AN ACT

AMENDING SECTION 28-4451, ARIZONA REVISED STATUTES; RELATING TO MOTOR VEHICLE DEALERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-4451, Arizona Revised Statutes, is amended to read:

28-4451. Product liability; warranty obligations; audits; vehicle exports; used vehicle recall obligations; definition

A. Each manufacturer shall file with the director a copy of the delivery and preparation obligations required to be performed by a new motor vehicle dealer before delivery of new motor vehicles to buyers. These delivery and preparation obligations constitute the new motor vehicle dealer's only responsibility for the product liability as between the new motor vehicle dealers and the manufacturer. The new motor vehicle dealer shall furnish the buyer of a new motor vehicle with a signed copy of the manufacturer's or distributor's delivery and preparation requirements indicating that all of the requirements have in fact been performed.

B. Any mechanical, body or parts defects arising from any express or implied warranties of the manufacturer constitute the manufacturer's product or warranty liability.

C. The manufacturer or distributor shall compensate an authorized new motor vehicle dealer who performs work to rectify the manufacturer's or distributor's warranty obligations, recall obligations or delivery and preparation obligations.

D. The compensation that the manufacturer or distributor pays to a new motor vehicle dealer for diagnostic work, repair service and labor shall be fair and reasonable and, at the option of the new motor vehicle dealer, may be determined pursuant to subsection E of this section. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work or services to be performed. The compensation that the manufacturer or distributor pays to the new motor vehicle dealer for parts used in warranty or recall related service shall be fair and reasonable and, at the option of the new motor vehicle dealer, may be determined pursuant to subsection E of this section.

E. The new motor vehicle dealer may declare the retail rates that it customarily charges for parts or labor or both parts and labor by submitting to the manufacturer or distributor the lesser of one hundred sequential, nonwarranty, customer-paid service repair orders or ninety consecutive days of customer-paid service repair orders for warranty-like repairs made not more than one hundred eighty days before the submission. The new motor vehicle dealer's retail labor rate shall be determined by dividing the amount of the dealer's total labor sales contained in the submitted repair orders by the total number of labor hours that generated those sales. The new motor vehicle dealer's retail rate for parts shall be a percentage determined by dividing the total sales for parts in the submitted repair orders by the new motor vehicle dealer's total cost for those parts, minus one, and then multiplied by one hundred to produce a
percentage. Declared rates are presumed to be fair and reasonable except that a manufacturer or distributor, within thirty days after receiving the new motor vehicle dealer’s submission, may rebut the presumption by reasonably substantiating that the rate or rates are inaccurate or unreasonable compared to other similarly situated same line-make new motor vehicle dealers in the THIS state. The new motor vehicle dealer's declared parts, labor or both parts and labor rates shall go into effect thirty days following the manufacturer's or distributor's receipt of the declaration, unless the manufacturer or distributor timely sends a rebuttal of the declared rate or rates to the new motor vehicle dealer. If any of the declared rates are rebutted, the manufacturer or distributor shall propose an adjustment of the rebutted rate or rates within thirty days after receiving the new motor vehicle dealer's submission. If the new motor vehicle dealer does not agree with the proposed adjusted rate or rates, it may file a protest with the director within thirty days after receipt of the manufacturer's or distributor's proposal. If a protest is timely filed, the director shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on the protest if any available manufacturer or distributor mediation opportunity has been used and was unsuccessful in reaching an agreement between the parties.

F. In calculating the retail rate or rates that a new motor vehicle dealer customarily charges for parts or labor, the following work may not be included in the calculation:

1. Repairs for manufacturer or distributor special events, specials or promotional discounts for retail customer repairs.
2. Parts sold at wholesale.
3. Engine assemblies and transmission assemblies, if the new motor vehicle dealer agrees to be compensated for those assemblies with a handling charge instead of a retail parts markup.
4. Routine maintenance not covered under any retail customer warranty, such as fluids, filters and belts not provided in the course of repairs.
5. Nuts, bolts, fasteners and similar items that do not have individual part numbers.

