

STATE OF NEW YORK

5593

2021-2022 Regular Sessions

IN SENATE

March 11, 2021

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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:

23 (1) the franchisor or manufacturer shall, where parts or a remedy are
24 not reasonably available and a policy described in this subdivision is
25 in effect, following fifteen days notice from a dealer that they are in

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

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1 possession of a vehicle subject to the provisions of this section
2 provide to said dealer a payment of one and seventy-five hundredths
3 percent of the value of the used motor vehicle as determined by the
4 average "trade-in" value for a similar used vehicle as indicated in a
5 widely disseminated, publicly available, independent used motor vehicle
6 guide for the year, make, model, and mileage of the used motor vehicle
7 in the possession of the dealer for every thirty days, or portion of
8 thirty days, the dealer is unable to sell, offer to sell, or repair such
9 vehicle due to the inability to satisfy any recall issued for such vehi-
10 cle or due to a communication described in the opening paragraph of this
11 subdivision received from the manufacturer regarding the sale of such
12 vehicle; and

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

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

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

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