

ASSEMBLY BILL NO. 410—ASSEMBLYWOMAN
BUSTAMANTE ADAMS

MARCH 27, 2017

Referred to Committee on Transportation

SUMMARY—Authorizing a new vehicle dealer to file a claim for compensation with a manufacturer of motor vehicles under certain circumstances. (BDR 43-1024)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to new vehicle dealers; authorizing a new vehicle dealer to file, under certain circumstances, a claim for compensation with a manufacturer of motor vehicles relating to a used vehicle held by the new vehicle dealer which is subject to a stop-sale order or do-not-drive order; requiring a manufacturer of motor vehicles to provide compensation to a new vehicle dealer for the used vehicle under certain circumstances; establishing a rate for that compensation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, certain acts or practices by a manufacturer of motor vehicles toward a new vehicle dealer are considered unfair acts or practices. (NRS 482.36371-482.36395) For example, it is an unfair act or practice for a manufacturer to fail to compensate a dealer fairly for labor, parts and other expenses incurred by the dealer under the manufacturer's warranty agreements. (NRS 482.36385) Under federal law, if a new motor vehicle is subject to a recall for a defect related to safety or noncompliance with certain safety standards after the manufacturer has sold the vehicle to a new vehicle dealer, the manufacturer must repurchase the vehicle from the dealer, and pay the dealer reasonable reimbursement of at least 1 percent of the purchase price for each month, or portion thereof, the dealer possessed the car after the recall notice was issued. (49 U.S.C. § 30116)

Section 1 of this bill authorizes a new vehicle dealer that is franchised to sell new vehicles of the manufacturer to apply to the manufacturer for compensation for each month that the dealer possesses a used vehicle, manufactured by the manufacturer, that is subject to a stop-sale order or do-not-drive order. **Section 1**



requires the new vehicle dealer to file a claim for compensation with the manufacturer. Compensation for a claim filed pursuant to the provisions of this bill must be calculated at a rate of not less than 1 percent of the value of the used vehicle for each month that the used vehicle is in the inventory of the dealer, beginning 30 days after the stop-sale order or do-not-drive order is provided to the dealer. Finally, **section 1** prohibits a manufacturer from taking certain actions to offset or reduce the amount of compensation owed to the dealer for filing the claim. **Section 3.5** of this bill adds recall service and repair to the list of items for which a manufacturer must fairly compensate a dealer. (NRS 482.36385) **Section 4** of this bill adds a violation of **section 1** to provisions in existing law that authorize a person who is aggrieved by certain violations to seek injunctive relief, and that authorize a person who is injured in his or her business by such a violation to bring an action to recover certain monetary damages. (NRS 482.36423) **Section 5** of this bill adds a willful violation of **section 1** to the list of violations in existing law for which a civil penalty may apply, and for which the Attorney General may seek injunctive relief. (NRS 482.36425) **Section 2** of this bill makes conforming changes.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 482 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a manufacturer issues a recall and either a stop-sale order or a do-not-drive order on a used vehicle and parts or a remedy are not available to perform a recall service or repair on the vehicle within 30 days after issuing the recall, a new vehicle dealer that is franchised to sell and service new vehicles of the manufacturer is entitled to compensation from the manufacturer and may file a claim with the manufacturer for each used vehicle subject to the recall which the dealer:

(a) Has in its used vehicle inventory on the date on which the stop-sale order or do-not-drive order is issued; or

(b) Takes into its used car inventory as a consumer trade-in related to the sale of a new vehicle after the date on which the stop-sale order or do-not-drive order is issued.

2. A claim for compensation that is filed by a new vehicle dealer pursuant to this section:

(a) Must be in a form prescribed by the manufacturer. The manufacturer may prescribe the manner in which a dealer must demonstrate eligibility for such compensation, including, without limitation, the documentation required to show the inventory status of a used vehicle, provided that the demonstration of eligibility or the providing of documentation is not unduly burdensome.

(b) Except as otherwise provided in subsection 5, is subject to the provisions of NRS 482.36385.



1 3. Except as otherwise provided in subsections 4 and 5,
2 compensation for a used vehicle pursuant to this section must be
3 calculated at a rate of not less than 1 percent of the value of the
4 used vehicle per month, beginning 30 days after the date on which
5 the stop-sale order or do-not-drive order is provided to the dealer
6 and continuing until the earlier of the date:

7 (a) The parts or a remedy for the recall service or repair are
8 made available to the dealer; or

9 (b) The dealer sells, trades or otherwise disposes of the used
10 vehicle.

11 4. Compensation due to a new vehicle dealer pursuant to
12 subsection 1 is limited to an amount equal to the value of the used
13 vehicle for which the compensation is paid.

14 5. A manufacturer, in lieu of compensating a new vehicle
15 dealer pursuant to subsection 3, may:

16 (a) Compensate the dealer pursuant to a national recall
17 compensation program, if the amount of compensation owed to
18 the dealer under the program is not less than the amount of
19 compensation owed to the dealer pursuant to subsection 3; or

20 (b) Enter into an agreement with the dealer for an alternative
21 form or amount of compensation.

