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:

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).

(b) 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:

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

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(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.

(c) 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 (b) of this section.

(d) 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 subdivision (b) 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.