

1 AN ACT relating to motor vehicle dealers.

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

3 → Section 1. KRS 190.010 is amended to read as follows:

4 As used in this chapter:

5 (1) "Manufacturer" means any person, partnership, firm, association, corporation, or
6 trust, resident or nonresident, who manufactures or assembles new motor vehicles,
7 or imports for distribution through distributors of new motor vehicles, or any
8 partnership, firm, association, joint venture, corporation, or trust, resident or
9 nonresident, which is controlled by the manufacturer. Additionally, the term
10 "manufacturer" shall include the following terms:

11 (a) "Distributor" which means any person, firm, association, corporation, or trust,
12 resident or nonresident, who in whole or in part offers for sale, sells, or
13 distributes any new motor vehicle to new motor vehicle dealers, or who
14 maintains factory representatives, or who controls any person, firm,
15 association, corporation, or trust, resident or nonresident, who in whole or in
16 part offers for sale, sells, or distributes any new motor vehicle to new motor
17 vehicle dealers;

18 (b) "Factory branch" which means a branch office maintained by a manufacturer
19 for the purpose of selling, or offering for sale, new motor vehicles to a
20 distributor, wholesaler, or new motor vehicle dealer, or for directing or
21 supervising, in whole or in part, factory or distributor representatives, and
22 shall further include any sales promotion organization, whether the same be a
23 person, firm, or corporation, which is engaged in promoting the sale of new
24 motor vehicles in this state of a particular brand or make to new motor vehicle
25 dealers;

26 (c) "Factory representative" which means a representative employed by a
27 manufacturer, distributor, or factory branch for the purpose of making or

- 1 promoting for the sale of his or her, its, or their new motor vehicles, or for
 2 supervising or contracting with his or her, its, or their dealers, or prospective
 3 dealers;
- 4 (d) "Distributor branch" which means a branch office similarly maintained by a
 5 distributor or wholesaler for the same purposes; and
- 6 (e) "Distributor representative" which means a representative similarly employed
 7 by a distributor, distributor branch, or wholesaler;
- 8 (2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this
 9 section, engaged in the business of selling, offering to sell, soliciting, or advertising
 10 the same, of new or used motor vehicles, or possessing motor vehicles for the
 11 purpose of resale, either on his or her own account, or on behalf of another, either
 12 as his or her primary business or incidental thereto;
- 13 (3) The term "motor vehicle dealer" shall not include:
- 14 (a) Receivers, trustees, administrators, executors, guardians, or other persons
 15 appointed by or acting under the judgment or order of any court, and any
 16 bank, trust company, or lending institution that is subject to state or federal
 17 regulation, with regard to its disposition of repossessed motor vehicles;
- 18 (b) Public officers while performing their official duties; or
- 19 (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection,
 20 when engaged in the specific performance of their duties as employees;
- 21 (4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and
 22 service agreement, franchise, or contract, granted by the manufacturer, distributor,
 23 or wholesaler for the sale of the manufacturer's new motor vehicles;
- 24 (5) "New motor vehicle dealership facility" means an established place of business
 25 which is being used or will be used primarily for the purpose of selling, buying,
 26 displaying, repairing, and servicing motor vehicles;
- 27 (6) "Used motor vehicle dealer" means any person engaged in the business of selling at

