

1 AN ACT relating to motor vehicle racing.

2 WHEREAS, it is the intent of this Commonwealth to promote safe roadways for all
3 drivers and pedestrians and protect the citizens of the Commonwealth from motorists
4 who participate in unpermitted street racing; and

5 WHEREAS, the Commonwealth recognizes the harms caused by street racing, such
6 as substantial risk of physical injury or death, the high costs of health care for those
7 injured while participating in or viewing unpermitted street racing, and damage to motor
8 vehicles and other property; and

9 WHEREAS, imposing penalties of increased fines, motor vehicle impoundment,
10 and motor vehicle forfeiture is necessary to prevent harm to citizens of the
11 Commonwealth, deter criminal behavior, and punish acts of unpermitted street racing;

12 NOW, THEREFORE,

13 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

14 → Section 1. KRS 189.993 is amended to read as follows:

15 (1) Any person who violates KRS 189.045 shall be fined not less than one hundred
16 dollars (\$100) nor more than one thousand dollars (\$1,000).

17 (2) Any person convicted of violating any of the provisions of KRS 189.095 shall be
18 fined sixty dollars (\$60) and costs of prosecution.

19 (3) Any person who violates any provision of KRS 189.205 shall be fined not less than
20 twenty dollars (\$20) nor more than one hundred dollars (\$100).

21 (4) Any person who violates any provision of KRS 189.375 shall be fined not less than
22 twenty dollars (\$20) nor more than one hundred dollars (\$100).

23 (5) Any person who violates KRS 189.505 shall:

24 **(a) For the first offense:**

25 **1.** Be fined **one thousand dollars (\$1,000)**~~not less than sixty dollars (\$60)~~
26 ~~nor more than two hundred dollars (\$200)}~~ or be imprisoned for not
27 more than thirty (30) days, or both; **and**

1 2. In accordance with KRS 70.155 or 82.625, have any motor vehicle
 2 used by the person in the commission of the violation impounded for
 3 not less than six (6) months;

4 (b) For a second offense:

5 1. Be fined two thousand dollars (\$2,000) or be imprisoned for not more
 6 than thirty (30) days, or both; and

7 2. In accordance with KRS 70.155 or 82.625, have any motor vehicle
 8 used by the person in the commission of the violation impounded for
 9 not less than six (6) months; and

10 (c) For a third or subsequent offense:

11 1. Be fined two thousand dollars (\$2,000) or be imprisoned for not more
 12 than thirty (30) days, or both; and

13 2. Have any motor vehicle used by the person in the commission of the
 14 violation forfeited to the Commonwealth and destroyed or sold at
 15 public auction in accordance with Section 2 of this Act.

16 (6) Any person found violating any provision of KRS 189.820 or 189.830 is guilty of a
 17 misdemeanor and shall be fined not less than twenty dollars (\$20) nor more than
 18 thirty-five dollars (\$35).

19 (7) Any person who violates KRS 189.920 shall be fined not less than one hundred
 20 dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned in the
 21 county jail for not more than thirty (30) days, or both. In the case of a private
 22 vehicle not authorized to use emergency lights under KRS 189.920, all lighting and
 23 other equipment used in violation of KRS 189.910 to 189.950 shall be confiscated
 24 and forfeited to the county in which the offense occurred.

25 (8) Any person who violates KRS 189.930 shall be fined not less than sixty dollars
 26 (\$60) nor more than five hundred dollars (\$500), or be imprisoned in the county jail
 27 for not more than thirty (30) days, or both.

- 1 (9) **(a)** Any person who violates KRS 189.940 shall be fined not less than sixty
 2 dollars (\$60) nor more than one thousand dollars (\$1,000) or be imprisoned in
 3 the county jail for not more than six (6) months, or both.
- 4 **(b)** In the case of a private vehicle, except as outlined in subsection (11) of this
 5 section, all lighting and other equipment used in violation of KRS 189.910 to
 6 189.950 shall be confiscated and forfeited to the county in which the offense
 7 occurred.
- 8 (10) **(a)** If a member of a regular or volunteer fire department, ambulance service, or
 9 rescue squad violates ~~any provisions of~~ subsection (6) of KRS 189.940, he
 10 **or she** shall, in addition to any other penalty provided under KRS 189.990 or
 11 this section, be:
 12 **1.** Immediately dismissed from his **or her** membership or employment
 13 with the fire department, ambulance service, or rescue squad; and
 14 **2.** ~~shall be~~ Disqualified from being employed by or being a member of
 15 any fire department, ambulance service, or rescue squad in the
 16 Commonwealth for a period of three (3) years.
- 17 **(b)** Upon conviction of a second offense he **or she** shall be permanently barred
 18 from employment or membership in any fire department, ambulance service,
 19 rescue squad, police department, or sheriff's office in the Commonwealth, nor
 20 shall he **or she** be permitted to operate any public safety vehicle as defined in
 21 KRS 189.910.
- 22 (11) (a) Any person who violates KRS 189.950(3) shall be fined one hundred dollars
 23 (\$100) for the first offense, two hundred dollars (\$200) for the second offense,
 24 and one thousand dollars (\$1,000) for each subsequent offense.
- 25 (b) Except as provided in paragraph (a) of this subsection, any person who
 26 violates KRS 189.950 shall be fined not less than one hundred dollars (\$100)
 27 nor more than one thousand dollars (\$1,000) or be imprisoned in the county

