

Amendment No. 811

Senate Amendment to Assembly Bill No. 410 First Reprint	(BDR 43-1024)
Proposed by: Senate Committee on Transportation	
Amends: Summary: No Title: No 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/AAK



Date: 5/19/2017

A.B. No. 410—Authorizes 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—Authorizes 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 such 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.

3. 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 not less than 1 percent of the value of the used vehicle per month, 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 offset or reduce the amount of compensation owed to a new vehicle dealer pursuant to this section, including, without limitation, through a chargeback program, any reduction in an amount owed to the new vehicle dealer under an incentive program or 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. 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 order" means a notification issued by a manufacturer to its dealers or to the registered owner of a used vehicle or by the National Highway Traffic Safety Administration to the registered owner of a used vehicle stating that the vehicle is subject to a federal safety recall for a defect or noncompliance ~~that~~ and including an unconditional instruction to the recipient of the notification to not drive the vehicle until the remedy for the recall is complete.

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

(c) "Stop-sale order" means a notification issued by a manufacturer 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 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. (Deleted by amendment.)

Sec. 3.3. NRS 482.36349 is hereby amended to read as follows:

482.36349 ~~1. A~~

1. Except as otherwise provided in subsection 2, 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. (a)~~ (a) Only manufactures passenger cars powered solely by one or more electric motors;

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

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

2. A manufacturer described in subsection 1 is subject to the provisions of section 1 of this act.

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

2 482.36385 It is an unfair act or practice for any manufacturer, distributor or
3 factory branch, directly or through any representative, to:

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

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

14 3. Fail to compensate a dealer fairly for the work and services which the
15 dealer is required to perform in connection with the delivery and preparation
16 obligations under any franchise, or fail to compensate a dealer fairly for labor, parts
17 and other expenses incurred by the dealer under the manufacturer's warranty
18 agreements ~~+~~ *or any recall service or repairs*. The manufacturer shall set forth in
19 writing the respective obligations of a dealer and the manufacturer in the
20 preparation of a vehicle for delivery, and as between them a dealer's liability for a
21 defective product is limited to the obligation so set forth. Fair compensation
22 includes diagnosis and reasonable administrative and clerical costs. The dealer's
23 compensation for parts and labor to satisfy a warranty *or a recall service or repair*
24 must not be less than the amount of money charged to its various retail customers
25 for parts and labor that are not covered by a warranty. If parts are supplied by the
26 manufacturer, including exchanged parts and assembled components, the dealer is
27 entitled with respect to each part to an amount not less than the dealer's normal
28 retail markup for the part. This subsection does not apply to compensation for any
29 part, system, fixture, appliance, furnishing, accessory or feature of a motor home or
30 recreational vehicle that is designed, used and maintained primarily for
31 nonvehicular, residential purposes.

32 4. Fail to:

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

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

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

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

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

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

52 7. Perform an audit to confirm a *claim for compensation pursuant to section*
53 *1 of this act*, warranty repair, sales incentive or rebate more than 9 months after the

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

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

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

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

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

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

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

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

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

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

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

49 482.36425 1. Any manufacturer or distributor who willfully violates any
50 provision of NRS 482.36311 to 482.36425, inclusive, *and section 1 of this act* is
51 subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of
52 violation and for each act of violation. All civil penalties recovered must be paid to
53 the State of Nevada.

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

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