- 1 retail, displaying, offering for sale, or dealing in used motor vehicles or autocycles
2 as defined in KRS 186.010, but shall not mean any person engaged in the business
3 of dismantling, salvaging, or rebuilding motor vehicles by means of using used
4 parts, or any public officer performing his or her official duties;
- 5 (7) "Motor vehicle leasing dealer" means any person engaged in the business of
6 regularly making available, offering to make available, or arranging for another
7 person to use a motor vehicle pursuant to a bailment, lease, or other contractual
8 arrangement under which a charge is made for its use at a periodic rate for at least a
9 monthly term, and title to the motor vehicle is in a person other than the user, but
10 shall not mean a manufacturer or its affiliate leasing to its employees or to dealers;
- 11 (8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively
12 sells, offers to sell, solicits, or advertises specialized motor vehicles including, but
13 not limited to, funeral coaches, emergency vehicles, and an automotive recycling
14 dealer engaged in the business of dismantling, salvaging, or recycling salvage
15 motor vehicles for the purpose of harvesting used parts, components, assemblies,
16 and recyclable materials for resale, reuse, or reclamation;
- 17 (9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to
18 sell, solicits, or advertises motorcycles, including alternative-speed motorcycles as
19 defined in KRS 186.010 and autocycles as defined in KRS 186.010. Motorcycles
20 shall not include mopeds as defined in this section;
- 21 (10) "Motor vehicle salesperson" means any person who is employed as a salesperson by
22 a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer
23 by a motor vehicle auction dealer to sell motor vehicles at auction;
- 24 (11) "Motor vehicle auction dealer" means any person primarily engaged in the business
25 of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of
26 a motor vehicle through auction;
- 27 (12) "Motor vehicle" means every vehicle intended primarily for use and operation on

1 the public highways that is self-propelled including low-speed motor vehicles as
2 defined in KRS 186.010, but shall not include any recreational vehicle or farm
3 tractors and other machines and tools used in the production, harvesting, and care of
4 farm products;

5 (13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer,
6 distributor, or wholesaler, or has been sold to the holders of a valid sales and
7 service agreement, franchise, or contract, granted by the manufacturer, distributor,
8 or wholesaler for the sale of the make of new vehicle, which is new, and on which
9 the original title has not been issued from the franchised dealer;

10 (14) "Moped" means a motorized bicycle with pedals whose frame design may include
11 one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle
12 with pedals and with a step through type frame rated no more than two (2) brake
13 horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an
14 automatic transmission not requiring clutching or shifting by the operator after the
15 drive system is engaged, and capable of a maximum speed of not more than thirty
16 (30) miles per hour;

17 (15) "Commission" means the Motor Vehicle Commission;

18 (16) "Commissioner" means the commissioner of the department;

19 (17) "Department" means the Department of Vehicle Regulation;

20 (18) "Licensor" means the commission;

21 (19) "Established place of business" means a permanent, enclosed commercial building
22 located within this state, easily accessible and open to the public at all reasonable
23 times, and at which the business of a vehicle dealer, including the display and repair
24 of vehicles, may be lawfully carried on in accordance with the terms of all
25 applicable building codes, zoning, and other land use regulatory ordinances;

26 (20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or
27 other legal entity;

- 1 (21) "Franchise" means the agreement or contract between any new motor vehicle
2 manufacturer, written or otherwise, and any new motor vehicle dealer that purports
3 to fix the legal rights and liabilities of the parties to an agreement or contract, and
4 pursuant to which the dealer purchases and resells the franchise product, along with
5 any addendums to the franchise agreement;
- 6 (22) "Good faith" means honesty in fact, and the observance of reasonable commercial
7 standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-
8 103(1)(b);
- 9 (23) "Designated family member" means the spouse, child, grandchild, parent, brother,
10 or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the
11 dealer's ownership interest in the dealership under the terms of the dealer's will; or
12 who has otherwise been designated in writing by a deceased dealer to succeed him
13 in the motor vehicle dealership; or who, under the laws of intestate succession of
14 this state is entitled to inherit the interest; or who, in the case of an incapacitated
15 dealer, has been appointed by a court as the legal representative of the dealer's
16 property. The term includes the appointed and qualified personal representative and
17 testamentary trustee of a deceased dealer;
- 18 (24) "Fraud" means a misrepresentation in any manner, whether intentionally false or
19 due to gross negligence, of a material fact; a promise or representation not made in
20 good faith; or an intentional failure to disclose material fact;
- 21 (25) "Sale" means the issuance, transfer, agreement for transfer, exchange, lease, pledge,
22 hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of
23 any motor vehicle or interest in it, or of any franchise related to it, as well as any
24 option, subscription, other contract, or solicitation looking to a sale, offer to attempt
25 to sell in any form, whether spoken or written. A gift or delivery of any motor
26 vehicle or franchise with respect thereto, with or as a bonus on account of the sale
27 of anything, shall be deemed a sale of the motor vehicle or franchise;

