

2018 Regular Session

SENATE BILL NO. 126

BY SENATOR MARTINY

MOTOR VEHICLES. Provides relative to recall repairs. (8/1/18)

1 AN ACT

2 To enact R.S. 32:1264.2, relative to recall repairs; to provide for definitions; to provide for
3 reimbursement claims; to provide for compensation to a dealer under certain
4 circumstances; to provide for terms, conditions, and procedures; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 32:1264.2 is hereby enacted to read as follows:

8 **§1264.2. Recall repairs; compensation**

9 **A. As used in this Section:**

10 **(1) "Stop sale order" means a notification issued by a manufacturer,**
11 **distributor, factory branch, or distributor branch to its franchised new motor**
12 **vehicle dealers stating that certain used vehicles in inventory shall not be sold**
13 **or leased, at either retail or wholesale, due to a federal safety recall for a defect**
14 **or a noncompliance, or a federal emissions recall.**

15 **(2) "Do not drive order" means a notification issued by a manufacturer,**
16 **distributor, factory branch, or distributor branch stating that certain used**
17 **vehicles shall not be driven due to a federal safety recall for a defect or a**

1 noncompliance, or a federal emissions recall. Such notification shall include an
2 unconditional instruction to the recipient to not drive the vehicle until the
3 remedy for the recall is complete.

4 B.(1)(a) A manufacturer shall compensate its new motor vehicle dealers
5 for all labor and parts required by the manufacturer to perform recall repairs.
6 Compensation for recall repairs shall be reasonable.

7 (b) If parts or a remedy are not reasonably available to perform a recall
8 service or repair on an affected used vehicle held for sale by a dealer authorized
9 to sell and service new vehicles of the same line-make or authorized to perform
10 recall work on an affected vehicle within forty-five days of the manufacturer
11 issuing the initial notice of recall, and the manufacturer has issued a stop sale
12 order or do not drive order on the vehicle, the manufacturer shall compensate
13 the dealer at a prorated rate of at least one and one-quarter percent of the value
14 of the vehicle per month. Compensation shall begin forty-five days after the
15 date on which the stop sale order or do not drive order was provided to the
16 dealer. Compensation shall cease when one of the following events occurs:

17 (i) The date the recall remedy or parts are made available.

18 (ii) The date the stop sale order or do not drive order is withdrawn.

19 (iii) The date the dealer disposes of the affected used vehicle.

20 (2) For the purposes of this Section, the value of a used vehicle shall be
21 the average trade-in value for used vehicles as indicated in an independent
22 third-party guide for the year, make, and model of the recalled vehicle.

23 C. The provisions of this Section shall apply only to:

24 (1) Used vehicles subject to safety or emissions recalls pursuant to and
25 recalled in accordance with federal law and regulations adopted thereunder and
26 when a stop sale order or do not drive order has been issued and repair parts
27 or remedy remain unavailable for forty-five days or longer in accordance with
28 Subsection (B)(1) of this Section.

29 (2) New motor vehicle dealers holding an affected used vehicle for sale

1 in inventory at the time the stop sale order or do not drive order was issued.

2 (3) New motor vehicle dealers holding an affected used vehicle for sale
3 that is a line-make that the dealer is franchised to sell or one which the dealer
4 is authorized to perform recall repairs and that was taken in the used vehicle
5 inventory of the dealer as a consumer trade-in incident to the purchase of a new
6 vehicle from the dealer after the stop sale order or do not drive order was issued
7 and when payments shall begin after the forty-fifth day that affected used
8 vehicle remains in the dealer's inventory and shall cease in accordance with
9 Subsection (B)(1) of this Section.

10 D.(1) Subject to the audit provisions of R.S. 32:1262, it shall be a
11 violation of this Section for a manufacturer to reduce the amount of
12 compensation otherwise owed to an individual new motor vehicle dealer solely
13 because the new motor vehicle dealer has submitted a claim for reimbursement
14 under this Section. This prohibition shall include reduction through a
15 chargeback, surcharge, removal of the individual dealer from an incentive
16 program, or reduction in amount owed under an incentive program.

17 (2) This Subsection shall not apply to an action by a manufacturer to
18 any prospective change, modification, cancellation, or elimination of any
19 incentive program that is applied uniformly among all dealers of the same
20 line-make in the state.

21 E. Pursuant to the provisions of this Section, all reimbursement claims
22 made by new motor vehicle dealers for recall remedies or repairs, or for
23 compensation where no part or repair is reasonably available and the vehicle
24 is subject to a stop sale order or do not drive order shall be subject to the same
25 limitations and requirements as a warranty reimbursement claim made under
26 R.S. 32:1262. However, a manufacturer may compensate its franchised dealers
27 under a national recall compensation program provided the compensation
28 under the program is equal to or greater than the compensation provided in
29 Subsection (B)(1) of this Section or as the manufacturer and dealer otherwise

1 agree.

