

STATE OF NEW YORK

7545--A

IN SENATE

January 23, 2018

Introduced by Sens. FUNKE, CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to safety recalls on used motor vehicles

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new section
2 198-d to read as follows:

3 § 198-d. Used motor vehicles; recalls. (a) For the purpose of this
4 section, the following terms shall have the following meanings:

5 (1) "dealer" shall have the same meaning as paragraph a of subdivision
6 one of section four hundred fifteen of the vehicle and traffic law.

7 (2) "used motor vehicle" shall have the same meaning as paragraph i of
8 subdivision one of section four hundred fifteen of the vehicle and traf-
9 fic law.

10 (3) "stop drive order" shall mean a notification issued under 49 USC
11 section 30118 which includes precautionary advice to stop driving a
12 motor vehicle (including the vehicle identification number for such
13 vehicle).

14 (4) "safer car website" shall mean any website, application, or inter-
15 net accessed platform operated by the national highway traffic safety
16 administration, the United States department of transportation, or their
17 agent and/or subcontractor, wherein a consumer may determine the status
18 of all recalls on any new and/or used motor vehicle.

19 (b) If, prior to executing a contract for sale or lease of a used
20 motor vehicle at retail, a dealer determines pursuant to the inquiry
21 required by subdivision (f) of this section that the used motor vehicle
22 subject to the contract is under a stop drive order, such dealer shall
23 not sell or lease any such vehicle until the defect or noncompliance is
24 remedied.

25 (c) A dealer shall disclose in any print and online advertisement that
26 any used motor vehicle being advertised may be subject to a recall, and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 that a consumer may obtain all recall information from the safer car
2 website. Two days prior to the submission of any advertisement for a
3 used motor vehicle, a dealer shall make an inquiry on the safer car
4 website for any open recalls. If any open recalls are listed on this
5 report, the dealer shall either cause the recall defect to be repaired
6 before the used vehicle is delivered to the consumer, or clearly display
7 notice, in such advertisement, stating that the particular vehicle is
8 subject to an open recall.

9 (d) A dealer shall maintain a link on any website or online platform
10 it controls directing that a consumer may obtain all recall information
11 from the safer car website.

12 (e) A dealer shall place upon all used vehicles for sale a sticker
13 and/or decal that includes information that will allow a consumer to
14 check the status of any potential recalls on said vehicle through the
15 safer car website, or shall include a means of checking said vehicle's
16 recall status on the safer car website by scanning a bar code, QR code,
17 or vehicle identification number, or shall include a report, which may
18 be a print copy of the results of a search of the safer car website,
19 from the safer car website reflecting the vehicle's recall status.

20 (f) A dealer shall perform, prior to, but no earlier than two days
21 before, the execution of the sale or lease of any used vehicle, a search
22 using the vehicle identification number of the vehicle involved in the
23 transaction on the national highway traffic safety administration's
24 safer car website, and shall produce and provide the report from such
25 website to the purchaser of any motor vehicle safety recall or recalls
26 that the motor vehicle is subject to, that such recalls may be repaired
27 by a motor vehicle dealer approved by the manufacturer of the vehicle,
28 and that further information on the recalls may be obtained from the
29 national highway traffic safety administration on its safer car website.
30 Providing a printout of the result of the search provided for in this
31 subdivision shall be deemed compliance with this requirement, and such
32 notice shall be signed by the purchaser. Additionally, such dealer who
33 complies with this subdivision shall be deemed to have complied with any
34 state or local law, rule or regulation relating to deceptive trade,
35 business or commercial acts or practices concerning the sale or lease
36 of, or offer to sell or lease, any used motor vehicle that as a result
37 of a federal safety defective or noncompliant condition has been
38 recalled by the original equipment manufacturer of such used motor vehi-
39 cle or the United States department of transportation, provided, howev-
40 er, the provisions of section one hundred ninety-eight-b of this article
41 shall still apply.

42 (g) Where a franchisor or manufacturer, as defined by section four
43 hundred sixty-two of the vehicle and traffic law, directly or indirectly
44 subjects any dealer to any financial or other penalties or otherwise
45 penalizes or prevents a dealer from selling or leasing any used motor
46 vehicle subject to recall, including where any such restrictions are
47 imposed by the manufacturer, either through the issuance of a "stop
48 sell" or any other communication, or federal, state, or local law or
49 regulation:

50 (1) the franchisor or manufacturer shall, within fifteen days from
51 notice of a recall, or upon notification from a dealer that they are in
52 possession of a vehicle subject to such recall, which is covered under a
53 policy or policies as described in this subdivision, provide to said
54 dealer a payment of one and seventy-five hundredths percent of the value
55 of a used motor vehicle as determined by the average "trade-in" value
56 for a similar used vehicle as indicated in a widely disseminated,

1 publicly available, independent used motor vehicle guide for the year,
2 make, model, and mileage of the used motor vehicle in the possession of
3 the dealer for every thirty days, or portion of thirty days, the dealer
4 is unable to sell, offer to sell, or repair such vehicle due to the
5 inability to satisfy any recall issued for such vehicle or due to commu-
6 nication received from the manufacturer regarding the sale of such vehi-
7 cle; and

8 (2) the manufacturer or franchisor shall pay the dealer through a
9 credit to the dealer's open account, or by any other method approved by
10 the dealer.

11 (h) The manufacturer or franchisor may not retaliate against a dealer
12 who has submitted a claim for reimbursement under this section or who
13 was otherwise compensated for a vehicle subject to a recall. For the
14 purposes of this subdivision, retaliation shall include, but shall not
15 be limited to, reducing the amount of compensation otherwise owed to a
16 dealer, whether through a chargeback, removal from an incentive program,
17 reducing the amount owed under an incentive program, or any other means,
18 imposing additional requirements, withholding inventory, reducing allo-
19 cation, requiring any facility upgrade, or otherwise surcharging or
20 penalizing the dealer. A dealer may not, however, receive compensation
21 for the same vehicle under recall under this section, as well as under
22 another manufacturer program designed to mitigate dealer costs for the
23 holding of vehicles under recall, unless otherwise entitled to such
24 compensation.

25 (i) The manufacturer or franchisor shall pay for any repairs performed
26 by the dealer to remedy any recall, pursuant to the provisions of
27 section four hundred sixty-five of the vehicle and traffic law. Any
28 replacement part provided for a recall repair shall be paid at the
29 existing retail reimbursement rate in existence at the time the repair
30 is performed.

31 § 2. This act shall take effect immediately, provided, however, that
32 subdivisions (b) through (f) of section one hundred ninety-eight-d of
33 the general business law, as added by section one of this act, shall
34 take effect sixty days after this act shall have become a law.