

STATE OF NEW YORK

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2017-2018 Regular Sessions

IN ASSEMBLY

June 5, 2017

Introduced by M. of A. PHEFFER AMATO, QUART, DILAN, NORRIS, CRESPO -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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:

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

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

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

(2) "used motor vehicle" shall have the same meaning as paragraph i of subdivision one of section four hundred fifteen of the vehicle and traffic law.

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

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

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

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1 (b) If the inquiry required to be performed by subdivision (f) of this
2 section reveals that the used motor vehicle subject to the contract is
3 under a stop drive order, the dealer required to perform such inquiry
4 shall not sell or lease any such vehicle until the defect or noncompli-
5 ance is remedied.

6 (c) A dealer shall disclose in any print and online advertisement that
7 any used motor vehicle being advertised may be subject to a recall, and
8 that a consumer may obtain all recall information from the safer car
9 website. Two days prior to the submission of any advertisement for a
10 used motor vehicle, a dealer shall make an inquiry on the safer car
11 website for any open recalls. If any open recalls are listed on this
12 report, the dealer shall either cause the recall defect to be repaired
13 before the used vehicle is delivered to the consumer, or clearly display
14 notice, in such advertisement, stating that the particular vehicle is
15 subject to an open recall.

16 (d) A dealer shall maintain a link on any website or online platform
17 advertising used cars, which it controls directing that a consumer may
18 obtain all recall information from the safer car website.

19 (e) A dealer shall place upon all used vehicles for sale a sticker
20 and/or decal that includes information that will allow a consumer to
21 check the status of any recalls on said vehicle through the safer car
22 website, or shall provide a means of checking said vehicle's recall
23 status on the safer car website by scanning a bar code, QR code, or
24 vehicle identification number, or shall provide a report, which may be a
25 printout of the results of a search of the safer car website reflecting
26 the vehicle's recall status, provided that any such report is no more
27 than two days old or is otherwise accurate regarding said vehicle.

28 (f) A dealer shall perform, prior to, but no earlier than two days
29 before, the execution of the sale or lease of any used vehicle, a search
30 using the vehicle identification number of the vehicle involved in the
31 transaction on the safer car website, and shall produce and provide the
32 report from such website to the purchaser of any motor vehicle safety
33 recall or recalls that the motor vehicle is subject to, that such
34 recalls may be repaired by a motor vehicle dealer approved by the
35 manufacturer of the vehicle, and that further information on the recalls
36 may be obtained from the national highway traffic safety administration
37 on its safer car website. Providing a printout of the result of the
38 search provided for in this subdivision shall be deemed compliance with
39 this requirement, and such notice shall be signed by the purchaser.
40 Additionally, compliance with the notice requirements found in this
41 section shall be a complete defense to any action under sections three
42 hundred forty-nine or three hundred fifty of this chapter, subdivision
43 twelve of section sixty-three of the executive law, or to any other
44 state or local law, rule or regulation to the extent that such action is
45 premised upon any alleged failure to provide sufficient or timely notice
46 of an open recall.

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

1 (1) the franchisor or manufacturer shall, where parts or a remedy are
2 not reasonably available and a policy described in this subdivision is
3 in effect, following fifteen days notice from a dealer that they are in
4 possession of a vehicle subject to the provisions of this section
5 provide to said dealer a payment of one and seventy-five hundredths
6 percent of the value of the used motor vehicle as determined by the
7 average "trade-in" value for a similar used vehicle as indicated in a
8 widely disseminated, publicly available, independent used motor vehicle
9 guide for the year, make, model, and mileage of the used motor vehicle
10 in the possession of the dealer for every thirty days, or portion of
11 thirty days, the dealer is unable to sell, offer to sell, or repair such
12 vehicle due to the inability to satisfy any recall issued for such vehi-
13 cle or due to a communication described in the opening paragraph of this
14 subdivision received from the manufacturer regarding the sale of such
15 vehicle; and

16 (2) all reimbursement claims made by a dealer pursuant to this subdivi-
17 vision shall be subject to the procedure established under subdivisions
18 two through seven of section four hundred sixty-five of the vehicle and
19 traffic law.

20 (h) The manufacturer or franchisor may not retaliate against a dealer
21 who has submitted a claim for reimbursement under this section or who
22 was otherwise compensated for a vehicle subject to a recall. For the
23 purposes of this subdivision, retaliation shall include, but shall not
24 be limited to, reducing the amount of compensation otherwise owed to a
25 dealer, whether through a chargeback, removal from an incentive program,
26 reducing the amount owed under an incentive program, or any other means,
27 imposing additional requirements, withholding inventory, reducing allo-
28 cation, requiring any facility upgrade, or otherwise surcharging or
29 penalizing the dealer. A dealer may not, however, receive compensation
30 for the same vehicle under recall under this section, as well as under
31 another manufacturer program designed to mitigate dealer costs for the
32 holding of vehicles under recall, unless otherwise entitled to such
33 compensation, and such compensation is equal to or greater than that
34 provided under paragraph one of subdivision (g) of this section.

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

41 § 2. This act shall take effect immediately, provided, however, that
42 subdivisions (b) through (f) of section one hundred ninety-eight-d of
43 the general business law, as added by section one of this act, shall
44 take effect on the sixtieth day after this act shall have become a law.