STATE OF NEW YORK

8268--C

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.

LBD11912-07-8

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

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

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

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

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

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

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

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

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

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

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