22 6. A manufacturer may not take any action to offset or reduce
23 the amount of compensation owed to a new vehicle dealer
24 pursuant to this section, including, without limitation, through a
25 chargeback program, any reduction in an amount owed to the new
26 vehicle dealer under an incentive program or the removal of the
27 new vehicle dealer from an incentive program, if such action is
28 taken, in whole or in part, because the new vehicle dealer filed a
29 claim for compensation pursuant to this section. This subsection:

30 (a) Does not apply to any action taken by a manufacturer that
31 is applied uniformly to all new vehicle dealers of the same line and
32 make of vehicles in this State; and

33 (b) Is subject to the audit provisions of subsections 7 and 8 of
34 NRS 482.36385.

35 7. Except as otherwise provided in subsection 5 and NRS
36 482.36385, any compensation provided to a new vehicle dealer
37 pursuant to this section is exclusive and may not be combined with
38 any other state or federal recall compensation remedy.

39 8. As used in this section:

40 (a) "Do-not-drive order" means a notification issued by a
41 manufacturer to its dealers or to the registered owner of a used
42 vehicle or by the National Highway Traffic Safety Administration
43 to the registered owner of a used vehicle stating that the vehicle is
44 subject to a federal safety recall for a defect or noncompliance.



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1 (b) "*Recall*" means a safety recall of a vehicle in accordance
2 with federal law and any regulations adopted thereunder.

3 (c) "*Stop-sale order*" means a notification issued by a
4 manufacturer to its dealers stating that a used vehicle in inventory
5 must not be sold or leased, either retail or wholesale, because of a
6 federal safety recall for a defect or noncompliance or because of a
7 federal emissions recall.

8 (d) "*Value of the used vehicle*" means the average trade-in
9 value of the year, make and model of the subject used vehicle as
10 indicated in an independent third-party guide.

11 **Sec. 2.** NRS 482.36311 is hereby amended to read as follows:
12 482.36311 As used in NRS 482.36311 to 482.36425, inclusive,
13 *and section 1 of this act*, unless the context otherwise requires, the
14 words and terms defined in NRS 482.36318 to 482.36348, inclusive,
15 have the meanings ascribed to them in those sections.

16 **Sec. 3.** (Deleted by amendment.)

17 **Sec. 3.5.** NRS 482.36385 is hereby amended to read as
18 follows:

19 482.36385 It is an unfair act or practice for any manufacturer,
20 distributor or factory branch, directly or through any representative,
21 to:

22 1. Compete with a dealer. A manufacturer or distributor shall
23 not be deemed to be competing when operating a previously
24 existing dealership temporarily for a reasonable period, or in a bona
25 fide retail operation which is for sale to any qualified person at a fair
26 and reasonable price, or in a bona fide relationship in which a
27 person has made a significant investment subject to loss in the
28 dealership and can reasonably expect to acquire full ownership of
29 the dealership on reasonable terms and conditions.

30 2. Discriminate unfairly among its dealers, or fail without good
31 cause to comply with franchise agreements, with respect to warranty
32 reimbursement or authority granted to its dealers to make warranty
33 adjustments with retail customers.

34 3. Fail to compensate a dealer fairly for the work and services
35 which the dealer is required to perform in connection with the
36 delivery and preparation obligations under any franchise, or fail to
37 compensate a dealer fairly for labor, parts and other expenses
38 incurred by the dealer under the manufacturer's warranty
39 agreements ~~+~~ *or any recall service or repairs*. The manufacturer
40 shall set forth in writing the respective obligations of a dealer and
41 the manufacturer in the preparation of a vehicle for delivery, and as
42 between them a dealer's liability for a defective product is limited to
43 the obligation so set forth. Fair compensation includes diagnosis and
44 reasonable administrative and clerical costs. The dealer's
45 compensation for parts and labor to satisfy a warranty *or a recall*



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1 *service or repair* must not be less than the amount of money
2 charged to its various retail customers for parts and labor that are
3 not covered by a warranty. If parts are supplied by the manufacturer,
4 including exchanged parts and assembled components, the dealer is
5 entitled with respect to each part to an amount not less than the
6 dealer's normal retail markup for the part. This subsection does not
7 apply to compensation for any part, system, fixture, appliance,
8 furnishing, accessory or feature of a motor home or recreational
9 vehicle that is designed, used and maintained primarily for
10 nonvehicular, residential purposes.

11 4. Fail to:

12 (a) Pay all claims made by dealers for compensation for delivery
13 and preparation work, transportation claims, special campaigns and
14 work to satisfy warranties *and recall service or repairs* within 30
15 days after approval, or fail to approve or disapprove such claims
16 within 30 days after receipt;

17 (b) Disapprove any claim without notice to the dealer in writing
18 of the grounds for disapproval; or

19 (c) Accept an amended claim for labor and parts if the amended
20 claim is submitted not later than 60 days after the date on which the
21 manufacturer or distributor notifies the dealer that the claim has
22 been disapproved and the disapproval was based on the dealer's
23 failure to comply with a specific requirement for processing the
24 claim, including, without limitation, a clerical error or other
25 administrative technicality that does not relate to the legitimacy of
26 the claim.