1 jail for not more than thirty (30) days, or both. In the case of a privately
 2 owned vehicle, all lighting and other equipment used or installed in violation
 3 of KRS 189.910 to 189.950 shall be confiscated and forfeited to the county in
 4 which the offense occurred.

5 (12) Any person who violates any provision of this chapter for which no penalty is
 6 otherwise provided shall, upon conviction, be fined not less than twenty dollars
 7 (\$20) nor more than one hundred dollars (\$100) for each offense, except that no
 8 penalty shall be assessed for a violation of KRS 189.580(1)(b) or (6)(b).

9 (13) ~~A [No]~~ producer or processor of natural resources shall ***not*** allow the transporting of
 10 natural resources over the highways of the Commonwealth in excess of the weight
 11 limits without possessing a resource recovery road hauling permit. Violation for
 12 hauling in excess of prescribed limits without possession of a permit or transporting
 13 natural resources over prescribed limits of the resource recovery road hauling
 14 permit shall be not less than five hundred dollars (\$500) nor more than one
 15 thousand dollars (\$1,000) for each violation and shall be deposited in the resource
 16 recovery road fund.

17 ➔ Section 2. KRS 500.090 is amended to read as follows:

18 (1) Except as provided in KRS 500.092, all property which is subject to forfeiture
 19 under any section of the Kentucky Penal Code shall be disposed of in ***the following***
 20 ***manner:***~~[accordance with this section.]~~

21 (a) Property other than firearms which is forfeited under any section of this code
 22 may, upon order of the trial court, be destroyed by the sheriff of the county in
 23 which the conviction was obtained:~~[.]~~

24 (b) Property other than firearms which is forfeited under any section of this code
 25 may, upon order of the trial court, be sold at public auction. The expenses of
 26 keeping and selling such property and the amount of all valid recorded liens
 27 that are established by intervention as being bona fide shall be paid out of the

1 proceeds of the sale. The balance shall be paid to:

- 2 1. The state, if the property was seized by an agency of the state or peace
3 officer thereof;
- 4 2. The county, if the property was seized by the sheriff or an agency or
5 peace officer of the county;
- 6 3. The Department of Fish and Wildlife Resources, if the property was
7 seized by a peace officer of the Department of Fish and Wildlife or was
8 seized by any other officer for violation of KRS Chapter 150;
- 9 4. The city, if the property was seized by the city or by an agency or peace
10 officer thereof and the property was delivered to the city property clerk;
- 11 5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten
12 percent (10%) of the proceeds), if the property was seized by the city or
13 by an agency or peace officer thereof and the property was delivered to
14 the sheriff or the county police;~~[-or]~~
- 15 6. The state, if the property was seized by any combination of agencies
16 listed above; or
- 17 **7. The Crime Victims Compensation Board established under KRS**
18 **49.010, if the property is a motor vehicle seized by any agency or peace**
19 **officer thereof for a third or subsequent violation of KRS 189.505;[-]**

- 20 (c) **1.** Subject to the duty to return confiscated firearms and ammunition to
21 innocent owners pursuant to this section, all firearms and ammunition
22 confiscated by a state or local law enforcement agency, all firearms
23 ordered forfeited by a court, and all abandoned firearms and ammunition
24 coming into the custody of a state or local law enforcement agency and
25 not retained for official use shall be transferred to the Department of
26 Kentucky State Police for disposition as provided by KRS 16.220;~~[-]~~
- 27 **2.** The transfer shall occur not more than ninety (90) days after the

1 abandonment of the firearm or ammunition to the law enforcement
 2 agency or not more than ninety (90) days after its confiscation, unless a
 3 court requires the firearm or ammunition for use as evidence, in which
 4 case it shall be transferred to the Department of Kentucky State Police
 5 not more than ninety (90) days following the order of forfeiture by the
 6 court or after the court returns the firearm or ammunition from use as
 7 evidence; ~~and~~

8 3. Prior to the sale of any firearm or ammunition, the law enforcement
 9 agency shall make a bona fide attempt to determine if the firearm or
 10 ammunition to be sold has been stolen or otherwise unlawfully obtained
 11 from an innocent owner and return the firearm and ammunition to its
 12 lawful innocent owner, unless that person is ineligible to purchase a
 13 firearm under federal law; and ~~and~~

