewing metal fragments into his neck, causing him to bleed to death.]—
"Fatal Houston Fender-Bender Shows Shortcomings of Recalls," Bloomberg, Feb. 1, 2015.

For example, the parents of Raechel and Jacqueline Houck, two sisters, ages 24 and 20, who were killed by an unrepaired recalled 2004 Chrysler PT Cruiser that caught on fire and lost steering, brought a lawsuit against Chrysler and the rental car company that rented them an unsafe car. A jury unanimously awarded the Houcks over \$15 million in compensatory damages, under California's existing laws.²⁵

²² "GM says GM Says FTC Is Investigating Its Used Vehicle Sales," Wall Street Journal, July 23, 2015.

²³ Consumer Group Petition to the FTC is posted here: <http://www.carconsumers.org/pdf/FTCpetitionCarMax.pdf>.

²⁴ FTC's response: <http://www.carconsumers.org/pdf/FTC-Response-to-Consumer-Group-Petition.pdf>.

²⁵ Letter from Roland Wrinkle and Larry Grassini, attorneys for Carol (Cally) Houck, Mother of Raechel and Jacqueline Houck, addressed to Brian Maas, President, California New Car Dealers Association, June 11, 2015. http://carconsumers.org/pdf/Gordon_AB-287_Grassini-Wrinkle-letter_Brian-Mass.pdf.

“Potamkin, a General Motors dealer in New York, has a written policy requiring its employees to fix recalled vehicles before selling them to the public, according to John Bruno Jr., a general sales manager at one Potamkin location. ***'If there are any open recalls, we get them taken care of as fast as possible,'*** Mr. Bruno said, adding that it was ***'illegal and irresponsible'*** to do otherwise.” -- -- “New York City Imposes Used-Car Repair Rule,” *New York Times*, July 29, 2014.

Federal Legislation Needed for Important Added Protection and Enforcement

Currently, Massachusetts Senator Edward Markey and Connecticut Senator Richard Blumenthal are championing legislation in Congress (S 900, the Used Car Safety Recall Repair Act) to provide additional, uniform federal protection for used car buyers from car dealers who sell unsafe recalled used cars, enforceable by the National Highway Traffic Safety Administration.

Under federal law, NHTSA already has the authority to police car dealers' sales of NEW vehicles that are under a safety recall. In some cases, NHTSA has issued significant fines against new car dealers who violated that law. NHTSA is seeking the same authority over car dealers' sales of recalled USED cars, which would be granted to them if S 900 is enacted. One of the important benefits of NHTSA's having that authority would be that the agency is empowered to act, to *prevent* crashes, without having to wait until someone suffers an economic loss (such as having their car wrecked), or is injured or killed.

New and used car dealers are not only aggressively lobbying to kill S 900, they have been seeking anti-consumer, anti-safety legislation in Washington, D.C. to *legalize* dealers' rentals and sales of unsafe recalled used cars with only a “disclosure” requirement – overriding existing state law protections and shifting liability onto victims.²⁶ But so far, thanks largely to opposition from courageous members of Congress like Senators Markey, Blumenthal, McCaskill, Boxer, Schumer, and Nelson, and Representatives Capps and Schakowsky, and consumer / safety groups, they have failed in those efforts.

This year, the California New Car Dealers Association and car dealers in New Jersey attempted to gain passage of similar bills in those states to *legalize* dealers' sales of recalled used cars with “disclosure.”²⁷ As reported in *Automotive News*, this is apparently because they can no longer claim ignorance of safety recalls as a legal defense when people are injured or killed because the dealers sold them a dangerous recalled car. “Dealers have faced new liability risk since the creation of an Internet database [operational as of August, 2014] that allows a customer or dealer to check for recalls by entering a vehicle identification number...The California bill, which dealers see as a potential defense against lawsuits...”²⁸ would allow dealers to sell unrepaired recalled cars with “disclosure” – insulating unscrupulous dealers from legal liability and basically making CarMax's shady practices legal.

²⁶ “Measure to permit rentals of more recalled cars draws fire,” Bloomberg News, July 9, 2015.

²⁷ AB 287, authored by Assembly member Richard Gordon (D-San Mateo), whose father and grandfather were car dealers.

²⁸ “Recall bill cruises, but will it help?” *Automotive News*, May 4, 2015, page 14.

