

# STATE OF NEW YORK

5365--A

2019-2020 Regular Sessions

## IN SENATE

April 29, 2019

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

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

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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 subdi-  
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 (c) 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 (b) of this section.

35 (d) 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 subdivision (b) of section one hundred ninety-eight-d of the general  
43 business law, as added by section one of this act, shall take effect on  
44 the sixtieth day after this act shall have become a law.