

Amendment No. 360

Assembly Amendment to Assembly Bill No. 410	(BDR 43-1024)
Proposed by: Assembly Committee on Transportation	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

DLJ/JRS



Date: 4/19/2017

A.B. No. 410—Authorizing a new vehicle dealer to file a claim for compensation with a manufacturer of motor vehicles under certain circumstances. (BDR 43-1024)



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.

~

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 ~~notification~~ 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 ~~for~~ the manufacturer for compensation for each month ~~or portion thereof~~ that the dealer possesses a used vehicle, manufactured by the manufacturer, that is subject to a stop-sale ~~notification~~ order or do-not-drive ~~notification~~ order. **Section 1** requires the new vehicle dealer to file a claim for compensation with the manufacturer ~~and requires the manufacturer to approve the claim if the claim meets certain requirements~~. Compensation for a claim filed pursuant to the provisions of this bill must be calculated at a rate of ~~2-4%~~ not less than 1 percent of the value of the used vehicle for each month ~~or portion thereof~~ 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 ~~or (2) retaliate against 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) ~~Sections 2 and 3 of this bill make~~ Section 2 (and 3) 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. ~~A new vehicle dealer which has in its inventory a used vehicle which is subject to a stop sale notification or a do not drive notification may file a claim for compensation with the~~ If a manufacturer ~~of the vehicle as provided in this section. The~~ 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 ~~for each month or portion thereof, that the used vehicle~~

— (a) Remains and may file a claim with the manufacturer for each used vehicle subject to the recall which the dealer:

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

(b) ~~Is subject to a stop sale notification or a do not drive notification.~~ 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 ~~new vehicle dealer must file a~~ claim for compensation that is filed by a new vehicle dealer pursuant to this section ~~and~~ :

(a) Must be in a form prescribed ~~and made available~~ 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.

3. ~~Upon receipt of a claim for compensation filed pursuant to subsection 2 a manufacturer must:~~

— (a) Approve or deny the claim within 30 days after receipt of the claim. A claim that is not denied by the manufacturer within 30 days after receipt of the claim shall be deemed approved.

— (b) Approve a claim that meets the requirements of this section.

— (c) Provide the claimant a reason and basis for the denial of any claim by the manufacturer.

4. ~~Compensation from a manufacturer to a new vehicle dealer.~~ Except as otherwise provided in subsections 4 and 5, compensation for a used vehicle

pursuant to this section must be calculated at a rate of ~~{2.43}~~ not less than 1 percent of the value of the used vehicle ~~{which is subject to a stop sale notification or a do not drive notification for each}~~ per month, for portion thereof, pursuant to subsection 1. The value of the vehicle must be established using the pricing information and tools created by National Appraisal Guides, Inc., or its successor, that is current at the time for which compensation pursuant to this section is sought.

~~5.1~~ beginning 30 days after the date on which the stop-sale order or do-not-drive order is provided to the dealer and continuing until the earlier of the date:

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

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

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

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

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

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

6. A manufacturer may not take any action to ~~+~~

~~(a) Offset~~ offset or reduce the amount of compensation owed to a new vehicle dealer pursuant to this section, including, without limitation, through a chargeback program, ~~for~~ any reduction in an amount owed to the new vehicle dealer under an incentive program ~~++~~ or

~~(b) Retaliate against a new vehicle dealer for filing a claim for compensation pursuant to this section by taking any action that adversely affects the new vehicle dealer, including, without limitation,~~ the removal of the new vehicle dealer from an incentive program, if such action is taken, in whole or in part, because the new vehicle dealer filed a claim for compensation pursuant to this section.

~~6. The provisions of this section do not apply to the extent preempted by federal law.~~ This subsection:

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

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

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

8. As used in this section:

(a) "Do-not-drive {notification"} order" means a notification {from} issued by a manufacturer {pursuant to 49 C.F.R. § 577.5} to its dealers or to the registered owner of a used vehicle or by the National Highway Traffic Safety Administration {pursuant to 49 C.F.R. § 577.6 which has the effect of forbidding the operation of a specific model of vehicle until the defect or noncompliance which is the subject of the notification is remedied,} to the registered owner of a

used vehicle stating that the vehicle is subject to a federal safety recall for a defect or noncompliance.

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

(c) "Stop-sale ~~(notification)~~ order" means a notification ~~(from)~~ issued by a manufacturer ~~(pursuant to 49 C.F.R. § 577.5 or the National Highway Traffic Safety Administration pursuant to 49 C.F.R. § 577.6 which has the effect of prohibiting the sale of a specific model of vehicle by a new vehicle dealer until they to its dealers stating that a used vehicle in inventory must not be sold or leased, either retail or wholesale, because of a federal safety recall for a defect or noncompliance which is the subject of the notification is remedied.)~~ or because of a federal emissions recall.

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

Sec. 2. NRS 482.36311 is hereby amended to read as follows:

482.36311 As used in NRS 482.36311 to 482.36425, inclusive, and section 1 of this act, unless the context otherwise requires, the words and terms defined in NRS 482.36318 to 482.36348, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. ~~NRS 482.36349 is hereby amended to read as follows:~~

~~482.36349 A manufacturer is not subject to the provisions of NRS 482.36311 to 482.36425, inclusive, and section 1 of this act if the manufacturer:~~

~~1. Only manufactures passenger cars powered solely by one or more electric motors;~~

~~2. Only sells at retail new or new and used passenger cars that it manufactures; and~~

~~3. Was selling such passenger cars at retail in this State on or before January 1, 2016.~~ (Deleted by amendment.)

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

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

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

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

3. Fail to compensate a dealer fairly for the work and services which the dealer is required to perform in connection with the delivery and preparation obligations under any franchise, or fail to compensate a dealer fairly for labor, parts and other expenses incurred by the dealer under the manufacturer's warranty agreements ++ or any recall service or repairs. The manufacturer shall set forth in writing the respective obligations of a dealer and the manufacturer in the preparation of a vehicle for delivery, and as between them a dealer's liability for a defective product is limited to the obligation so set forth. Fair compensation includes diagnosis and reasonable administrative and clerical costs. The dealer's compensation for parts and labor to satisfy a warranty or a recall service or repair must not be less than the amount of money charged to its various retail customers

for parts and labor that are not covered by a warranty. If parts are supplied by the manufacturer, including exchanged parts and assembled components, the dealer is entitled with respect to each part to an amount not less than the dealer's normal retail markup for the part. This subsection does not apply to compensation for any part, system, fixture, appliance, furnishing, accessory or feature of a motor home or recreational vehicle that is designed, used and maintained primarily for nonvehicular, residential purposes.

4. Fail to:

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

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

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

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

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

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

7. Perform an audit to confirm a claim for compensation pursuant to section 1 of this act, warranty repair, sales incentive or rebate more than 9 months after the date on which the claim was made. An audit of a dealer's records pursuant to this subsection may be conducted by the manufacturer or distributor on a reasonable basis, and a dealer's claim for warranty or sales incentive compensation or compensation pursuant to section 1 of this act must not be denied except for good cause, including, without limitation, performance of nonwarranty repairs, lack of material documentation, fraud or misrepresentation. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for processing the claim does not constitute grounds for the denial of the claim or the reduction of the amount of compensation to the dealer if reasonable documentation or other evidence has been presented to substantiate the claim. The manufacturer or distributor shall not deny a claim or reduce the amount of compensation to the dealer for warranty repairs to resolve a condition discovered by the dealer during the course of a separate repair.

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

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

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

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

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

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

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

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

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

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

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

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

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