However, faced with growing opposition from consumer / safety groups, labor unions, rental car companies, and even auto manufacturers, in California, the author retreated and withdrew the bill, and in New Jersey the bill was held in Committee, and failed to pass.

CarMax Continues to Sell Unsafe, Recalled Cars Despite Repeated Public Exposure

Particularly troubling about CarMax’s unsafe practices in Massachusetts is the fact that the research for this report was conducted after CarMax has been repeatedly exposed selling recalled cars in other states, including Georgia, California, and Connecticut. As concerning is that CarMax is planning on opening three new stores in Massachusetts. In addition to their North Attleboro location, their website lists stores “opening soon” in Danvers, Norwood, and Westborough.

As shown on national television, on ABC's 20/20, CarMax was caught on camera selling dangerous recalled vehicles at its Hartford dealership.²⁹ In addition, CarMax's reckless practices have been repeatedly exposed by other, similar, local investigative reports. (While CarMax admits that it sells recalled vehicles, it has refused to have anyone from the company go on camera to answer reporters' questions about its practices.) Given that CarMax continues to put lives at risk by selling vehicles with unrepaired safety recalls despite being repeatedly caught on camera misleading car buyers about the safety of its vehicles, the need for action at the state and federal level to compel changes in their business practices is all the more urgent.

Table 1: Full List of Vehicles for Sale at CarMax's North Attleboro, Massachusetts Location That Had Unrepaired Federal Safety Recalls, as advertised on October 28, 2015

Year	Make	Model	Reason for recall	Recall #
2012	Chevrolet	Malibu	Cable may detach from seat belts, and seat belts may not provide protection in a crash, increasing risk of injury or death. “Remedy not yet available”	15V269
2012	Chevrolet	Malibu	Cable may detach from seat belts, and seat belts may not provide protection in a crash, increasing risk of injury or death. “Remedy not yet available”	15V269

²⁹ “What Do Some CarMax Sales Reps Tell Consumers About Vehicles?” Jeanette Torres, ABC News 20/20 Investigative Report. Dec. 12, 2014. <http://abcnewsradioonline.com/business-news/what-do-some-carmax-sales-reps-tell-consumers-about-vehicles.html>.

2011	Chevrolet	Traverse	Liftgate may collapse, striking heads or other body parts. "Remedy not yet available"	15V415
2011	Chevrolet	Traverse	Liftgate may collapse, striking heads or other body parts. "Remedy not yet available"	15V415
2012	Chevrolet	Volt	Vehicle's battery may run down when it appears to be shut off, and gas engine may run continuously, while parked, causing carbon monoxide poisoning, which can result in serious illness or death.	15V145
2015	Chrysler	200 C 4D Sedan	Faulty power distribution center may cause engine stalling or a shift to neutral while driving, causing a crash without warning.	15V470
2013	Chrysler	200 C Limited 4D Sedan	Active head restraints may not deploy in a rear-end collision, causing serious injuries. FAILS to comply with Federal Motor Vehicle Safety Standard.	13V282
2012	Chrysler	200 C Limited 4D Sedan	Active head restraints may not deploy in a rear-end collision, causing serious injuries. FAILS to comply with Federal Motor Vehicle Safety Standard.	13V282
2012	Chrysler	Town and Country Touring L 4D Pass Ext Van	Rear quarter vent window switch on your vehicle may overheat. May cause a driver's door fire without warning.	14V234
2014	Ford	Fiesta SE 4D Sedan	Faulty door latch – door may unlatch and open while driving.	15V246
2013	Ford	Fiesta SE 4D Sedan	Faulty door latch – door may unlatch and open while driving.	15V246

