

**As Amended by House Committee**

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***As Amended by Senate Committee***

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*Session of 2018*

**SENATE BILL No. 324**

By Committee on Transportation

1-24

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

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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

1 elements or the date that the dealer receives a certificate of occupancy,  
2 whichever is later.

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

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

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

24 ~~(A) Are unfair, unreasonable, arbitrary or inequitable; or~~

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

1 ~~performance standard and applying it to the dealer~~ A manufacturer shall  
2 not use sales or service performance criteria for the purpose of  
3 canceling, terminating or non-renewing a franchise agreement or  
4 otherwise rely upon such criteria for purposes related to K.S.A. 8-2414  
5 or 8-2416, and amendments thereto, that fail to meet the requirements  
6 of this subsection. A standard measuring sales or service performance  
7 of any new vehicle dealer of the manufacturer shall not use criteria  
8 that:

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

10 (B) do not consider the relevant and material local and state or  
11 regional criteria, including prevailing economic conditions affecting  
12 the sales or service performance of a vehicle dealer or any relevant  
13 and material data and facts presented by the dealer in writing.  
14 Relevant and material criteria, data or facts include, but are not  
15 limited to: (i) Those motor vehicle dealerships of comparable size and  
16 comparable markets; (ii) demographics in the new vehicle dealers  
17 area; (iii) geographic and market characteristics in the new vehicle  
18 dealer's area; (iv) the proximity of other new vehicle dealers of the  
19 same line and make; (v) the proximity of motor vehicle manufacturing  
20 facilities; (vi) the buying patterns and consumer preferences of motor  
21 vehicle purchases; and (vii) customer drive time and distance. If such  
22 performance measurement criteria are based in whole or in part on a  
23 survey, that survey must be based on a statistically significant and  
24 valid random sample or must survey a majority of new vehicle retail  
25 sales and warranty service customers of the dealer if the survey is one  
26 measuring customer satisfaction of the dealer's sales or service  
27 operations. A manufacturer, contractor or common entity or an  
28 affiliate that enforces against any vehicle dealer any such performance  
29 measurement criteria shall, upon the request of the dealer, describe in  
30 writing to the dealer, in detail, how the performance measurement  
31 criteria were calculated and uniformly applied and shall also provide  
32 any data upon which it relied in reaching the performance standard  
33 and applying it to the dealer.

34 (c) This section shall be a part of and supplemental to the vehicle  
35 dealers and manufacturers licensing act.

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

37 (1) "Manufacturer" means a first or second stage manufacturer of  
38 vehicles, factory branch, distributor or factory representative, officer or  
39 agent or any representative thereof or any other person acting on their  
40 behalf;

41 (2) "stop-sale order" means a notification or its equivalent issued by a  
42 manufacturer to its franchised new vehicle dealer stating that certain motor  
43 vehicles in inventory shall not be sold or leased, at either retail or

1 wholesale, due to a federal safety recall for a defect or noncompliance or a  
2 federal emissions recall; and

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

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

19 ~~(A)~~ (A) The date the recall or remedy parts are made available; or  
20 ~~(B)~~ (B) the date the dealer sells, trades or otherwise disposes of the  
21 affected used motor vehicle.

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

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

30 (c) This section shall apply only to used vehicles subject to safety or  
31 emissions recalls pursuant to, and recalled in accordance with, federal law  
32 as well as rules and regulations adopted thereunder where a stop-sale or  
33 do-not-drive order has been issued and repair parts or remedy parts remain  
34 unavailable for 30 days or longer. Furthermore, this section shall apply  
35 only to new vehicle dealers holding an affected used vehicle for sale:

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

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

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

43 (d) It shall be a violation of this section for a manufacturer to reduce

1 the amount of compensation otherwise owed to a new vehicle dealer, or  
2 otherwise retaliate, whether through a chargeback, removal of the  
3 individual dealer from an incentive program or reduction in the amount  
4 owed under an incentive program or any other means, solely because the  
5 new vehicle dealer has made or submitted a claim for reimbursement  
6 under this section. This subsection shall not apply to an action by a  
7 manufacturer that is applied uniformly among all dealers of the same line-  
8 make in the state.

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

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

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

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

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