

© 2014 The New York Times

FRIDAY, MAY 9, 2014

## Recalled Used Cars Roam the Roads as Federal Legislation Stalls

By RACHEL ABRAMS  
and CHRISTOPHER JENSEN

David Clayton was driving 70 miles an hour in his Ram 1500 pickup truck last October when he learned the hard way that it had a serious safety problem. The rear axle locked up, causing

him to nearly lose control before wrestling the truck to the side of the highway.

Chrysler knew about the axle defect, and had ordered a recall of the pickup before Mr. Clayton bought it last July from a used-car dealer in Visalia, Calif. But the dealer never had the axle repaired — and was not required to

do so under the law.

“That could have killed me,” Mr. Clayton said.

The United States does not have a law requiring the repair of used vehicles — including rental cars — that have been recalled for safety issues before they are rented or sold to the public. Used-car dealers and rental car compa-

nies are allowed to fix problems when — and if — they see fit. And they are not required by law to disclose to customers that a vehicle is the subject of a recall.

Even as Congress and law enforcement officials investigate the delayed recall of 2.6 million General Motors cars for a faulty

Continued on Page A4

## Recalled Used Cars Roam Roads as Legislation Stalls

From Page A1

ignition, auto dealers and many manufacturers oppose efforts to require recalled used and rental cars to be immediately repaired. These efforts include a measure recently sent to Congress and a separate Senate bill that has languished since 2011.

Dealers contend that not all recalls require immediate attention, though regulators say recalls, by definition, involve pressing safety concerns. And auto manufacturers, while not opposed in principle to mandatory repairs, want protection from rental car companies that might sue over lost business while recalled cars are out of service.

Major rental companies, under pressure from consumer groups, agreed in 2012 to support a bill calling for mandatory repairs and to abide by its terms, fixing them before renting them, even before it becomes law, according to Sharon Faulkner, the executive director of the American Car Rental Association, which represents companies including Enterprise, Hertz and Avis.

But without a law, safety advocates and regulators say, consumers must take the rental car company's or dealer's word that the repairs were made, and have limited ability to seek redress without that assurance.

“It should be a slam dunk,” David J. Friedman, acting administrator of the National Highway Traffic Safety Administration, said of required repairs. “To me it is hard to oppose ensuring that people who buy a car, whether it is new or used, or whether you are renting a vehicle, can have the confidence that it is safe.”

In the first four months of the year, 11.3 million vehicles were recalled in America. There are almost two million rental vehicles on the road, according to Auto Rental News, a trade publication, though it is not known how many of those have been recalled.

Safety advocates are pushing for change on two fronts in Washington — one is a proposal in the Transportation Department's budget and the other is a bill about rental cars in the Senate.

The Transportation Department's proposal is part of its Grow America Act, a 350-page budget plan covering four years. The repair provisions would require car dealers and rental agencies to idle vehicles under recall until they are fixed. The proposed legislation has been



MAX WHITTAKER FOR THE NEW YORK TIMES

David Clayton and his dog in his Ram 1500, which had an axle defect that wasn't repaired.

sent to both houses of Congress, and the Senate Commerce Committee has taken it up.

The bill in the Senate would apply only to rental cars. Introduced in 2011, it was largely a reaction to the death of two sisters, Raechel and Jacqueline Houck, who were killed in a recalled but unrepaired rental car in 2004. It is not seen as having enough support to pass as a stand-alone bill, but it could become part of a bigger piece of legislation.

“It's just a question of how long it will take and how many people have to be killed or injured before it happens,” said Rosemary Shahan, the president of Consumers for Auto Reliability and Safety, an advocacy group pushing for legislation.

The group receives complaints about accidents involving unrepaired used cars. Ms. Shahan said, including one about a model recalled by G.M. in February for the faulty switch linked by the automaker to 13 deaths. Malisa Norman, a 35-year-old home health aide in Latta, S.C., said she was unaware of the recall on the 2007 Chevrolet Cobalt she bought days after the recall was announced. Soon after, she said, she and her son were injured when the car lost power and crashed into a tree.

Though Ms. Norman has hired a lawyer, it is unclear what recourse, if any, she and others in her position have because the dealer did not guarantee that the recall repairs had been made. In

the case of Mr. Clayton, the California pickup owner, the dealer had guaranteed that recall repairs had been completed. Mr. Clayton sued, saying he had been misled over the safety of the vehicle. Mr. Clayton and the dealer settled the case, though the terms were not disclosed.

CarMax, the nation's largest seller of used cars, offers a “Certified Quality Inspection,” which does not include fixing recalls. CarMax does not support the N.H.T.S.A. proposal in its current form, a spokesman, Casey Werdeman, wrote in an email.

The National Automobile Dealers Association, which represents 16,000 new-car dealers, many of which also sell used vehicles, says not all recalls need to be fixed immediately because some are not for serious issues. Instead, a spokesman, Bailey Wood, said there should be a “graduated system to determine which recalls actually do impact safety.”

But every recall involves a safety problem, Mr. Friedman said. “When we do a recall it is because it represents an unreasonable risk to safety and it has got to be fixed,” he said. Consumers can check for recalls at [www.safercar.gov](http://www.safercar.gov).

Rental car companies should be required to repair recalled vehicles, said Daniel Gage, a spokesman for the Alliance of Automobile Manufacturers, which represents 12 automakers, including General Motors, Ford,

Chrysler and Toyota.

But automakers and rental agencies remain in a stalemate over such a bill. The automakers wanted the Senate bill to contain “simple, straightforward language” that prohibits rental car companies from seeking loss-of-use damages because of a recall, Mr. Gage wrote in an email. Advocates say they offered language they thought addressed the issue, but Mr. Gage said it wasn't clear enough. While G.M. and Toyota said they were reviewing their stance, Ford and Chrysler expressed support for the alliance's position.

The stalemate has left some safety advocates frustrated.

“In the middle of the G.M. fiasco, I can't imagine that Congress is going to buy the argument that keeping recalled cars off the road is too expensive for the manufacturers and dealers,” Pamela Gilbert, a lawyer working for Consumers for Auto Reliability and Safety, wrote in an email.

But Carol Houck, the mother of the two sisters who died in the rental car in 2004, sees reason for optimism. She called the decision by the rental car companies to support mandatory repairs a “phenomenal victory.”

She remembers the shock years ago — after the death of her daughters — when she learned there was no law requiring recalled rental cars be repaired.

“Outraged doesn't adequately describe how I felt,” she said.

Matthew L. Wald contributed reporting.