Session of 2018

SENATE BILL No. 324

By Committee on Transportation

1-24

AN ACT concerning the vehicle dealers and manufacturers licensing act; relating to improvements to facilities; performance measurements; recall repairs.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this section:

(1) "Manufacturer" means a first or second stage manufacturer of vehicles, factory branch, distributor or factory representative, officer or agent or any representative thereof;

(2) "substantial reimbursement" means an amount equal to or greater than the cost of the savings that would result if the dealer were to utilize a vendor of the dealer's own selection instead of using the vendor identified by the manufacturer; and

(3) "goods" does not include moveable displays, brochures and promotional materials containing material subject to the intellectual property rights of the manufacturer.

(b) Notwithstanding the terms and conditions of any franchise agreement, including any policy, bulletin, practice or guideline with respect thereto or performance thereunder, and in addition to the other provisions of the vehicle dealers and manufacturers licensing act, K.S.A. 8-2401 et seq., and amendments thereto:

(1) No manufacturer shall coerce or require any vehicle dealer to construct improvements to facilities or install new signs or other franchise or image elements that replace or substantially alter improvements, signs or franchise or image elements completed within the past 10 years that were required and approved by the manufacturer or one of its contractors or affiliates. For the purposes of this subsection, the term "substantially alter" does not include routine maintenance, including, but not limited to, interior painting that is reasonably necessary to keep a dealer facility in attractive condition.

(2) The 10-year period set forth under this section shall begin to run for a vehicle dealer, including that dealer's successors and assigns, on the date that the manufacturer gave final written approval of the facility, facility improvements or installation of signs or other franchise or image elements or the date that the dealer receives a certificate of occupancy, whichever is later.

(3) (A) No manufacturer shall require a vehicle dealer to purchase goods or services to make improvements to the dealer's facilities from a vendor selected, identified or designated by the manufacturer or one of its contractors or affiliates by agreement, program, incentive provision or bulletin or otherwise without allowing or making available to the dealer the option to obtain goods or services of substantially similar kind, quality and overall design from a vendor chosen by the dealer and approved by the manufacturer, except that approval by the manufacturer shall not be unreasonably withheld and the dealer's option to select a vendor shall not be available if the manufacturer provides substantial reimbursement for the goods or services offered.

(B) This section is not intended to prohibit a manufacturer from requiring changes or updates to signs that contain the manufacturer brand, logo or other intellectual property protected by federal intellectual property law more frequently than every 10 years, provided the manufacturer offers the dealer compensation for the sign or pays for the sign if sign changes are required more than every five years.

(4) Any manufacturer that has established, implemented or enforced criteria for measuring the sales or service performance of any of its new vehicle dealers that have a material or adverse effect on any vehicle dealer and that:

(A) Are unfair, unreasonable, arbitrary or inequitable; or

(B) do not consider the relevant and material local and regional criteria, data and facts, including those presented by the dealer, shall not be used to evaluate any dealer. Such prohibited sales and service performance criteria shall not be relied upon for the purposes of canceling, terminating or non-renewing a franchise agreement with a dealer or otherwise relied upon for purposes related to K.S.A. 8-2414 or 8-2416, and amendments thereto. Relevant and material criteria, data or facts include, but are not limited to, those motor vehicle dealerships of comparable size and comparable markets. If such performance measurement criteria are based in whole or in part on a survey, that survey must be based on a statistically significant and valid random sample. Additionally, prevailing economic or other conditions affecting the sales or service performance of a vehicle dealer must be considered and taken into account in relying upon any performance measurement or criteria or standard. A manufacturer, contractor or common entity or an affiliate that enforces against any vehicle dealer any such performance measurement criteria shall, upon the request of the dealer, describe in writing to the dealer, in detail, how the performance measurement criteria were calculated and uniformly applied and shall also provide any data upon which it relied in reaching the performance standard and applying it to the dealer.

(c) This section shall be a part of and supplemental to the vehicle

dealers and manufacturers licensing act.

Sec. 2. (a) As used in this section:

(1) "Manufacturer" means a first or second stage manufacturer of vehicles, factory branch, distributor or factory representative, officer or agent or any representative thereof or any other person acting on their behalf;

(2) "stop-sale order" means a notification or its equivalent issued by a manufacturer to its franchised new vehicle dealer stating that certain motor vehicles in inventory shall not be sold or leased, at either retail or wholesale, due to a federal safety recall for a defect or noncompliance or a federal emissions recall; and

(3) "do-not-drive order" means a notification or its equivalent issued by the national highway traffic safety administration that prohibits the sale or operation of certain motor vehicles held in inventory due to a federal safety recall for a defect or non-compliance or a federal emissions recall.

(b) A manufacturer shall compensate its new vehicle dealers for all labor and parts required to perform recall repairs. Compensation for recall repairs shall be reasonable. If parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by a vehicle dealer authorized to sell and service new vehicles of the same line-make within 30 days of the manufacturer issuing the initial notice of recall, and the manufacturer has issued a stop-sale or do-not-drive order on the vehicle, then the manufacturer shall compensate the dealer at the prorated rate of at least 1% of the value of the vehicle per month beginning on the date that is 30 days after the date on which the stop-sale or do-not-drive order was provided to the dealer until the earlier of either:

(1) The date the recall or remedy parts are made available; or

(2) the date the dealer sells, trades or otherwise disposes of the affected used motor vehicle.

The value of a used vehicle shall be the average trade-in value for used vehicles as indicated in an independent third party guide for the year, make and model of the recalled vehicle.

(c) This section shall apply only to used vehicles subject to safety or emissions recalls pursuant to, and recalled in accordance with, federal law as well as rules and regulations adopted thereunder where a stop-sale or do-not-drive order has been issued and repair parts or remedy parts remain unavailable for 30 days or longer. Furthermore, this section shall apply only to new vehicle dealers holding an affected used vehicle for sale:

(1) In inventory at the time the stop-sale or do-not-drive order was issued; or

(2) that was taken into the used vehicle inventory of the dealer as a consumer trade-in incident to the purchase of a new vehicle from the

dealer after the stop-sale or do-not-drive order was issued; and

(3) that are a line-make that the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

(d) It shall be a violation of this section for a manufacturer to reduce the amount of compensation otherwise owed to a new vehicle dealer, or otherwise retaliate, whether through a chargeback, removal of the individual dealer from an incentive program or reduction in the amount owed under an incentive program or any other means, solely because the new vehicle dealer has made or submitted a claim for reimbursement under this section. This subsection shall not apply to an action by a manufacturer that is applied uniformly among all dealers of the same line-make in the state.

(e) A manufacturer may direct the manner and method in which a vehicle dealer must demonstrate the inventory status and identification of the affected used vehicle to determine eligibility under this section, provided that the manner and method may not be unduly burdensome and may not require information that is unduly burdensome to provide.

(f) Nothing in this section shall require a manufacturer to provide total compensation to a vehicle dealer for any single unit that would exceed the total average trade-in value of the affected used motor vehicle as originally determined under subsection (b).

(g) Any remedy provided to a vehicle dealer under this section is exclusive and may not be combined with any other state or federal recall compensation remedy. It shall not be deemed to supersede or otherwise replace the provisions of K.S.A. 8-2419, and amendments thereto.

(h) This section shall be a part of and supplement to the vehicle dealers and manufacturers licensing act.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.