

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 amend and reenact R.S. 32:1254(E)(5) and to enact R.S. 32:1264.2, relative to recall
3 repairs; to provide for definitions; to provide for reimbursement claims; to provide
4 for compensation to a dealer under certain circumstances; to provide for motor
5 vehicle repair and servicing facilities; to provide for terms, conditions, and
6 procedures; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 32:1254(E)(5) is hereby amended and reenacted and R.S. 32:1264.2
9 is hereby enacted to read as follows:

10 §1254. Application for license; requirements for licensure; contents; licenses;
11 franchise filings; exceptions

12 * * *

13 E. Additional licensing and compliance requirements for motor vehicle and
14 recreational products dealers.

15 * * *

16 (5)(a) The applicant must also furnish satisfactory evidence that the applicant
17 maintains adequate space in the building or structure wherein the applicant's

1 established business is conducted for the display of new motor vehicles or
2 recreational products, together with adequate facilities for the repair and servicing
3 of motor vehicles or recreational products and the storage of new parts and
4 accessories for same.

5 (b) Notwithstanding the provisions of Subparagraph (E)(5)(a) of this
6 Section and subject to written approval by the franchisor, adequate facilities for
7 the repair and servicing of motor vehicles may be physically located in a
8 building directly across a dedicated municipal street, but not more than one
9 thousand feet from the applicant's established place of business.

10 * * *

11 §1264.2. Recall repairs; compensation

12 A. As used in this Section:

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

18 (2) "Do not drive order" means a notification issued by a manufacturer,
19 distributor, factory branch, or distributor branch stating that certain used
20 vehicles shall not be driven due to a federal safety recall for a defect or a
21 noncompliance, or a federal emissions recall. Such notification shall include an
22 unconditional instruction to the recipient to not drive the vehicle until the
23 remedy for the recall is complete.

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

27 (b) If parts or a remedy are not reasonably available to perform a recall
28 service or repair on an affected used vehicle held for sale by a dealer authorized
29 to sell and service new vehicles of the same line-make or authorized to perform

1 recall work on an affected vehicle within forty-five days of the manufacturer
2 issuing the initial notice of recall, and the manufacturer has issued a stop sale
3 order or do not drive order on the vehicle, the manufacturer shall compensate
4 the dealer at a prorated rate of at least one and one-quarter percent of the value
5 of the vehicle per month. Compensation shall begin forty-five days after the
6 date on which the stop sale order or do not drive order was provided to the
7 dealer. Compensation shall cease when one of the following events occurs:

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

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

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

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

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

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

20 (2) New motor vehicle dealers holding an affected used vehicle for sale
21 in inventory at the time the stop sale order or do not drive order was issued.

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

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

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

12 E. Pursuant to the provisions of this Section, all reimbursement claims
13 made by new motor vehicle dealers for recall remedies or repairs, or for
14 compensation where no part or repair is reasonably available and the vehicle
15 is subject to a stop sale order or do not drive order shall be subject to the same
16 limitations and requirements as a warranty reimbursement claim made under
17 R.S. 32:1262. However, a manufacturer may compensate its franchised dealers
18 under a national recall compensation program provided the compensation
19 under the program is equal to or greater than the compensation provided in
20 Paragraph (B)(1) of this Section or as the manufacturer and dealer otherwise
21 agree.

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

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

- 1 **this Section.**
- 2 **H. Any remedy provided to a dealer under this Section is exclusive and**
- 3 **shall not be combined with any other state or federal recall compensation**
- 4 **remedy or other federal law.**

The original instrument was prepared by Michelle D. Ridge. The following digest, which does not constitute a part of the legislative instrument, was prepared by Linda Nugent.

DIGEST

SB 126 Reengrossed 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 45th 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.

Present law provides for licensing and compliance requirements for motor vehicle and recreational products dealers, which includes maintaining adequate space for displaying new vehicles or recreational products and adequate facilities for the repair and servicing of the products. Proposed law retains present law but also provides that the repair and service facility may be physically located in a building directly across a dedicated municipal street, but not more than 1,000 feet from the applicant's established place of business.

Effective August 1, 2018.

(Amends R.S. 32:1254(E)(5); adds R.S. 32:1264.2)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Provides that the repair and service facility of a dealership may be physically located in a building directly across a dedicated municipal street, but not more than 1,000 feet from the applicant's established place of business.