- 1 (26) "Automotive mobility dealer" means any motor vehicle dealer who:
- 2 (a) Exclusively engages in the business of selling, offering to sell, or soliciting or
- 3 advertising the sale of adapted vehicles;
- 4 (b) Possesses adapted vehicles exclusively for the purpose of resale, either on his
- 5 or her own account or on behalf of another, as his or her primary business or
- 6 incidental thereto; or
- 7 (c) Engages in the business of selling, installing, or servicing; offering to sell,
- 8 install, or service; or soliciting or advertising the sale, installation, or servicing
- 9 of equipment or modifications specifically designed to facilitate use or
- 10 operation of a motor vehicle by an aging or disabled person;
- 11 (27) "Adapted vehicle" means a new or used motor vehicle especially designed or
- 12 modified for use by an aging or disabled person;
- 13 (28) "Mobility equipment" means equipment specifically designed to facilitate the use of
- 14 a motor vehicle by an aging or disabled person;
- 15 (29) "Nonprofit motor vehicle dealer" means a nonprofit organization exempt from
- 16 taxation under Section 501(c)(3) of the Internal Revenue Code that purchases motor
- 17 vehicles that it may offer for purchase to clients and other individuals who meet the
- 18 definition of client as defined in this section and who are referred to the
- 19 organization by public or private social service agencies;
- 20 (30) "Client" means a person who has an open case file with a nonprofit organization or
- 21 governmental agency and who meets the standards for disability or disadvantaging
- 22 condition as established in administrative regulations promulgated by the
- 23 commission pursuant to KRS 190.032(4);
- 24 (31) "Recreational vehicle" means a vehicle that:
- 25 (a) Is primarily designed as temporary living quarters for noncommercial
- 26 recreation or camping use;
- 27 (b) Has its own motive power or is towed by another vehicle;

1 (c) Is regulated by the National Highway Traffic Safety Administration as a
 2 vehicle; and

3 (d) Does not require a special highway use permit; and

4 (32) "New recreational vehicle dealer" means a new recreational vehicle dealer as
 5 defined in KRS 190A.010.

6 → Section 2. KRS 190.042 is amended to read as follows:

7 (1) Any owner of a new motor vehicle dealership may appoint by will, or any other
 8 written instrument, a designated family member to succeed in the ownership
 9 interest of the said owner in the new motor vehicle dealership.

10 (2) **Manufacturers shall permit an owner of a new motor vehicle dealership to**
 11 **propose a successor addendum, which shall be subject to the requirements in this**
 12 **section.**

13 **(3)** Unless there exists good cause for refusal to honor succession on the part of the
 14 manufacturer or distributor, any designated family member of a deceased or
 15 incapacitated owner of a new motor vehicle dealership may succeed to the
 16 ownership of the new motor vehicle dealership under the existing franchise
 17 provided that:

18 (a) The designated family member gives the manufacturer or distributor written
 19 notice of his or her intention to succeed to the ownership of the new motor
 20 vehicle dealership within ninety (90) days of the owner's death or incapacity;
 21 and

22 (b) The designated family member agrees to be bound by all the terms and
 23 conditions of the franchise.

24 ~~(4)~~~~(3)~~ The manufacturer or distributor may request, and the designated family
 25 member shall provide, promptly upon said request, personal and financial data that
 26 is reasonably necessary to determine whether the succession should be honored.