14 4. This subsection relating to auction of firearms and ammunition shall not
 15 apply to firearms and ammunition auctioned by the Department of Fish
 16 and Wildlife that may be sold to individual purchasers residing in
 17 Kentucky who are eligible under federal law to purchase firearms and
 18 ammunition of the type auctioned; ~~and~~

19 (d) If property which is forfeited under any section of this code is determined by
 20 the trial court to be worthless, encumbered with liens in excess of its value, or
 21 otherwise a burdensome asset, the court may abandon any interest in such
 22 property. Property which is abandoned pursuant to this section shall be
 23 returned to the lawful claimant upon payment of expenses for keeping the
 24 property; and ~~and~~

25 (e) 1. Property which is forfeited under any section of this code may, upon
 26 order of the trial court, be retained for official use in the following
 27 manner; ~~and~~

1 a. Property which has been seized by an agency of the state may be
2 retained for official state use;~~[-]~~

3 b. Property which has been seized by an agency of county, city, or
4 urban-county government may be retained for official use by the
5 government whose agency seized the property or for official state
6 use; and~~[-]~~

7 c. Property seized by any other unit of government may be retained
8 only for official state use; and~~[-]~~

9 2. The expenses for keeping and transferring such property shall be paid by
10 the unit of government by which the property is retained.

11 (2) Money which has been obtained or conferred in violation of any section of this code
12 shall, upon conviction, be forfeited for the use of the state. This subsection shall not
13 apply when, during the course of the proceeding in which the conviction is
14 obtained, the person from whom said money was unlawfully acquired is identified.

15 (3) Property forfeited under any section of this code shall be disposed of in accordance
16 with this section only after being advertised pursuant to KRS Chapter 424. This
17 subsection shall not apply to property which is designed and suitable only for
18 criminal use or to money forfeited under subsection (2) of this section.

19 (4) The trial court shall remit the forfeiture of property when the lawful claimant:

20 (a) Asserts his or her claim before disposition of the property pursuant to this
21 section;

22 (b) Establishes his or her legal interest in the property; and

23 (c) Establishes that the unlawful use of the property was without his or her
24 knowledge and consent. This subsection shall not apply to a lienholder of
25 record when the trial court elects to dispose of the property pursuant to
26 subsection (1)(b) of this section.

27 (5) For purposes of this section, "lawful claimant" means owner or lienholder of record.

- 1 (6) (a) Before property which has had its identity obscured in violation of KRS
 2 514.120 may be sold or retained for official use as provided in this section, the
 3 court shall cause a serial or other identifying number to be placed thereon, and
 4 a record of the number assigned shall be placed in the court order authorizing
 5 the sale or retention of the property.
- 6 (b) This number shall be assigned, whenever applicable, in consultation with the
 7 Department of Kentucky State Police and any other state or federal regulatory
 8 agency.
- 9 (c) The purchaser of the property shall be given a document stating that the
 10 property had been forfeited pursuant to law and that a number, shown on the
 11 document, has been assigned which shall be deemed as compliance of the
 12 owner with KRS 514.120.
- 13 (d) When property is returned to an owner pursuant to this section and its identity
 14 has been obscured by another person in violation of KRS 514.120, the court
 15 shall provide a document to the owner relieving him or her of liability for its
 16 continued possession. This document shall serve as evidence of compliance
 17 with KRS 514.120 by the owner or any person to whom he or she lawfully
 18 disposes of the property.
- 19 (e) This section shall not apply to any person after property has been sold or
 20 returned in compliance with this section who violates the provisions of KRS
 21 514.120 with respect to that property.
- 22 (7) (a) Before forfeiture of any property under this section, ~~it shall be the duty of~~
 23 ~~the trial court~~ shall ~~to~~ determine if a lawful owner or claimant to the
 24 property has been identified or is identifiable.
- 25 (b) If a lawful owner or claimant has been identified or is identifiable, the court
 26 shall notify the owner or claimant that the property is being held and specify a
 27 reasonable period of time during which the claim may be made or may, in lieu

1 thereof, order the return of the property to the lawful owner or claimant.

2 **(c)** If the lawful owner or claimant does not assert his or her claim to the property
3 after notification or if he or she renounces his or her claim to the property, the
4 property shall be disposed of as provided in this section.

5 **(d)** ~~It shall be the duty of~~ All peace officers and other public officers or officials
6 having knowledge of the lawful owner or claimant of property subject to
7 forfeiture **shall**~~to~~ report the same to the trial court before the act of forfeiture
8 occurs.

