

SENATE BILL No. 324

By Committee on Transportation

1-24

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

4
5 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

17 (b) Notwithstanding the terms and conditions of any franchise
18 agreement, including any policy, bulletin, practice or guideline with
19 respect thereto or performance thereunder, and in addition to the other
20 provisions of the vehicle dealers and manufacturers licensing act, K.S.A.
21 8-2401 et seq., and amendments thereto:

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

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

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

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

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

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

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

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

1 dealers and manufacturers licensing act.

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

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

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

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

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

28 ~~(1)~~*(A)* The date the recall or remedy parts are made available; or

29 ~~(2)~~*(B)* the date the dealer sells, trades or otherwise disposes of the
30 affected used motor vehicle.

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

34 *(3) In the alternative, a manufacturer may compensate its new*
35 *vehicle dealers subject to a stop-sale or do-not-drive order under a*
36 *national recall compensation program, provided that the compensation*
37 *under the program is equal to or greater than that provided under this*
38 *subsection, or the manufacturer and dealer otherwise agree.*

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

1 only to new vehicle dealers holding an affected used vehicle for sale:

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

4 (2) that was taken into the used vehicle inventory of the dealer as a
5 consumer trade-in incident to the purchase of a new vehicle from the
6 dealer after the stop-sale or do-not-drive order was issued; and

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

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

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

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

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

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

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