



FUELING FAIR PRACTICES

A road map to improved public policy
for used car sales and financing

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EXECUTIVE SUMMARY

For most working families, owning a car is central to productivity and self-sufficiency. Yet, buying, financing, and keeping a reliable car is fraught with dangers and problems. This is especially true for low-income families. It is not surprising that households with incomes below \$25,000 are nine times more likely to be without a car than households with incomes above \$25,000.¹ While existing policies offer some protections, consumers still face numerous hurdles and stumbling blocks, such as cars in poor or even dangerous condition, unfair financing arrangements, deceptive sales practices, junk products and fees that add to a car's cost, and outright fraud.

Most Americans understand how difficult it is to obtain a fair deal when buying and financing a car. There is broad public support for policy improvements,² and a growing number of policy makers are seeking to address these issues. Reform will be welcomed not only by consumers, but even some car dealers and finance companies that would like to succeed by providing quality cars at fair terms, but cannot when competitors succeed through unfair practices.

This guide examines problems and inequalities in the current used car sales and finance market, and suggests policy reforms that would bring fairness to these transactions. Both state and federal policy improvements are suggested. There are three principles which apply to all the suggested improvements:

- Laws protecting consumers should have a private right of action.
- Dollar amounts should automatically adjust for inflation, and other numbers found in statutes should be periodically reviewed.
- Federal laws should not preempt stronger state consumer protections, nor should state laws preempt stronger local and community protections.

¹ U.S. Department of Transportation, Bureau of Transportation Statistics, *NHTS 2001 Highlights Report*, BTS03-05 (Washington, DC: 2003).

² In 2004, when an initial, strong, car buyer bill of rights was proposed in California, a statewide poll found that 83% of likely voters supported the measure. See California's Car Buyers Bill of Rights: A Bittersweet Deal for Consumers, Consumers for Auto Reliability and Safety, November 28, 2007, available at http://www.carconsumers.com/CBBR_BittersweetDeal.html.

STATE LAW REFORMS

Protecting Used Car Buyers from Sales and Financing Abuses

The sale and financing of used cars is fraught with abuses. One change that would do much to address such abuses is instituting a right of rescission or cooling off period. Other policies states should follow to reduce such abuses include eliminating or limiting dealer finance charge markups to a dollar amount; capping document preparation and fees; and requiring posted pricing and simplified rebate calculation for add-ons.

Even when laws prohibit abuses, often dealers go out of business without the resources to protect consumers. Such closures can leave consumers without good title to a recently purchased car or still owing money on a trade-in that should have been paid off. To address these issues, states should create dealer-funded consumer compensation funds and increase existing dealer bond requirements.

Protecting Used Car Buyers from Dangerous and Unreliable Vehicles

One of the most difficult problems consumers face is trying to obtain a car in good condition. There are several alternatives states can pursue to address this issue by enacting used car lemon laws and required warranties; prohibiting disclaimer of implied warranties and “as is” sales; or requiring inspection of, and minimum condition for, used cars for sale. If such protections are created and a dispute does arise about the condition of the vehicle at the time of sale, the burden of proof should be on the dealer to show that the car was in good condition at the time of sale.

Protecting Car Buyers and the Public from Arbitrary and Dangerous Repossession

Even if families can get a reliable car, they often find it difficult to keep the car. While taking the law into one’s own hands is generally disfavored, lenders have extraordinary power to take a car away from a family without protection. This leads in many cases to repossessions when the lender is not entitled to the car, loss of the family’s ability to get to work, and all too many instances injuries and fatalities.

States should either ban self-help repossessions or restrict the use of self-help repossession. If self-help repossession is allowed in a restricted form, repossessors should be heavily regulated, including licensing and bonding, and lenders should be liable for all actions of repossessors. To help keep families in their cars and productive, consumers should be afforded a right to cure or reinstate the loan if they do fall behind. Finally, states should adjust anti-deficiency statutes for inflation.

SUGGESTED CHANGES TO FEDERAL LAW

- In order to better understand what happens when cars are sold and financed, and to combat discrimination in such transactions, a federal data collection system for automobile financing should be created similar to existing HMDA mortgage data collection.
- Pre-dispute binding arbitration should be prohibited in auto sales and financing transactions.
- The Federal Trade Commission’s “used car rule” should be improved.
- Restrictions on modification of car loans in bankruptcy should be removed.
- Jurisdictional and damage amounts under the Truth in Lending Act should be adjusted for inflation.
- Impediments to proper operation of the Motor Vehicle Information and Cost Savings Act (MVICSA) should be eliminated.

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