G. The manufacturer, factory branch, distributor or distributor branch may reasonably and periodically audit a new motor vehicle dealer to determine the validity of paid claims for dealer compensation or any charge-backs for warranty parts or service compensation. Audits shall only be for the twelve month period immediately following the date of the payment. This limitation does not apply if the manufacturer, factory branch, distributor or distributor branch reasonably suspects fraud. As a result of an audit that is authorized by this subsection, the manufacturer or distributor has the right to charge back to the new motor vehicle dealer the amount of any previously paid claim after the new motor vehicle
dealer has had notice and an opportunity to participate in any available manufacturer or distributor mediation processes and all legal appeals have been exhausted if mediation failed to result in an agreement.

H. The manufacturer, factory branch, distributor or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of paid claims for dealer compensation or any charge-backs for consumer or dealer incentives. Audits shall only be for a one year period immediately following the date of the payment. This limitation does not apply if the manufacturer, factory branch, distributor or distributor branch reasonably suspects fraud. As a result of an audit authorized by this subsection, the manufacturer or distributor has the right to charge back to the new motor vehicle dealer the amount of any previously paid claim after the new motor vehicle dealer has had notice and an opportunity to participate in any available manufacturer or distributor mediation processes and all legal appeals have been exhausted if mediation failed to result in an agreement.

I. All claims by new motor vehicle dealers under this section for labor and parts and all claims for compensation relative to any sales incentive programs shall be paid within thirty days after approval by the manufacturer or distributor subject to the manufacturer’s or distributor’s right to audit the claims provided in subsection G or H of this section. All claims shall be either approved or disapproved within thirty days after receipt on forms and in the manner specified by the manufacturer or distributor. Any claim not disapproved in writing or by means of electronic transmission within thirty days after receipt is deemed approved, and payment must be made within thirty days after approval.

J. If a manufacturer or distributor furnishes a part or component to a new motor vehicle dealer, at no cost, to use in performing repairs under a recall, campaign service action or warranty repair, the manufacturer or distributor shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the retail parts rate on the wholesale cost for the part or component as listed in the manufacturer’s or distributor’s price schedule, less the wholesale cost for the part or component.

K. A manufacturer or distributor may not require a new motor vehicle dealer to establish the retail rates customarily charged by the dealer for parts or labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide calculations, including part-by-part or transaction-by-transaction calculations. A new motor vehicle dealer may not declare any new retail rate more than once in any twelve-month period. A manufacturer or distributor may use the repair orders submitted by a new motor vehicle dealer under subsection E of this section to validate any or all of a new motor vehicle dealer’s current warranty reimbursement rates or require a new motor vehicle dealer to submit, not more than once every twelve
months, repair orders pursuant to this section to validate the new motor vehicle dealer's retail rate or rates. If a manufacturer or distributor finds that any of a new motor vehicle dealer's retail rates have declined, the manufacturer or distributor may prospectively reduce the respective warranty reimbursement rate.

L. If the new motor vehicle dealer has otherwise properly submitted the claim pursuant to the manufacturer's or distributor's warranty or incentive program guidelines, a manufacturer or distributor may not deny a claim by a new motor vehicle dealer for reimbursement of any warranty parts or service compensation or any consumer or dealer incentive compensation based solely on a new motor vehicle dealer's incidental failure to comply with a specific claim processing requirement that does not put into question the legitimacy of the claim. If a claim is rejected for such an incidental requirement the new motor vehicle dealer may correct or complete and resubmit a previously submitted warranty or incentive claim for a period of up to sixty days following the new motor vehicle dealer's receipt of first notice of the failure from the manufacturer or distributor. A manufacturer or distributor is not required to approve any such warranty or incentive claim if all claim processing requirements are not complied with by the new motor vehicle dealer within the time periods prescribed by this section.

