

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:

1 Under existing law, certain acts or practices by a manufacturer of motor
2 vehicles toward a new vehicle dealer are considered unfair acts or practices. (NRS
3 482.36371-482.36395) For example, it is an unfair act or practice for a
4 manufacturer to fail to compensate a dealer fairly for labor, parts and other
5 expenses incurred by the dealer under the manufacturer’s warranty agreements.
6 (NRS 482.36385) Under federal law, if a new motor vehicle is subject to a recall
7 for a defect related to safety or noncompliance with certain safety standards
8 after the manufacturer has sold the vehicle to a new vehicle dealer, the
9 manufacturer must repurchase the vehicle from the dealer, and pay the dealer
10 reasonable reimbursement of at least 1 percent of the purchase price for each
11 month, or portion thereof, the dealer possessed the car after the recall notice was
12 issued. (49 U.S.C. § 30116)

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



* A B 4 1 0 R 2 *

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

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

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

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

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

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

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

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

25 *(b) Except as otherwise provided in subsection 5, is subject to
26 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 and*
45 *including an unconditional instruction to the recipient of the*



1 *notification to not drive the vehicle until the remedy for the recall*
2 *is complete.*

3 (b) *“Recall” means a safety recall of a vehicle in accordance*
4 *with federal law and any regulations adopted thereunder.*

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

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

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

14 482.36311 As used in NRS 482.36311 to 482.36425, inclusive,
15 *and section 1 of this act*, unless the context otherwise requires, the
16 words and terms defined in NRS 482.36318 to 482.36348, inclusive,
17 have the meanings ascribed to them in those sections.

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

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

21 482.36349 ~~1A~~

22 *1. Except as otherwise provided in subsection 2, a*
23 *manufacturer is not subject to the provisions of NRS 482.36311 to*
24 *482.36425, inclusive, and section 1 of this act* if the manufacturer:

25 ~~1A~~ (a) Only manufactures passenger cars powered solely by
26 one or more electric motors;

27 ~~1B~~ (b) Only sells at retail new or new and used passenger cars
28 that it manufactures; and

29 ~~1C~~ (c) Was selling such passenger cars at retail in this State on
30 or before January 1, 2016.

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

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

35 482.36385 It is an unfair act or practice for any manufacturer,
36 distributor or factory branch, directly or through any representative,
37 to:

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



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

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

27 4. Fail to:

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

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

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

43 ➤ Failure to approve or disapprove or to pay within the specified
44 time limits in an individual case does not constitute a violation of



1 this section if the failure is because of reasons beyond the control of
2 the manufacturer, distributor or factory branch.

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

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

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

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

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

33 482.36423 1. Whenever it appears that a person has violated,
34 is violating or is threatening to violate any provision of NRS
35 482.36311 to 482.36425, inclusive, *and section 1 of this act*, any
36 person aggrieved thereby may apply to the district court in the
37 county where the defendant resides, or in the county where the
38 violation or threat of violation occurs, for injunctive relief to restrain
39 the person from continuing the violation or threat of violation.

40 2. In addition to any other judicial relief, any dealer or person
41 who assumes the operation of a franchise pursuant to NRS
42 482.36396 to 482.36414, inclusive, who is injured in his or her
43 business or property by reason of a violation of NRS 482.36311 to
44 482.36425, inclusive, *and section 1 of this act* may bring an action
45 in the district court in which the dealership is located, and may



1 recover three times the pecuniary loss sustained by the dealer or
2 person, and the cost of suit, including a reasonable attorney's fee.
3 The amount of pecuniary loss sustained by a dealer, pursuant to
4 subsection 7 of NRS 482.3638, is the fair market value of the
5 franchised dealership at the time of notification of termination,
6 refusal to continue or unilateral modification of a franchise.

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

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

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

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

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

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

24 482.36425 1. Any manufacturer or distributor who willfully
25 violates any provision of NRS 482.36311 to 482.36425, inclusive,
26 *and section 1 of this act* is subject to a civil penalty of not less than
27 \$50 nor more than \$1,000 for each day of violation and for each act
28 of violation. All civil penalties recovered must be paid to the State
29 of Nevada.

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

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