2013	Ford (Recall 1)	Fusion Titanium 4D Sedan	Side air bags and seat belts may fail to work in a crash, increasing the risk of injury.	14V597
2013	Ford (Recall 2)	Fusion Titanium 4D Sedan	Steering gear may corrode and cause loss of power steering.	15V250
2013	Ford (Recall 3)	Fusion Titanium 4D Sedan	Faulty door latch – door may unlatch and open while driving.	15V246
2012	Ford	Mustang GT 2D Coupe	Driver airbag inflator may rupture, and metal fragments may strike driver or passengers, causing blindness, facial injuries, or death. "Remedy not yet available"	15V319
2012	Ford (Recall 1)	Taurus SHO 4D Sedan	Door may unlatch in side impact collision, increasing the risk of injury.	15V040
2012	(Recall 2)	Taurus SHO 4D Sedan	Faulty steering gear motor may cause loss of power steering.	15V340
2010	Honda	CR-V EXL 4D Sport Utility	Faulty transmission may cause engine stalling while driving or allow vehicle to roll away and injure people when they are exiting the car, or injure bystanders.	11V-395
2014	Hyundai	Sonata GLS 4D Sedan	Faulty transmission may allow vehicle to roll away and injure people when they are exiting the car, or injury bystanders.	14V434000
2013	Hyundai	Sonata Limited 4D Sedan	Faulty transmission may allow vehicle to roll away and injure people when they are exiting the car, or injure bystanders.	14V434000
2013	Hyundai (Recall 1)	Sonata SE 4D Sedan	Side airbags may inflate without a crash, increasing risk of injury.	12V352000

2013	Hyundai (Recall 2)	Sonata SE 4D Sedan	Faulty transmission may allow vehicle to roll away and injure people when they are exiting the car, or injure bystanders.	14V434000
2014	Jeep (Recall 1)	Cherokee Limited 4D Sport Utility	Power liftgate control may short circuit and cause a fire.	15V393
2014	Jeep (Recall 2)	Cherokee Limited 4D Sport Utility	Windshield wipers could fail without warning while car is being driven in stormy weather, causing loss of driver visibility and a crash. "Remedy not yet available"	15V509
2013	Jeep	Grand Cherokee Laredo 4D Sport Utility	Fuel pump relay could operate intermittently or fail without warning, causing stalling while driving and a crash.	15V115
2015	Jeep	Grand Cherokee SRT 4D Sport Utility	Software security vulnerabilities could allow hackers to access vehicle control systems.	15V-461
2015	Kia	Soul + 4D Wagon	Accelerator pedal may fracture and increase risk of a crash.	15V-123
2011	Lincoln	MKS 4D Sedan	Faulty steering gear motor may cause loss of power steering and increased risk of a crash.	15V340
2013	Mazda	CX9 Grand Touring 4D Sport Utility	Ball joint may corrode, resulting in loss of steering. "Remedy not yet available."	15V451
2015	Nissan	Versa S 4D Sedan	Center console panel may interfere with braking.	15V507

2015	Nissan	Versa S 4D Sedan	Center console panel may interfere with braking.	15V507
2009	Nissan	Versa 4D Sedan	Front coil springs may fracture and increase the risk of a crash.	15V573
2010	Scion	XB Release 7.0 4D Wagon	Power window master switch may short circuit and cause a fire. "Remedy not yet available."	15V689
2012	Subaru	Impreza 2.0i 4D Sedan	Front passenger air bag may not inflated when needed in a crash, if passenger uses electronic equipment or an electronic device contacts certain components.	15V419000
2009	Toyota	Corolla LE 4D Sedan	Power window master switch may short-circuit and cause a fire. "Remedy not yet available."	15V689
2010	Toyota	Corolla S 4D Sedan	Power window master switch may short-circuit and cause a fire. "Remedy not yet available."	15V689
2010	Toyota	Matrix S 4D Wagon	Power window master switch may short-circuit and cause a fire. "Remedy not yet available."	15V689
2011	Toyota	RAV4 4D Sport Utility	Windshield wipers may become inoperable without warning, resulting in limited visibility and causing a crash. "Remedy not yet available."	Awaiting #
2012	Toyota	RAV4 4D Sport Utility	Windshield wipers may become inoperable without warning, resulting in limited visibility and causing a crash. "Remedy not yet available."	Awaiting #