9 ➔ Section 3. KRS 190.046 is amended to read as follows:

10 (1) **As used in this section:**

11 **(a) "Qualifying repair" means a repair to a vehicle included within the**
12 **manufacturer, distributor, wholesaler, factory branch, or distributor branch**
13 **original new motor vehicle warranty, except when the vehicle on which the**
14 **repair was performed exceeds the chronological or mileage limit of the**
15 **warranty, and the repair does not otherwise constitute warranty work and**
16 **does not include any of the work described in subsection (4)(b) of this**
17 **section;**

18 **(b) "Qualifying repair order" means a repair order that encompasses, in whole**
19 **or in part, a qualifying repair;**

20 **(c) "Repair order" means an invoice paid by a retail customer and closed at the**
21 **time of submission, which encompasses one (1) or more repairs to or other**
22 **work on a vehicle, and reflects, in the case of a:**

23 **1. Parts markup submission, the dealer's cost and sale price for each**
24 **part; and**

25 **2. Labor rate submission, the amount charged for labor, and the number**
26 **of hours that generated those charges;**

27 **(d) "Warranty" means and includes a new motor vehicle warranty, a recall, or**

1 a certified pre-owned warranty of a manufacturer, distributor, wholesaler,
2 factory branch, or distributor branch to repair or replace a vehicle or part,
3 including manufacturers of all-terrain vehicles as defined in KRS 189.010;
4 and

5 (e) "Warranty work":

6 1. Means work, including necessary diagnostic labor, performed by a
7 dealer in order to fulfill the obligations of a manufacturer, distributor,
8 wholesaler, factory branch, or distributor branch:

9 a. Warranty;

10 b. Recall; or

11 c. Service contract that the manufacturer required in writing the
12 dealer to provide the customer at the time of sale at no additional
13 cost; and

14 2. Includes work a dealer arranges to be performed if the work is
15 authorized by a manufacturer, distributor, wholesaler, factory branch,
16 or distributor branch in order to fulfill the warranty or recall
17 obligations of the manufacturer, distributor, wholesaler, factory
18 branch, or distributor branch warranty.

19 (2) Notwithstanding the terms of any franchise agreement, each motor vehicle
20 manufacturer or distributor~~[-]~~ doing business within this Commonwealth~~[-]~~ shall,
21 except for claims involving negligence by the dealer, including its employees and
22 subcontractors, assume all responsibility for and shall defend, indemnify, and hold
23 harmless its motor vehicle dealers against any loss, damages, and expenses,
24 including legal costs, arising out of:

25 (a) Complaints, claims, warranty repairs, recall repairs or modifications, or
26 factory authorized or directed repairs;

27 (b) ~~[-or -]~~ Lawsuits resulting from warranty defects, which shall include structural

1 or production defects; or

2 (c) Defects in the assembly~~[;]~~ or design of motor vehicles, parts, accessories,~~[;]~~ or
 3 other functions beyond the control of the dealer, including without limitation,
 4 the selection of parts or components for the vehicle. Each manufacturer or
 5 distributor shall pay~~[reasonable]~~ compensation to any authorized dealer who
 6 performs work to repair defects, or to repair any damage to the manufacturer's
 7 or distributor's product sustained while the product is in transit to the dealer,
 8 when the carrier or the means of transportation is designated by the
 9 manufacturer or distributor.

10 (3) (a) 1. Each manufacturer or distributor shall provide to its dealers with each
 11 model year a schedule of time allowances for the performance of
 12 warranty repair work and services, which shall include time allowances
 13 for the diagnosis and performance of warranty work and service time~~[,~~
 14 ~~and shall be reasonable and adequate for the work to be performed].~~

15 2. A manufacturer or distributor shall not deny a written request
 16 submitted by a franchised dealer for modification of a manufacturer
 17 or distributor's uniform time allowance for a specific warranty repair,
 18 or a request submitted by a franchised dealer for an additional time
 19 allowance for either diagnostic or repair work on a specific vehicle
 20 covered under warranty, unless:

21 a. The request fails to include all information and documentation
 22 reasonably required by the manufacturer or distributor to assess
 23 the merits of the franchised dealer's request;

24 b. Information submitted with the request fails to substantiate the
 25 merits of the request which, if the request is for a modification of
 26 a time allowance, must include a substantiation that the
 27 manufacturer or distributor's time allowance is insufficient for a

1 qualified technician to complete the repair under ordinary
 2 circumstances;

3 c. The manufacturer or distributor rebuts the time allowance
 4 claimed by the dealer for a modification of the manufacturer or
 5 distributor's uniform time allowance or request for additional
 6 time allowance for diagnostic or repair work on a specific
 7 vehicle;

8 d. For purposes of modification of a uniform time allowance, the
 9 manufacturer or distributor provides an explanation for why a
 10 dealer can complete the repair in the time allowed or establishes
 11 a new time allowance and provides an explanation for the new
 12 time allowance; or

13 e. For purposes of a request for additional time allowance for
 14 diagnostic or repair work on a specific vehicle, the manufacturer
 15 determines that the hours claimed were unnecessary, fraudulent,
 16 for diagnostic or repair work that did not follow the
 17 manufacturer or distributor's diagnostic and repair procedures,
 18 or were worked to remedy a mistake by the dealer or its
 19 employee.