2 F. A manufacturer may direct the manner and method in which a dealer
 3 shall demonstrate the inventory status of an affected used motor vehicle to
 4 determine eligibility under this Section, provided such manner and method may
 5 not be unduly burdensome and may not require information that is unduly
 6 burdensome to provide.

7 G. Nothing in this Section shall require a manufacturer to provide total
 8 compensation to a dealer that would exceed the total average trade-in value of
 9 an affected used motor vehicle as originally determined in Subsection (B)(1) of
 10 this Section.

11 H. Any remedy provided to a dealer under this Section is exclusive and
 12 shall not be combined with any other state or federal recall compensation
 13 remedy or other federal law.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ridge.

DIGEST

SB 126 Engrossed

2018 Regular Session

Martiny

Present law provides relative to regulation of vehicle manufacturers and dealers.

Present law provides relative to recall notices.

Proposed law provides relative to compensation for recall repairs.

Proposed law defines the following terms:

- (1) "Stop sale order" means a notification issued by a manufacturer, distributor, factory branch, or distributor branch to its franchised new motor vehicle dealers stating that certain used vehicles in inventory shall not be sold or leased, at either retail or wholesale, due to a federal safety recall for a defect or a noncompliance, or a federal emissions recall.
- (2) "Do not drive order" means a notification issued by a manufacturer, distributor, factory branch, or distributor branch stating that certain used vehicles shall not be driven due to a federal safety recall for a defect or a noncompliance, or a federal emissions recall. Such notification shall include an unconditional instruction to the recipient to not drive the vehicle until the remedy for the recall is complete.

Proposed law provides that a manufacturer shall compensate its new motor vehicle dealers for all labor and parts required by the manufacturer to perform recall repairs.

Proposed law provides if parts or a remedy are not reasonably available to perform a recall service or repair on an affected used vehicle held for sale by a dealer authorized to sell and

service new vehicles of the same line-make or authorized to perform recall work on an affected vehicle within 45 days of the manufacturer issuing the initial notice of recall and the manufacturer has issued a stop sale order or do not drive order on the vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least 1.25% of the value of the vehicle per month. Such compensation shall begin 45 days after the date on which the stop sale order or do not drive order was provided to the dealer and shall cease when one of the following events occurs:

- (1) The date the recall remedy or parts are made available.
- (2) The date the stop sale order or do not drive order is withdrawn.
- (3) The date the dealer disposes of the affected used vehicle.

Proposed law provides that 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.

Proposed law shall apply only to:

- (1) Used vehicles subject to safety or emissions recalls pursuant to and recalled in accordance with federal law and regulations adopted thereunder and when a stop sale order or do not drive order has been issued and repair parts or remedy remain unavailable for 45 days or longer in accordance with proposed law.
- (2) New motor vehicle dealers holding an affected used vehicle for sale in inventory at the time the stop sale order or do not drive order was issued.
- (3) New motor vehicle dealers holding an affected used vehicle for sale that is a line-make that the dealer is franchised to sell or one which the dealer is authorized to perform recall repairs and that was taken in 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 order or do not drive order was issued and when payments shall begin after the forty-fifth day that affected used vehicle remains in the dealer's inventory and shall cease in accordance with proposed law.

Proposed law provides that it is a violation for a manufacturer to reduce the amount of compensation otherwise owed to an individual new motor vehicle dealer solely because the new motor vehicle dealer has submitted a claim for reimbursement under proposed law.

Proposed law shall not apply to an action by a manufacturer to any prospective change, modification, cancellation, or elimination of any incentive program that is applied uniformly among all dealers of the same line-make in the state.

Proposed law provides that all reimbursement claims made by new motor vehicle dealers for recall remedies or repairs, or for compensation where no part or repair is reasonably available and the vehicle is subject to a stop sale order or do not drive order shall be subject to the same limitations and requirements as a warranty reimbursement claim made under certain provisions of law. However, a manufacturer may compensate its franchised dealers under a national recall compensation program provided the compensation under the program is equal to or greater than the compensation provided in proposed law, or the manufacturer and dealer otherwise agree.

Proposed law provides that a manufacturer may direct the manner and method in which a dealer shall demonstrate the inventory status of an affected used motor vehicle to determine eligibility under proposed law, provided that such manner and method may not be unduly burdensome and may not require information that is unduly burdensome to provide.

Proposed law provides that nothing shall require a manufacturer to provide total compensation to a dealer that would exceed the total average trade-in value of the affected used motor vehicle as originally determined in proposed law.

Proposed law provides that any remedy provided to a dealer is exclusive and may not be combined with any other state or federal recall compensation remedy or other federal law.

Effective August 1, 2018.

(Adds R.S. 32:1264.2)