

Vehicle Dealer Facilities, Performance Criteria, and Recall Repairs; SB 324

SB 324 adds two sections to the Vehicle Dealers and Manufacturers Licensing Act (Act) on improvements to dealer facilities, dealer performance criteria, and recall repairs.

Improvements to Dealer Facilities

The bill prohibits a manufacturer (as defined in the bill) from coercing or requiring any vehicle dealer to construct improvements to facilities or install new signs that replace or substantially alter improvements or signs completed within the previous ten years that were required and approved by the manufacturer or one of its contractors or affiliates, notwithstanding the terms and conditions of any franchise agreement or related document. The ten-year period begins for a dealer, including that dealer's successor and assigns, when the manufacturer gives final written approval of the facility, improvements, or signs or the dealer receives a certificate of occupancy, whichever is later.

The bill prohibits a manufacturer from requiring a dealer to purchase goods or services for improvements from vendors selected, identified, or designated by the manufacturer without allowing the dealer to obtain goods or services of substantially similar kind, quality, and design from a vendor chosen by the dealer. The bill requires manufacturer approval of an alternate vendor and specifies approval by the manufacturer may not be unreasonably withheld. The option to choose an alternate vendor is not available if the manufacturer provides substantial reimbursement (as defined in the bill) for the goods or services. The bill specifies the term "goods" does not include moveable displays, brochures, and promotional materials containing material subject to the intellectual property rights of the manufacturer.

The bill states this section is not intended to prohibit a manufacturer from requiring changes or updates to signs more frequently than every ten years if the manufacturer offers the dealer compensation for the sign or pays for the sign if the sign changes are required more than every five years.

Dealer Performance Criteria

The bill prohibits a manufacturer from using criteria that are unfair, unreasonable, arbitrary, or inequitable or that do not consider local and state or regional criteria, data, and facts presented by the dealer in writing to evaluate any dealer's sales or service performance. The prohibited criteria cannot be used for purposes of canceling, terminating, or non-renewing a franchise agreement with a dealer or assigning the dealership to another person. The bill requires prevailing economic or other conditions affecting sales or service performance to be taken into account by the manufacturer and state relevant and material criteria, data, or facts include, but are not limited to, dealerships of comparable size in comparable markets, geographic and market characteristics in the new vehicle dealer's area, proximity to the motor vehicle manufacturing facilities, buying patterns and consumer preferences, and customer drive time and distance. If any performance measurement criteria are based in whole or in part on a survey, the bill requires the survey be based on a statistically significant and valid random sample or survey a majority of customers if the survey measures customer satisfaction.

Recall Repairs

The bill requires a manufacturer to provide reasonable compensation to its new vehicle dealers for all labor and parts required to perform recall repairs. A manufacturer is required to compensate a dealer in one of two ways:

- At the prorated rate of at least 1.0 percent of the value of the vehicle per month if, after 30 days, 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 the same line-make of new vehicles and the manufacturer has issued a stop-sale or do-not-drive order on the vehicle; the period ends the date the parts are made available or the date the dealer sells, trades, or otherwise disposes of the vehicle; or
- Under a national recall compensation program, provided the compensation under the program is equal to or greater than the compensation outlined above, or as the manufacturer and dealer otherwise agree.

The bill defines both stop-sale and do-not-drive orders. The recall repair provisions apply only to used vehicles subject to safety or emissions recalls that are held by dealers of new vehicles and only to vehicles in inventory when the order is issued or taken into inventory as a trade-in incident to new vehicle purchases after the order was issued.

The bill states it will be a violation of this section for a manufacturer to reduce compensation to a new vehicle dealer or otherwise retaliate solely because the dealer has made a claim for reimbursement under this section, but it excludes an action by a manufacturer applied uniformly among all dealers of the same line-make in the state.

The bill authorizes a manufacturer to direct the manner and method in which a dealer must demonstrate the inventory status of a vehicle affected by a stop-sale or do-not-drive order, provided the manner and method are not unduly burdensome or require information that is unduly burdensome to provide.

The bill states a manufacturer will not be required to provide total compensation to a dealer for any single unit that exceeds the total average trade-in value of the affected used vehicle.

The bill states any remedy provided under this section is exclusive and may not be combined with any other recall compensation remedy. Also, it will not supersede or otherwise replace provisions in continuing law regarding liability of manufacturers and distributors for defects in equipment.