20 3. A manufacturer or distributor may require requests to be submitted in
 21 accordance with a uniform process, which may not be unduly
 22 burdensome or time consuming.

23 4. A manufacturer or distributor shall respond to a franchised dealer's
 24 accurate and complete request for additional time for diagnostic or
 25 repair work on a specific warranty repair within forty-five (45) days or
 26 the request shall be deemed approved. A manufacturer or distributor
 27 shall respond to a franchised dealer's accurate, complete request to

1 modify a uniform time allowance within two hundred forty (240) days
 2 or the request shall be deemed approved. The time periods in this
 3 subparagraph shall be tolled if the manufacturer or distributor
 4 demonstrates its ability to respond is delayed due to strike, shortage,
 5 act of God, or other cause over which the manufacturer or distributor
 6 has no control.

7 **(b) A manufacturer shall not require a term, policy, or procedure different from**
 8 **those described in this section for any motor vehicle dealer to obtain**
 9 **compensation under this section, or pay a motor vehicle dealer or**
 10 **franchised dealer of an all-terrain vehicle, as defined in KRS 189.010, less**
 11 **than the rates due pursuant to this section.**

12 **(c) 1. Manufacturers shall pay motor vehicle dealers and franchised dealers**
 13 **of all-terrain vehicles the same retail labor rate that the dealer receives**
 14 **for customer-pay repairs, including diagnostic time for all warranty**
 15 **repairs as well as service, labor, and parts.**

16 **2. A dealer's retail labor rate shall be established by submission by the**
 17 **dealer of their choice of one hundred (100) consecutive qualifying**
 18 **repair orders or all qualifying repair orders in a ninety (90) day**
 19 **period, whichever is less. If a manufacturer or distributor believes the**
 20 **dealer's retail labor rate, based on the submitted documentation, is**
 21 **misleading, inaccurate, or fraudulent, the manufacturer or distributor**
 22 **may rebut the dealer's submitted rate or initiate legal proceedings.**

23 **3. If a qualified technician is required to communicate with a technical**
 24 **assistance center, an engineering department, or some external**
 25 **manufacturer source in order to provide a warranty repair on an issue**
 26 **not covered by a manufacturer's service manual or bulletin, the**
 27 **manufacturer shall pay for the time from the start of the**

1 communication, including time on hold, until the communication is
 2 complete, provided the communication was made in good faith.

3 (d) A motor vehicle dealer or franchised dealer of all-terrain vehicles may
 4 submit a request to the manufacturer for a warranty labor rate increase or
 5 parts markup increase no more than once in any twelve (12) month period.
 6 The request shall be made by the dealer in writing and based on one
 7 hundred (100) consecutive qualifying repair orders or all qualifying repair
 8 orders over a ninety (90) day period, whichever is less.

9 (e) A dealer seeking to establish or modify the warranty labor rate or parts
 10 markup shall submit to the manufacturer, distributor, wholesaler, factory
 11 branch, or distributor branch a single set of repair orders for the purpose of
 12 calculating:

13 1. Both the labor rate and parts markup; or

14 2. Only the labor rate or parts markup, if the dealer has not requested to
 15 establish or modify that rate within the previous twelve (12) months.

16 (f) 1. The submitted parts markup or labor rate shall be presumed accurate
 17 and shall go into effect thirty (30) days after the manufacturer,
 18 distributor, wholesaler, factory branch, or distributor branch approves
 19 the submission. If the manufacturer or distributor does not approve or
 20 rebut the declared rate within thirty (30) days of receipt, then the rate
 21 shall be deemed approved on the thirty-first day following receipt.

22 2. The manufacturer or distributor shall propose an adjustment of the
 23 average percentage parts markup or labor rate based on that rebuttal
 24 no later than thirty (30) days after receipt of the submission.

25 3. If the dealer does not agree with the proposed average percentage
 26 markup, the dealer may file a protest with the commission not later
 27 than sixty (60) days after receipt of that proposal by the manufacturer

1 or distributor.

2 4. If a protest is filed, the commission shall inform the manufacturer or
3 distributor that a timely protest has been filed and that a hearing will
4 be held on the protest. In any hearing held pursuant to this paragraph,
5 the manufacturer or distributor shall have the burden of proving that
6 the rate declared by the dealer was unfair and unreasonable and that
7 the proposed adjustment of the average percentage markup or labor
8 rate is fair and reasonable pursuant to subsection (4) of this section.

9 (g) Warranty repairs and recall repairs, including voluntary stop-sell repairs
10 required by the manufacturers, shall not be excluded from the requirements
11 of this subsection. If a manufacturer issues a recall, the dealer shall be
12 compensated for labor time as set forth in this subsection.