M. If a new motor vehicle dealer sells or leases a vehicle to a customer who exports the vehicle to a foreign country, unless the manufacturer, distributor or importer proves that the new motor vehicle dealer knew or reasonably should have known that the vehicle would be exported, a manufacturer, DISTRIBUTOR OR IMPORTER shall not do any of the following:

1. Refuse to sell, allocate or deliver new motor vehicles to the new motor vehicle dealer.
2. Charge back to or withhold payments or other things of value from the new motor vehicle dealer that the new motor vehicle dealer otherwise would be eligible for under an incentive program or contest.
3. Prevent a new motor vehicle dealer from participating in any sales promotion or program.
4. Take an adverse action against a new motor vehicle dealer, including reducing vehicle allocations or terminating or threatening to terminate a dealer.

N. There is a rebuttable presumption that the new motor vehicle dealer described in subsection M of this section did not know or should not have reasonably known that the vehicle described in subsection M of this section would be exported. The presumption may be rebutted by a preponderance of the evidence that the new motor vehicle dealer knew or should have reasonably known that the vehicle was to be exported.

O. If a timely protest is filed under subsection E of this section, the director shall:
1. Enter an order fixing the time and place of a hearing on the protest. The hearing shall be held within seventy-five days after the date of the order.

2. Send by certified mail a copy of the order to the dealer and the manufacturer.

3. Appoint a member of the Arizona state bar who shall be designated as an administrative law judge to conduct the hearing and who shall be compensated under a contractual relationship.

P. Prehearing discovery shall be conducted pursuant to the Arizona rules of civil procedure.

Q. Evidence that would be admissible under the issues in such an action in a state or federal court is admissible in a hearing held by the administrative law judge. The administrative law judge shall reasonably apportion all costs between the parties, including compensation for the administrative law judge's services. The administrative law judge may:
   1. Issue subpoenas.
   2. Administer oaths.
   3. Compel the attendance of witnesses and the production of books, papers, documents and all other evidence.
   4. Apply to the superior court in the county in which the hearing is held for a court order enforcing this section.

R. A transcript of the testimony of all witnesses taken at the hearing shall be made and preserved. Within forty-five days after the hearing the administrative law judge shall make written findings of fact and conclusions of law and enter a final order.

S. A party to the hearing before the administrative law judge may appeal pursuant to title 12, chapter 7, article 6. An appeal of a decision of an administrative law judge has preference over other civil matters and shall be heard at the earliest practicable date.

T. As a condition to the appeal, the appealing party shall file a cash bond, supersedeas bond or its equivalent with the director. The bond shall be sufficient in amount to cover the damages incurred by the prevailing party, but the amount of the bond may not exceed the lesser of fifty thousand dollars or ten percent of the appealing party's net worth. The appealing party may file alternatives to cash such as certificates of deposit purchased from a financial institution licensed to do business in this state pursuant to title 6 or bonds of the United States government.

U. A MANUFACTURER SHALL COMPENSATE ITS NEW MOTOR VEHICLE DEALERS FOR ALL LABOR AND PARTS THAT ARE REQUIRED TO PERFORM RECALL REPAIRS. THE COMPENSATION SHALL BE FAIR AND REASONABLE AND, AT THE OPTION OF THE NEW MOTOR VEHICLE DEALER, MAY BE DETERMINED PURSUANT TO SUBSECTION E OF THIS SECTION. IF PARTS OR A REMEDY IS NOT REASONABLY AVAILABLE TO PERFORM A RECALL SERVICE OR REPAIR ON A USED MOTOR VEHICLE HELD FOR SALE BY THE NEW MOTOR VEHICLE DEALER AND THE MANUFACTURER ISSUES A STOP-SALE OR DO NOT DRIVE NOTIFICATION ON THE USED MOTOR VEHICLE, THE MANUFACTURER SHALL COMPENSATE THE NEW MOTOR VEHICLE DEALER AT A RATE OF AT LEAST 2.43 PERCENT
OF THE VALUE OF THE USED MOTOR VEHICLE PER MONTH OR PORTION OF A MONTH
WHILE THE RECALL OR REMEDY PARTS ARE UNAVAILABLE OR THE STOP-SALE OR DO
NOT DRIVE NOTIFICATION REMAINS IN EFFECT.