2009	Toyota	RAV4 4D Sport Utility	Power window master switch may short-circuit and cause a fire. "Remedy not yet available."	15V689
2008	Toyota (Recall 1)	Tacoma 4D Extended Cab	Suspension components may fracture and puncture the fuel tank, causing a fire. "Remedy not yet available."	14V604
2008	Toyota (Recall 2)	Tacoma 4D Extended Cab	Seat belt pretensioners may not operate properly, increasing the risk of injury in a severe crash.	13V337
2008	Toyota (Recall 3)	Tacoma 4D Extended Cab	Tire pressure monitoring system may fail to warn of low tire pressure, increasing the risk of a crash. FAILS to comply with Federal Motor Vehicle Safety Standard.	11V148
2008	Toyota (Recall 4)	Tacoma 4D Extended Cab	Accelerator pedal can get stuck in full throttle position, causing a serious crash.	09V388
2012	Volkswagen	Beetle 2.5 2D Hatchback	If damaged and not repaired properly, the rear axle trailing arm could fracture and cause a loss of steering control and a crash.	14V656
2012	Volkswagen	Jetta S 4D Sedan	If damaged and not repaired properly, the rear axle trailing arm could fracture and cause a loss of steering control and a crash.	14V656
2012	Volkswagen	Jetta S 4D Sedan	If damaged and not repaired properly, the rear axle trailing arm could fracture and cause a loss of steering control and a crash.	14V656
2012	Volkswagen	Jetta S 4D Sedan	If damaged and not repaired properly, the rear axle trailing arm could fracture and cause a loss of steering control and a crash.	14V656

2013	Volkswagen	Passat S 4D Sedan	Faulty steering component may cause air bag to fail to inflate when needed in a crash, increasing the risk of injury or death.	15V483
2012	Volkswagen (Recall 1)	Tiguan S 4D Sport Utility	Faulty steering component may cause air bag to fail to inflate when needed in a crash, increasing the risk of injury or death.	15V483
2012	Volkswagen (Recall 2)	Tiguan S 4D Sport Utility	Fuel pump malfunction may cause stalling while driving, causing a crash.	14V441

Methodology

Using **CarMax's** website, data were collected for every car available at CarMax's North Attleboro location on October 28, 2015, as the "home store" before searching for "all cars." Each car was viewed individually online and its identifying features recorded, including year, make, model and Vehicle Identification Number (VIN).

To identify which of these vehicles were subject to a federal safety recall, we checked each VIN using the safety recall look-up tool on www.safercar.gov, a website provided by the National Highway Traffic Safety Administration (NHTSA). After entering the car's VIN, the tool reports "incomplete" (unrepaired) safety recalls pending for that specific vehicle and the relevant details, including a NHTSA recall identification number, the date the recall was issued, and a description of the problem. All of this information was recorded for every vehicle subject to a safety recall on October 28, 2015 at the North Attleboro location.

CONSUMER INFORMATION

Finding Safety Recall Information

It is very important to get safety recall repairs done right away. Don't wait. If you are shopping for a car, check the safety recall status before you buy and insist that the repair is done before you buy. Don't gamble that you will have time to get it repaired after purchase. Some people and their families have been killed within hours of when a dealer handed them the keys to an unsafe car.³⁰

³⁰ See Footnote 8, above.

To check if a vehicle has an unrepaired safety recall, find the Vehicle Identification Number (VIN). The VIN is a unique 17-digit combination of letters and numbers. It should be posted on the driver's side of the dashboard, and visible through the windshield. It should also be on a sticker on the driver doorjamb that includes the date the car was manufactured.

Next, visit www.safercar.gov. Click “search for recall by VIN” and then type in your VIN. If the recall notice says that the recall is “incomplete,” then according to the manufacturer, it has not yet been repaired.

To get an open recall on your vehicle repaired, contact a local new car dealer who sells that brand / model of vehicle. If there are no parts available, then insist on the manufacturers providing you with a safe loaner or rental car while you wait for the repairs. Double-check the VIN of the loaner or rental car to make sure that it doesn't also have an unrepaired safety recall.

If you don't have access to the Internet, you can call the manufacturer's toll-free number to find out the safety recall status, or contact a local dealership for that brand and ask them to check for you.

Recommendations

The CARS Foundation and MASSPIRG Education Fund recommend the following actions to address the risks posed by CarMax's sales of unsafe recalled vehicles to consumers:

- The Federal Trade Commission should crack down on CarMax over its deceptive and misleading ads and sales practices
- Massachusetts' Attorney General should investigate CarMax and take appropriate action to protect the public.
- Consumers should consider shopping – including trading in their vehicles – at dealerships that don't sell recalled vehicles, such as AutoNation dealerships. AutoNation has publicly taken a stand and is guaranteeing that all of its vehicles are “recall free.” AutoNation also has stated that they will not reduce the amount they offer for traded-in vehicles because of open safety recalls.