13 (h) If a manufacturer or distributor determines from any set of repair orders
14 submitted under this section that the retail labor rate or parts markup
15 percentage is substantially higher or lower than the rate currently on record
16 with the manufacturer or distributor for labor or parts, the manufacturer or
17 distributor may request additional documentation for a period of either sixty
18 (60) days prior to or sixty (60) days subsequent to the time period for which
19 the repair orders were submitted for purposes of an alteration or to rebut
20 the dealer's proposed rate.

21 (i) 1. A manufacturer or distributor may request up to one hundred (100)
22 additional consecutive repair orders that exclude repairs listed in
23 subsection (4)(b) of this section and that are different from those
24 provided under paragraphs (c)2. and (d) of this subsection from a
25 dealer to determine if the dealer's parts markup rate, labor rate, or
26 both are materially different than the rates the dealer has declared
27 with the manufacturer or distributor.

1 **2. The manufacturer or distributor may adjust the subsequent rates paid**
 2 **by the manufacturer or distributor to the dealer if the manufacturer or**
 3 **distributor determines that the dealer's rates charged to customers for**
 4 **nonwarranty work are less than the rates currently being paid by the**
 5 **manufacturer or distributor to the dealer for warranty work. The**
 6 **manufacturer or distributor shall have thirty (30) days from receiving**
 7 **all requested additional repair orders to rebut the new vehicle dealer's**
 8 **retail labor rate, retail parts rate, or both.**

9 **3. The additional repair orders specified in this paragraph shall be from**
 10 **a ninety (90) day period selected by the manufacturer or distributor**
 11 **within the most recent previous twelve (12) month period, and the**
 12 **repair orders shall be selected by the dealer. A manufacturer or**
 13 **distributor may not request repair orders under this paragraph within**
 14 **twelve (12) months of any prior request under this paragraph.**

15 **(4) [(2)]** (a) **A motor vehicle dealer or franchised dealer of all-terrain vehicles that**
 16 **is entitled to compensation for warranty work shall be compensated for all**
 17 **aggregated aspects of the repair.**~~In the determination of what constitutes~~
 18 ~~"reasonable compensation" under this section, the principal factor to be~~
 19 ~~considered shall be the amount of money that the dealer is charging its other~~
 20 ~~customers for the same type service or repair work. Other factors may be~~
 21 ~~considered, including:~~

22 ~~1. The compensation being paid by other manufacturers or distributors to~~
 23 ~~their dealers for work; and~~

24 ~~2. The prevailing amount of money being paid or charged by the dealers in~~
 25 ~~the city or community in which the authorized dealer is doing business.~~

26 (b) ~~"Reasonable compensation" shall include:~~

27 ~~1. Diagnosing the defect as needed;~~

- 1 2.—Repair service;
- 2 3.—Labor;
- 3 4.—Parts; and
- 4 5.—Administrative and clerical costs].

5 **(b) In calculating the labor rate or parts markup, the following shall not be**
6 **included:**

- 7 **1. Repairs subject to manufacturer, distributor, wholesaler, factory**
8 **branch, or distributor branch discounts, such as special events, special**
9 **promotions, coupons, or service campaigns;**
- 10 **2. Parts sold at wholesale;**
- 11 **3. Repairs of vehicles owned by the dealer or an employee of the dealer;**
- 12 **4. Routine maintenance, including but not limited to the replacement of**
13 **fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners;**
- 14 **5. Installations of accessories;**
- 15 **6. Replacement of or work on tires or wheels, including alignments**
16 **unless required during the course of a qualifying repair, wheel or tire**
17 **rotations, or replacement of brake drums, rotors, shoes, or pads;**
- 18 **7. Vehicle reconditioning;**
- 19 **8. Safety or emission inspections required by law;**
- 20 **9. Repairs for which volume discounts have been negotiated with**
21 **government agencies or insurers;**
- 22 **10. Parts that do not have individual part numbers;**
- 23 **11. Manufacturer, distributor, wholesaler, factory branch, or distributor**
24 **branch approved and reimbursed goodwill repairs or reimbursements;**
- 25 **12. Windshield replacements, window etchings, window tints, protective**
26 **films, or other masking products;**
- 27 **13. Vehicle body damage repairs;**

1 **14. Repairs of nonline make vehicles or repairs with aftermarket parts**
 2 **when calculating the retail parts rate but not the retail labor rate;**

3 **15. Repairs on aftermarket parts; or**

4 **16. Parts sold or repairs performed or paid for by insurance carriers.**

5 ~~(c)~~ Except as provided in paragraph (d) of this subsection, the compensation of a
 6 dealer shall not be less than:

7 1. The amount charged by the dealer for like services and parts, which
 8 minimum compensation for parts shall be dealer cost plus thirty percent
 9 (30%) gross profit, to retail customers for nonwarranty service and
 10 repairs; or

11 2. The amounts indicated for work on the schedule of warranty
 12 compensation required to be filed by the manufacturer with the
 13 commission as a part of the manufacturer's license application by KRS
 14 190.030.

