

State of Arkansas
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As Engrossed: H3/29/19 H4/1/19
A Bill

HOUSE BILL 1917

By: Representatives Payton, Wardlaw
By: Senator E. Cheatham

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS MOTOR VEHICLE COMMISSION
ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS MOTOR VEHICLE
COMMISSION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 23-112-103, concerning the definitions used in the Arkansas Motor Vehicle Commission Act, is amended to add an additional subdivision to read as follows:

(36) "Stop-sale order" or "do-not-drive order" means a notification issued by a manufacturer to the manufacturer's franchised new motor vehicle dealers stating that certain used motor vehicles in inventory shall not be sold or leased, at either retail or wholesale prices, due to a:

(A) Federal safety recall for a defect or noncompliance;

or

(B) Federal emissions recall.

SECTION 2. Arkansas Code § 23-112-310(d)(3), concerning delivery, preparations, and warranty obligations, is amended to read as follows:

~~(3)(A) In no event shall a~~ A manufacturer, distributor, distributor branch or division, or factory or division branch ~~refuse to~~ shall pay a motor vehicle dealer for warranty work, as long as the work in question was properly performed in accordance with ~~safety and repair specifications,~~



bulletins, and requirements of the manufacturer, distributor, distributor branch or division, or factory or division branch.

~~(B) A requirement that a motor vehicle dealer utilize a service technician with a specific qualification, training, or certification level may be satisfied if:~~

~~(i) The motor vehicle dealer submits to the manufacturer, distributor, distributor branch or division, or factory or factory division branch a written request listing the specific repairs to be completed and seeking preapproval authorizing the motor vehicle dealer to utilize a service technician who does not meet the training or certification requirements of the manufacturer, distributor, distributor branch or division, or factory or division branch but who is enrolled in a qualified training curriculum to receive the requisite training or certification;~~

~~(ii) The manufacturer, distributor, distributor branch or division, or factory or factory division or branch approves the motor vehicle dealer's request in writing; and~~

~~(iii) The work is supervised by a service technician with the required training or certification and the repair order is signed by both the supervising technician and the motor vehicle dealer's service department management.~~

~~(C) A manufacturer, distributor, distributor branch or division, or factory or factory division or branch is not required to consider a preapproval request to utilize an otherwise unqualified service technician if:~~

~~(i) The proposed repair is related to a safety or noncompliance recall;~~

~~(ii) The same repair has previously been attempted one (1) or more times by any authorized motor vehicle dealer;~~

~~(iii) The repair is to be made on a high performance or alternative technology vehicle; or~~

~~(iv) The requesting motor vehicle dealer's average service customer satisfaction ratings are below the applicable national or regional average for the same line make dealer.~~

~~(D) A motor vehicle dealer that utilizes an unqualified service technician under this section shall not be entitled to additional warranty repair labor time that is not authorized in the labor time guide of~~

~~the manufacturer, distributor, distributor branch or division, or factory or factory division or branch.~~

SECTION 3. Arkansas Code § 23-112-313, concerning warranty agreements, is amended to add additional subsections to read as follows:

(f) As used in this section, "routine maintenance" means motor vehicle upkeep not covered under the manufacturer's warranty, including without limitation tire rotations and the replacement of:

- (1) Tires;
- (2) Fluids;
- (3) Filters;
- (4) Batteries;
- (5) Belts;
- (6) Windshield wipers; and
- (7) Brake pads.

SECTION 4. Arkansas Code Title 23, Chapter 112, Subchapter 3, is amended to add an additional section to read as follows:

23-112-319. Reimbursement claim by motor vehicle dealer.

(a)(1) A manufacturer shall compensate its new motor vehicle dealers for all labor and parts required by the manufacturer to perform recall repairs.

(2) The compensation for recall repairs required under subdivision (a)(1) of this section shall be reasonable.

(3) If recall parts or a remedy is not reasonably available to perform a recall service or repair on a used motor vehicle held for sale by a dealer authorized to sell and service new motor vehicles of the same line make of a motor vehicle within thirty (30) days of the manufacturer's issuing the initial notice of recall, and the manufacturer has issued a stop-sale order or do-not-drive order on the used motor vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least one and twenty-five-hundredths percent (1.25%) of the value of the used motor vehicle per month beginning thirty (30) days from the date on which the stop-sale order or do-not-drive order was provided to the dealer until the earlier of:

(A) The date the recall parts or a remedy is made available; or

(B) The date the dealer sells, trades, or disposes of the affected used motor vehicle.