27 → Section 3. KRS 190.045 is amended to read as follows:

1 (1) Notwithstanding the terms, provisions, or conditions of any franchise or
 2 notwithstanding the terms or provisions of any waiver, a manufacturer shall not
 3 cancel, terminate, or fail to renew any franchise with a licensed new motor vehicle
 4 dealer unless the manufacturer has:

- 5 (a) Satisfied the notice requirement of subsection (4) of this section;
- 6 (b) Has good cause for cancellation, termination, or nonrenewal;
- 7 (c) Has acted in good faith as defined in KRS 190.010(22); and
- 8 (d) Has established the requirements of this subsection in proceedings before the
 9 licensor if the action is protested by the new motor vehicle dealer within:

10 1. **Thirty (30)**~~Fifteen (15)~~ days after receiving notice of the cancellation,
 11 termination, or nonrenewal; or

12 2. **Fifteen (15) days for a termination for a cause listed in subsection**
 13 **(4)(c) of this section.**

14 When a protest is filed, the licensor shall inform the manufacturer, distributor,
 15 factory branch, or factory representative that a timely protest has been filed and that
 16 the manufacturer, distributor, factory branch, or factory representative shall not
 17 cancel, terminate, or fail to renew any franchise with the licensed new motor
 18 vehicle dealer until the licensor has held a hearing and the licensor has determined
 19 that the manufacturer has met its burden under this section.

20 (2) Notwithstanding the terms, provisions, or conditions of any franchise or the terms
 21 or provisions of any waiver, good cause shall exist for the purposes of a
 22 termination, cancellation, or nonrenewal when:

- 23 (a) There is a failure by the new motor vehicle dealer to comply with a provision
 24 of the franchise which provision is both reasonable and of material
 25 significance to the franchise relationship, provided that the dealer has been
 26 notified in writing of the failure within one hundred eighty (180) days after
 27 the manufacturer first acquired knowledge of the failure.

- 1 (b) If the failure by the new motor vehicle dealer, defined in paragraph (a) of this
2 subsection, relates to the performance of the new motor vehicle dealer in sales
3 or service, then good cause shall be defined as the failure of the new motor
4 vehicle dealer to comply with reasonable performance criteria established by
5 the manufacturer, if the new motor vehicle dealer was apprised by the
6 manufacturer in writing of a failure, and
- 7 1. The notification stated that notice was provided of failure of
8 performance pursuant to this section;
 - 9 2. The new motor vehicle dealer was afforded a reasonable opportunity,
10 for a period of not less than six (6) months, to comply with the criteria;
11 and
 - 12 3. The new motor vehicle dealer did not demonstrate substantial progress
13 toward compliance with the manufacturer's performance criteria during
14 the designated period.
- 15 (3) The manufacturer shall have the burden of proof under this section.
- 16 (4) Notwithstanding the terms, provisions, or conditions of any franchise prior to the
17 termination, cancellation, or nonrenewal of any franchise, the manufacturer shall
18 furnish notification of a termination, cancellation, or nonrenewal to the new motor
19 vehicle dealer as follows:
- 20 (a) In the manner described in subsection (2)(b) of this section; and
 - 21 (b) In not less than ninety (90) days prior to the effective date of the termination,
22 cancellation or nonrenewal; or
 - 23 (c) In not less than fifteen (15) days prior to the effective date of a termination,
24 cancellation, or nonrenewal with respect to any of the following:
 - 25 1. Insolvency of the new motor vehicle dealer, or filing of any petition by
26 or against the new motor vehicle dealer under any bankruptcy or
27 receivership law;

- 1 2. Failure of the new motor vehicle dealer to conduct its customary sales
2 and service operations during its customary business hours for seven (7)
3 consecutive business days, except for acts of God or circumstances
4 beyond the direct control of the new motor vehicle dealer;
- 5 3. Fraudulent misrepresentation by the new motor vehicle dealer to the
6 manufacturer or distributor which is material to the franchise;
- 7 4. Conviction of the new motor vehicle dealer, or any owner or operator
8 thereof, of any felony which is punishable by imprisonment; or
- 9 5. Revocation of any license which the new motor vehicle dealer is
10 required to have to operate a dealership;
- 11 (d) In not less than one hundred eighty (180) days prior to the effective date of a
12 termination or cancellation where the manufacturer or distributor is
13 discontinuing the sale of the product line.
- 14 (5) Notification under this section shall be in writing by certified mail or personally
15 delivered to the new motor vehicle dealer; and shall contain:
- 16 (a) A statement of intent to terminate, cancel, or not to renew the franchise; and
17 (b) A statement of the reasons for the termination, cancellation, or nonrenewal;
18 and
- 19 (c) The date on which the termination, cancellation, or nonrenewal takes effect.
- 20 (6) Upon the termination, nonrenewal, or cancellation of any franchise, pursuant to this
21 section, the new motor vehicle dealer shall be allowed fair and reasonable
22 compensation by the manufacturer for the:
- 23 (a) New current model year motor vehicle inventory which has been acquired
24 from the manufacturer, and which has not been damaged or altered while in
25 the dealer's possession;
- 26 (b) Supplies and parts which have been acquired from the manufacturer;
- 27 (c) Equipment and furnishings provided the new motor vehicle dealer purchased