15 ~~(d)~~ The compensation of a dealer for vehicles with a classification of seven (7) or
 16 higher as established in 49 C.F.R. sec. 565.15 by a manufacturer, component
 17 manufacturer, or distributor shall not be less than the greater of:

18 1. The amount charged by the dealer to the retail customers of the dealer
 19 for nonwarranty work of like kind; or

20 2. The dealer acquisition costs of parts or service.

21 ~~(d)~~~~(e)~~ **Payments shall not be reduced due to preestablished market norms or**
 22 **market averages. Manufacturers shall not establish restrictions or**
 23 **limitations of customer repair frequency due to failure rate indices or**
 24 **national failure averages.**

25 **(e) 1. Except as provided in subparagraph 2. of this paragraph, if a**
 26 **manufacturer furnishes parts or components to a motor vehicle dealer**
 27 **at no cost to use in performing repairs subject to a recall or warranty**

1 repair, the manufacturer shall compensate the motor vehicle dealer
 2 for the parts or components in an amount equivalent to the motor
 3 vehicle dealer's retail average percentage markup on the parts or
 4 component as if the parts or components had been sold to the motor
 5 vehicle dealer by the manufacturer.

6 2. For work involving a complete engine, transmission, or electric or
 7 hybrid vehicle propulsion battery, the manufacturer or distributor
 8 shall provide the dealer with compensation totaling not less than
 9 twenty percent (20%) of the price of the component in the
 10 manufacturer or distributor's parts catalog, not to exceed one
 11 thousand dollars (\$1,000) per component, regardless of whether the
 12 part was provided by the manufacturer at no cost, at a discount, or
 13 purchased by the dealer from the manufacturer at full cost.~~A~~
 14 ~~manufacturer or distributor shall not require unreasonable proof to~~
 15 ~~establish "reasonable compensation."~~]

- 16 ~~(5)~~~~(3)~~ (a) A manufacturer or distributor shall not require a dealer to submit a claim
 17 authorized under this section sooner than thirty (30) days after the dealer
 18 completes the preparation, delivery, or warranty service authorizing the claim
 19 for preparation, delivery, or warranty service.
- 20 (b) All claims made by a dealer under this section shall be paid within thirty (30)
 21 days after their approval.
- 22 (c) All claims shall be either approved or disapproved by the manufacturer or
 23 distributor within thirty (30) days after their receipt on a completed form
 24 supplied or approved by the manufacturer or distributor.
- 25 (d) Any claims not specifically disapproved in writing within thirty (30) days
 26 after the receipt of the form shall be considered to be approved and payment
 27 shall be made within thirty (30) days thereafter.

1 (e) A dealer shall not be required to maintain defective parts for more than thirty
2 (30) days after payment of a claim.

3 (f) Any dispute between the dealer and the manufacturer or distributor shall be
4 subject to the provisions of KRS 190.057.

5 **(6) If a manufacturer imposes a recall or a stop-sale order on any new vehicle in a**
6 **dealer's inventory that prevents the sale of the vehicle, the manufacturer shall**
7 **compensate the dealer in accordance with 49 U.S.C. sec. 30116.**

8 **(7) (a) If parts or a remedy are not reasonably available to perform a recall service**
9 **or repair on a used vehicle held for sale by a dealer authorized to sell and**
10 **service new vehicles of the same line make within thirty (30) days of the**
11 **manufacturer issuing the initial notice of recall, and the manufacturer has**
12 **issued a stop-sale or do-not-drive order on the vehicle, the manufacturer**
13 **shall compensate the dealer at a prorated rate of at least one percent (1%) of**
14 **the value of the vehicle each month beginning on the date that is thirty (30)**
15 **days after the date on which the stop-sale or do-not-drive order was**
16 **provided to the dealer until the earlier of either the date the:**

17 **1. Recall or remedy parts are made available; or**

18 **2. Dealer sells, trades, or otherwise disposes of the affected used motor**
19 **vehicle.**

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

23 **(c) This subsection shall only apply to:**

24 **1. Used vehicles subject to safety or emissions recalls pursuant to and**
25 **recalled in accordance with federal law and regulations and where a**
26 **stop-sale or do-not-drive order has been issued and repair parts or**
27 **remedy remain unavailable for thirty (30) days or longer; and**

