

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 324

As Amended by House Committee on
Transportation

Brief*

SB 324, as amended, would add 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 would prohibit 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 would begin 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 would prohibit 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 would require manufacturer approval of an alternate vendor and would specify approval by the manufacturer may not be unreasonably withheld. The option to choose an alternate

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

vendor would not be available if the manufacturer provides substantial reimbursement (as defined in the bill) for the goods or services. The bill would specify 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 would state 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 would prohibit 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 could not 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 would require 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 would include, but not be 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 would require 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 would require a manufacturer to provide reasonable compensation to its new vehicle dealers for all labor and parts required to perform recall repairs. A

manufacturer would be required to compensate a dealer in one of two ways:

- At the prorated rate of at least 1 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 would end 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 would define both stop-sale and do-not-drive orders. The recall repair provisions would 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 would state it would 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 would exclude an action by a manufacturer applied uniformly among all dealers of the same line-make in the state.

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

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

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was requested by the president of the Kansas Automobile Dealers Association (KADA), who presented proponent testimony in the Senate Committee on Transportation hearing. The KADA president testified that states regulate practices addressed by the Act and by the bill to address disparity in bargaining power between automobile manufacturers and their dealers. He stated the KADA had negotiated with General Motors on the bill and similar provisions have been added to laws of a number of states over the past two years.

A representative of the Alliance of Automobile Manufacturers provided opponent testimony and requested additional time to work with the KADA on the bill.

No other testimony was provided.

The Senate Committee amended the bill to provide a method of compensation for a recall repair other than 1 percent of the value of the vehicle per month.

In the House Committee on Transportation hearing, the KADA president provided proponent testimony and requested an amendment agreed to by the KADA and automobile manufacturers regarding dealer performance standards. No other testimony was provided.

The House Committee amended the bill as requested by the KADA president.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, enactment of the bill would have no fiscal effect.