1 from the manufacturer or its approved sources; and

2 (d) Special tools.

3 Fair and reasonable compensation shall be paid by the manufacturer within ninety
4 (90) days of the effective date of termination, cancellation, or nonrenewal, provided
5 the new motor vehicle dealer has clear title to the inventory and other items and is
6 in a position to convey that title to the manufacturer.

7 (7) In the event of a termination, cancellation, or nonrenewal under this section, and the
8 new motor vehicle dealer is leasing the dealership facilities from a lessor other than
9 the manufacturer, or owns the dealership facilities, the manufacturer shall pay a
10 reasonable rent to the dealer in accordance with and subject to subsection (8) of this
11 section.

12 (8) (a) Reasonable rental value shall be paid only to the extent the dealership
13 premises are recognized in the franchise and only if they are:

- 14 1. Used solely for performance in accordance with the franchise; and
- 15 2. Not substantially in excess of those facilities recommended by the
16 manufacturer.

17 (b) If the facilities are owned by the dealer, the manufacturer will either:

- 18 1. Locate a purchaser who will offer to purchase the dealership facilities at
19 a reasonable price; or
- 20 2. Locate a lessee who will offer to lease the premises for a reasonable
21 term at a reasonable rent; or
- 22 3. Failing the foregoing, lease the dealership facilities at a reasonable
23 rental value for one (1) year.

24 (c) If the facilities are leased by the dealer, the manufacturer will either:

- 25 1. Locate a tenant or tenants satisfactory to the lessor, who will sublet or
26 assume the balance of the lease; or
- 27 2. Arrange with the lessor for the cancellation of the lease without penalty

1 to the dealer; or

2 3. Failing the foregoing, lease the dealership facilities at a reasonable rent
3 for one (1) year.

4 (d) The manufacturer shall not be obligated to provide assistance under this
5 section if the dealer:

6 1. Fails to accept a bona fide offer from a prospective purchaser, sublessee
7 or assignee; or

8 2. Refuses to execute a settlement agreement with the lessor if the
9 agreement would be without cost to the dealer; or

10 3. Fails to make a written request for assistance under this section within
11 one (1) month of the termination, cancellation, or nonrenewal.

12 (e) If, in an action for damages under this section, the manufacturer or distributor
13 fails to prove either that the manufacturer or distributor has acted in good faith
14 or that there was good cause for the franchise termination, cancellation, or
15 nonrenewal, then the manufacturer or distributor may terminate, cancel, or fail
16 to renew the franchise upon payment to the new motor vehicle dealer of an
17 amount equal to the value of the dealership as an ongoing business location.

18 (9) Notice of termination to a dealer shall entitle the dealer to continue the franchise
19 and the dealer may attempt to sell the franchise until all of the dealer's appeal rights
20 have been exhausted.