V. THE VALUE OF THE USED MOTOR VEHICLE SHALL BE THE AVERAGE RETAIL
VALUE FOR USED VEHICLES AS INDICATED IN THE NATIONAL AUTOMOBILE DEALERS
ASSOCIATION USED CAR GUIDE FOR THE YEAR, MAKE, MODEL AND MILEAGE OF THE
USED MOTOR VEHICLE THAT IS SUBJECT TO A STOP-SALE OR DO NOT DRIVE
NOTIFICATION.

W. IT IS A VIOLATION OF THIS SECTION FOR A MANUFACTURER TO REDUCE
THE AMOUNT OF COMPENSATION THAT IS OTHERWISE OWED TO A NEW MOTOR VEHICLE
DEALER, WHETHER THROUGH A CHARGEBACK, REMOVAL FROM AN INCENTIVE PROGRAM,
REDUCTION IN AMOUNT OWED UNDER AN INCENTIVE PROGRAM OR ANY OTHER MEANS,
BECAUSE THE NEW MOTOR VEHICLE DEALER HAS SUBMITTED A CLAIM FOR
COMPENSATION UNDER SUBSECTION U OF THIS SECTION OR WAS OTHERWISE
COMPENSATED FOR A VEHICLE THAT IS SUBJECT TO A RECALL.

X. ALL REIMBURSEMENT CLAIMS THAT ARE MADE BY A NEW MOTOR VEHICLE
DEALER PURSUANT TO SUBSECTION U OF THIS SECTION FOR RECALL REMEDIES OR
REPAIRS OR FOR COMPENSATION IF NO PART OR REPAIR IS REASONABLY AVAILABLE
AND THE USED MOTOR VEHICLE IS SUBJECT TO A STOP-SALE OR DO NOT DRIVE
NOTIFICATION SHALL BE MADE IN A LIKE MANNER AS A WARRANTY REIMBURSEMENT
CLAIM UNDER THIS SECTION. THE MANUFACTURER SHALL APPROVE OR DISAPPROVE A
CLAIM WITHIN THIRTY DAYS AFTER IT IS SUBMITTED TO THE MANUFACTURER IN THE
MANNER AND ON THE FORMS THE MANUFACTURER REASONABLY PRESCRIBES. THE
MANUFACTURER SHALL PAY A CLAIM WITHIN THIRTY DAYS AFTER APPROVAL OF THE
CLAIM. ANY CLAIM THAT IS NOT SPECIFICALLY DISAPPROVED IN WRITING BY THE
MANUFACTURER WITHIN THIRTY DAYS FOLLOWING THE MANUFACTURER’S RECEIPT OF
THE CLAIM IS DEEMED APPROVED.

Y. SUBSECTIONS U THROUGH X OF THIS SECTION APPLY ONLY TO USED MOTOR
VEHICLES THAT ARE SUBJECT TO SAFETY OR EMISSIONS RECALLS PURSUANT TO AND
RECALLED IN ACCORDANCE WITH FEDERAL LAW OR FOR WHICH A STOP-SALE OR DO NOT
DRIVE NOTIFICATION HAS BEEN ISSUED AND TO MOTOR VEHICLE MANUFACTURERS AND
NEW MOTOR VEHICLE DEALERS WITH USED MOTOR VEHICLES OF THE LINE-MAKE THAT
THE NEW MOTOR VEHICLE DEALER IS FRANCHISED TO SELL OR ON WHICH THE NEW
MOTOR VEHICLE DEALER IS AUTHORIZED TO PERFORM RECALL REPAIRS.

Z. FOR THE PURPOSES OF THIS SECTION, "STOP-SALE OR DO NOT DRIVE
NOTIFICATION" MEANS A NOTIFICATION THIS IS ISSUED BY A MANUFACTURER TO
SOME OR ALL OF ITS FRANCHISED DEALERSHIPS AND THAT STATES THAT CERTAIN
USED MOTOR VEHICLES IN THE DEALERSHIPS’ INVENTORIES SHOULD NOT BE SOLD OR
LEASED, EITHER AT RETAIL OR WHOLESALE, DUE TO A FEDERAL SAFETY DEFECT OR
NONCOMPLIANCE RECALL OR A FEDERAL OR CALIFORNIA EMISSIONS RECALL OR FOR
ANY OTHER REASON.