27 ➤ Failure to approve or disapprove or to pay within the specified
28 time limits in an individual case does not constitute a violation of
29 this section if the failure is because of reasons beyond the control of
30 the manufacturer, distributor or factory branch.

31 5. Sell a new vehicle to a person who is not licensed as a new
32 vehicle dealer under the provisions of this chapter.

33 6. Use false, deceptive or misleading advertising or engage in
34 deceptive acts in connection with the manufacturer's or distributor's
35 business.

36 7. Perform an audit to confirm a *claim for compensation*
37 *pursuant to section 1 of this act*, warranty repair, sales incentive or
38 rebate more than 9 months after the date on which the claim was
39 made. An audit of a dealer's records pursuant to this subsection may
40 be conducted by the manufacturer or distributor on a reasonable
41 basis, and a dealer's claim for warranty or sales incentive
42 compensation *or compensation pursuant to section 1 of this act*
43 must not be denied except for good cause, including, without
44 limitation, performance of nonwarranty repairs, lack of material
45 documentation, fraud or misrepresentation. A dealer's failure to



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1 comply with the specific requirements of the manufacturer or
2 distributor for processing the claim does not constitute grounds for
3 the denial of the claim or the reduction of the amount of
4 compensation to the dealer if reasonable documentation or other
5 evidence has been presented to substantiate the claim. The
6 manufacturer or distributor shall not deny a claim or reduce the
7 amount of compensation to the dealer for warranty repairs to resolve
8 a condition discovered by the dealer during the course of a separate
9 repair.

10 8. Prohibit or prevent a dealer from appealing the results of an
11 audit to confirm a warranty repair, sales incentive , *claim for*
12 *compensation made pursuant to section 1 of this act* or rebate, or
13 to require that such an appeal be conducted at a location other than
14 the dealer's place of business.

15 **Sec. 4.** NRS 482.36423 is hereby amended to read as follows:

16 482.36423 1. Whenever it appears that a person has violated,
17 is violating or is threatening to violate any provision of NRS
18 482.36311 to 482.36425, inclusive, *and section 1 of this act*, any
19 person aggrieved thereby may apply to the district court in the
20 county where the defendant resides, or in the county where the
21 violation or threat of violation occurs, for injunctive relief to restrain
22 the person from continuing the violation or threat of violation.

23 2. In addition to any other judicial relief, any dealer or person
24 who assumes the operation of a franchise pursuant to NRS
25 482.36396 to 482.36414, inclusive, who is injured in his or her
26 business or property by reason of a violation of NRS 482.36311 to
27 482.36425, inclusive, *and section 1 of this act* may bring an action
28 in the district court in which the dealership is located, and may
29 recover three times the pecuniary loss sustained by the dealer or
30 person, and the cost of suit, including a reasonable attorney's fee.
31 The amount of pecuniary loss sustained by a dealer, pursuant to
32 subsection 7 of NRS 482.3638, is the fair market value of the
33 franchised dealership at the time of notification of termination,
34 refusal to continue or unilateral modification of a franchise.

35 3. Any artificial person created and existing under the laws of
36 any other state, territory, foreign government or the government of
37 the United States, or any person residing outside the State, who
38 grants a franchise to any dealer in this State may be served with any
39 legal process in any action for injunctive relief or civil damages in
40 the following manner:

41 (a) By delivering a copy of the process to the Director; and

42 (b) By mailing to the last known address of the manufacturer or
43 distributor, by certified mail, return receipt requested, a copy of the
44 summons and a copy of the complaint, together with copies of any
45 petition or order for injunctive relief.



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1 4. The defendant has 30 days, exclusive of the day of service,
2 within which to answer or plead.

3 5. The method of service provided in this section is cumulative
4 and may be utilized with, after or independently of all other methods
5 of service.

6 **Sec. 5.** NRS 482.36425 is hereby amended to read as follows:

7 482.36425 1. Any manufacturer or distributor who willfully
8 violates any provision of NRS 482.36311 to 482.36425, inclusive,
9 *and section 1 of this act* is subject to a civil penalty of not less than
10 \$50 nor more than \$1,000 for each day of violation and for each act
11 of violation. All civil penalties recovered must be paid to the State
12 of Nevada.

13 2. Whenever it appears that a manufacturer or distributor has
14 violated, is violating or is threatening to violate any provision of
15 NRS 482.36311 to 482.36425, inclusive, *and section 1 of this act*,
16 the Attorney General may institute a civil suit in any district court of
17 this State for injunctive relief to restrain the violation or threat of
18 violation or, if the violation or threat is willful, for the assessment
19 and recovery of the civil penalty, or both.

20 **Sec. 6.** This act becomes effective upon passage and approval.