21 → Section 4. KRS 190.046 is amended to read as follows:

22 (1) Notwithstanding the terms of any franchise agreement, each motor vehicle
23 manufacturer or distributor, doing business within this Commonwealth, shall
24 assume all responsibility for and shall defend, indemnify, and hold harmless its
25 motor vehicle dealers against any loss, damages, and expenses, including legal
26 costs, arising out of complaints, claims, recall repairs or modifications or factory
27 authorized or directed repairs, or lawsuits resulting from warranty defects, which

1 shall include structural or production defects; defects in the assembly; or design of
 2 motor vehicles, parts, accessories; or other functions beyond the control of the
 3 dealer, including without limitation, the selection of parts or components for the
 4 vehicle. Each manufacturer or distributor shall pay reasonable compensation to any
 5 authorized dealer who performs work to repair defects, or to repair any damage to
 6 the manufacturer's or distributor's product sustained while the product is in transit to
 7 the dealer, when the carrier or the means of transportation is designated by the
 8 manufacturer or distributor. Each manufacturer or distributor shall provide to its
 9 dealers with each model year a schedule of time allowances for the performance of
 10 warranty repair work and services, which shall include time allowances for the
 11 diagnosis and performance of warranty work and service time, and shall be
 12 reasonable and adequate for the work to be performed.

- 13 (2) In the determination of what constitutes "reasonable compensation" under this
 14 section, the principal factor to be considered shall be the amount of money that the
 15 dealer is charging its other customers for the same type service or repair work.
 16 Other factors may be considered, including the compensation being paid by other
 17 manufacturers or distributors to their dealers for work; and the prevailing amount of
 18 money being paid or charged by the dealers in the city or community in which the
 19 authorized dealer is doing business. "Reasonable compensation" shall include
 20 diagnosing the defect *as needed*; repair service; labor; parts and administrative and
 21 clerical costs. The compensation of a dealer shall not be less than the amount
 22 charged by the dealer for like services and parts, which minimum compensation for
 23 parts shall be dealer cost plus thirty percent (30%) gross profit, to retail customers
 24 for nonwarranty service and repairs, or less than the amounts indicated for work on
 25 the schedule of warranty compensation required to be filed by the manufacturer
 26 with the commission as a part of the manufacturer's license application by KRS
 27 190.030. A manufacturer or distributor shall not require unreasonable proof to

- 1 establish "reasonable compensation."
- 2 (3) (a) A manufacturer or distributor shall not require a dealer to submit a claim
3 authorized under this section sooner than thirty (30) days after the dealer
4 completes the preparation, delivery, or warranty service authorizing the claim
5 for preparation, delivery, or warranty service.
- 6 (b) All claims made by a dealer under this section shall be paid within thirty (30)
7 days after their approval.
- 8 (c) All claims shall be either approved or disapproved by the manufacturer or
9 distributor within thirty (30) days after their receipt on a completed form
10 supplied or approved by the manufacturer or distributor.
- 11 (d) Any claims not specifically disapproved in writing within thirty (30) days
12 after the receipt of the form shall be considered to be approved and payment
13 shall be made within thirty (30) days thereafter.
- 14 (e) A dealer shall not be required to maintain defective parts for more than thirty
15 (30) days after payment of a claim.
- 16 (f) Any dispute between the dealer and the manufacturer or distributor shall be
17 subject to the provisions of KRS 190.057.
- 18 (4) A manufacturer or distributor shall compensate the dealer for manufacturer-
19 sponsored or distributor-sponsored sales or service promotion events, including but
20 not limited to rebates, programs, or activities in accordance with established written
21 guidelines for such events, programs, or activities, which the manufacturer or
22 distributor shall provide to each dealer.
- 23 (5) (a) A manufacturer or distributor shall not require a dealer to submit a claim
24 authorized under subsection (4) of this section sooner than thirty (30) days
25 after the dealer becomes eligible to submit the claim.
- 26 (b) All claims made by a dealer pursuant to subsection (4) of this section for
27 promotion events, including but not limited to rebates, programs, or activities,