- 1 2. New motor vehicle dealers holding an affected used vehicle for sale:
- 2 a. In inventory at the time the stop-sale or do-not-drive order was
- 3 issued; or
- 4 b. Which was taken in the used vehicle inventory of the dealer as a
- 5 consumer trade-in incident to the purchase of a new vehicle
- 6 from the dealer after the stop-sale or do-not-drive order was
- 7 issued; and
- 8 c. That is a line make that the dealer is franchised to sell or on
- 9 which the dealer is authorized to perform recall repairs.
- 10 (d) A manufacturer or distributor may compensate its dealers under a national
- 11 recall compensation program, provided the compensation under the
- 12 program is:
- 13 1. Equal to or greater than that provided under paragraph (b) of this
- 14 subsection; or
- 15 2. Of an amount on which the manufacturer or distributor and the
- 16 dealer agree.
- 17 (e) A manufacturer or distributor may direct the manner and method in which
- 18 a dealer must demonstrate the inventory status of an affected used motor
- 19 vehicle to determine eligibility under paragraph (c) of this subsection,
- 20 provided that the manner and method may not be unduly burdensome and
- 21 may not require information that is unduly burdensome to provide.
- 22 (f) This subsection shall not require a manufacturer or distributor to provide
- 23 total compensation to a dealer which would exceed the total average trade-
- 24 in value of the affected used motor vehicle as originally determined under
- 25 paragraph (b) of this subsection.
- 26 (g) Any remedy provided to a dealer under this subsection shall be exclusive
- 27 and shall not be combined with any other state or federal recall

1 compensation remedy.

2 (8) (a) Subject to paragraph (b) of this subsection, a manufacturer shall not
 3 establish an unduly burdensome process for:

4 1. The submission of a repair order; or

5 2. Proving payment for submitted repair orders.

6 (b) Requiring customer signatures or receipts shall not be considered unduly
 7 burdensome under this subsection.

8 ~~(9)~~~~(4)~~ A manufacturer or distributor shall compensate the dealer for manufacturer-
 9 sponsored or distributor-sponsored sales or service promotion events, including but
 10 not limited to rebates, programs, or activities in accordance with established written
 11 guidelines for such events, programs, or activities, which the manufacturer or
 12 distributor shall provide to each dealer.

13 ~~(10)~~~~(5)~~ (a) A manufacturer or distributor shall not require a dealer to submit a claim
 14 authorized under subsection ~~(9)~~~~(4)~~ of this section sooner than thirty (30)
 15 days after the dealer becomes eligible to submit the claim.

16 (b) All claims made by a dealer pursuant to subsection ~~(9)~~~~(4)~~ of this section for
 17 promotion events, including but not limited to rebates, programs, or activities,
 18 shall be paid within thirty (30) days after their approval.

19 (c) All claims shall be either approved or disapproved by the manufacturer or
 20 distributor within thirty (30) days after their receipt on a completed form
 21 supplied or approved by the manufacturer or distributor.

22 (d) Any claim not specifically disapproved in writing within thirty (30) days after
 23 the receipt of this form shall be considered to be approved and payment shall
 24 be made within thirty (30) days.

25 (e) Any claim disapproved in writing within thirty (30) days of submission shall
 26 state the reason for the disapproval and permit the motor vehicle dealer to
 27 correct and resubmit the disapproved claim within thirty (30) days of receipt

1 of the disapproval.

2 (f) A timely made warranty claim shall not be deemed invalid solely because
 3 unavailable parts cause additional use or mileage on the vehicle.

4 ~~(11)~~~~(6)~~ If a dealer submits any claim under this section to a manufacturer or
 5 distributor that is incomplete, inaccurate, or lacking any information usually
 6 required by the manufacturer or distributor, or if incomplete, inaccurate, or missing
 7 information is discovered during an audit, then the manufacturer or distributor shall
 8 promptly notify the dealer, and the time limit to submit the claim shall be extended
 9 for a reasonable length of time, not less than five (5) business days following notice
 10 by the manufacturer or distributor to the dealer, for the dealer to provide the
 11 complete, accurate, or lacking information to the manufacturer or distributor. A
 12 dealer's failure to comply with the specific requirements of the manufacturer or
 13 distributor for processing a claim may not constitute grounds for denial of the claim
 14 or reduction of the amount of compensation paid to the dealer if the dealer presents
 15 reasonable documentation or other evidence to substantiate the claim.

16 ~~(12)~~~~(7)~~ (a) A manufacturer or distributor may only audit warranty, recall, sales, or
 17 incentive claims for a period of twelve (12) months following payment, or the
 18 end of a program which does not exceed one (1) year in length, whichever is
 19 later, subject to all of the provisions of this section.

20 (b) A manufacturer or distributor shall not require documentation for warranty,
 21 recall, sales, or incentive claims more than twelve (12) months after the claim
 22 was paid or the end of a program which does not exceed one (1) year in
 23 length, whichever is later.

24 (c) Prior to requiring any charge-back, reimbursement, or credit against a future
 25 transaction arising out of an audit, the manufacturer or distributor shall submit
 26 written notice to the dealer along with a copy of its audit and the detailed
 27 reason for each intended charge-back, reimbursement, or credit.

1 (d) Notwithstanding the limitations of this subsection, a manufacturer that
2 possesses evidence which would cause a person of ordinary caution,
3 prudence, and judgment to believe that a dealer submitted a claim that was
4 fraudulent, false, or misleading may audit the dealer for the claims during any
5 period in which an action for fraud or for the submission of false or
6 misleading claims may be commenced under applicable state law.