(b) This section applies only to a:

(1) Used motor vehicle subject to a safety or emissions recall in accordance with federal law and regulations and a stop-sale order or do-not-drive order has been issued and repair parts or a remedy remains unavailable for thirty (30) days or longer; and

(2) New motor vehicle dealer having an affected used motor vehicle:

(A) In inventory for sale at the time the stop-sale order or do-not-drive order was issued;

(B) For sale as a used motor vehicle as a consumer trade-in, incident to the purchase of a new motor vehicle from the dealer after the stop-sale order or do-not-drive order was issued; or

(C) For sale that is a line make of a used motor vehicle the dealer is franchised to sell or on which the dealer is authorized to perform recall repairs.

(c)(1) It is a violation of this section for a manufacturer to reduce the amount of compensation otherwise owed to a new motor vehicle dealer because the new motor vehicle dealer has submitted a claim for reimbursement under this section, including without limitation compensation owed through:

(A) A chargeback;

(B) Removal of the dealer from an incentive program; or

(C) A reduction in the amount owed under an incentive program.

(2) However, subdivision (c)(1) of this section does not apply to a reduction in the amount of compensation owed to a new motor vehicle dealer by a manufacturer if the reduction is applied uniformly to all new motor vehicle dealers of the same line make in the state.

(d) A reimbursement claim made by a new motor vehicle dealer for a recall remedy or repair or for compensation when no part or repair is reasonably available and the motor vehicle is subject to a stop-sale order or do-not-drive order:

(1) Is subject to the same limitations and requirements as a warranty reimbursement claim made under § 23-112-313; or

(2) May be compensated to a franchised dealer by a manufacturer

under a national recall compensation program if the compensation under the program is equal to or greater than the compensation under subsection (a) of this section or the manufacturer and dealer otherwise agree to the amount of compensation.

(e) A manufacturer may direct the manner and method in which a dealer demonstrates the inventory status of an affected used motor vehicle to determine eligibility for compensation under this section if the manner and method are not unduly burdensome and do not require that the dealer provide information that may be unduly burdensome to obtain.

(f) This section does not require that a manufacturer provide total compensation to a dealer that exceeds the total average trade-in value of the used motor vehicle.

(g) If a recall remedy for a used motor vehicle is available under federal law or federal regulation, a dealer may choose to be compensated under the federal statute or under this section but may not combine the recall remedies.

(h) The value of a used motor vehicle shall be the average trade-in value for used motor vehicles as indicated in an independent third-party guide for the year, make, and model of the affected used motor vehicle.

SECTION 5. Arkansas Code § 23-112-403(a)(2)(U)(v), concerning manufacturers, distributors, second-stage manufacturers, importers, or converters, is amended to read as follows:

(v) Require a motor vehicle dealer to improve the dealer's facilities, including signs, or to replace factory required and approved facility improvements completed within the last ~~seven (7)~~ ten (10) years to qualify for a new vehicle sales incentive program;

SECTION 6. Arkansas Code § 23-112-403(a)(3)(A)(i), concerning the ownership, operation, or control of a new motor vehicle dealer by a manufacturer, is amended to read as follows:

(i) The operation by a manufacturer or distributor of a motor vehicle dealer for a temporary period, not to exceed one (1) year, during the transition from one (1) owner or operator to another, provided that the commission may extend the one (1) year period if the transition is not complete;

SECTION 7. Arkansas Code § 23-112-403(a)(3)(A)(iv), concerning the ownership, operation, or control of a new motor vehicle dealer by a manufacturer, is repealed.

~~(iv) The ownership, operation, or control of a new motor vehicle dealer by a manufacturer, if the commission determines after a hearing on the matter at the request of any party, that there is no prospective new motor vehicle dealer available to own and operate the franchise in a manner consistent with the public interest; or~~

/s/Payton

APPROVED: 4/11/19