- 1 shall be paid within thirty (30) days after their approval.
- 2 (c) All claims shall be either approved or disapproved by the manufacturer or
3 distributor within thirty (30) days after their receipt on a completed form
4 supplied or approved by the manufacturer or distributor.
- 5 (d) Any claim not specifically disapproved in writing within thirty (30) days after
6 the receipt of this form shall be considered to be approved and payment shall
7 be made within thirty (30) days.
- 8 (6) If a dealer submits any claim under this section to a manufacturer or distributor that
9 is incomplete, inaccurate, or lacking any information usually required by the
10 manufacturer or distributor, or if incomplete, inaccurate, or missing information is
11 discovered during an audit, then the manufacturer or distributor shall promptly
12 notify the dealer, and the time limit to submit the claim shall be extended for a
13 reasonable length of time, not less than five (5) business days following notice by
14 the manufacturer or distributor to the dealer, for the dealer to provide the complete,
15 accurate, or lacking information to the manufacturer or distributor. A dealer's
16 failure to comply with the specific requirements of the manufacturer or distributor
17 for processing a claim may not constitute grounds for denial of the claim or
18 reduction of the amount of compensation paid to the dealer if the dealer presents
19 reasonable documentation or other evidence to substantiate the claim.
- 20 (7) (a) A manufacturer or distributor may only audit warranty, recall, sales, or
21 incentive claims for a period of twelve (12) months following payment, or the
22 end of a program which does not exceed one (1) year in length, whichever is
23 later, subject to all of the provisions of this section.
- 24 (b) A manufacturer or distributor shall not require documentation for warranty,
25 recall, sales, or incentive claims more than twelve (12) months after the claim
26 was paid or the end of a program which does not exceed one (1) year in
27 length, whichever is later.

- 1 (c) Prior to requiring any charge-back, reimbursement, or credit against a future
 2 transaction arising out of an audit, the manufacturer or distributor shall submit
 3 written notice to the dealer along with a copy of its audit and the detailed
 4 reason for each intended charge-back, reimbursement, or credit.
- 5 (d) **Notwithstanding** the limitations of this subsection, ~~do not apply if the~~ a
 6 manufacturer **that possesses evidence which would cause a person of**
 7 **ordinary caution, prudence, and judgment to believe that a dealer submitted**
 8 **a claim that was fraudulent, false, or misleading may audit the dealer for**
 9 **the claims during any period in which an action for fraud or for the**
 10 **submission of false or misleading claims may be commenced under**
 11 **applicable state law** ~~for distributor can prove fraud on a claim~~.

12 → Section 5. KRS 190.070 is amended to read as follows:

- 13 (1) It shall be a violation of this section for any manufacturer, distributor, factory
 14 branch, or factory representative licensed under this chapter, **either directly or**
 15 **indirectly**, to require any new motor vehicle dealer in the Commonwealth:
- 16 (a) To order or accept delivery of any motor vehicle, part or accessory thereof,
 17 appliances, equipment, or any other product not required by law, which shall
 18 not have been voluntarily ordered by the new motor vehicle dealer; except
 19 that this section is not intended to modify or supersede any terms or
 20 provisions of the franchise requiring new motor vehicle dealers to market a
 21 representative line of those motor vehicles which the manufacturer or
 22 distributor is publicly advertising; ~~;~~
- 23 (b) To order or accept delivery of any new motor vehicle with special features,
 24 appliances, accessories, or equipment not included in the list price of the
 25 motor vehicle, as publicly advertised by the manufacturer or distributor; ~~;~~
- 26 (c) To order for any person any parts, accessories, equipment, machinery tools,
 27 appliance, or any commodity whatsoever not required in connection with a

- 1 recall campaign;[]
- 2 (d) To participate monetarily in an advertising campaign or contest, any
3 promotional materials, training materials, showroom or other display
4 decorations, or materials, at the expense of the dealer, without the consent of
5 the dealer;[]
- 6 (e) To enter into any agreement with the manufacturer, distributor, factory
7 branch, or factory representative, or to do any other act prejudicial to the new
8 motor vehicle dealer by threatening to cancel a franchise or any contractual
9 agreement existing between the dealer and the manufacturer, distributor,
10 factory branch, or factory representative. Notice in good faith to any dealer of
11 the dealer's violation of any terms or provisions of the dealer's franchise, or
12 contractual agreement shall not constitute a violation of this law;[]
- 13 (f) To change the capital structure of the dealership, or the means by or through
14 which the dealer finances the operation of the dealership, provided that the
15 dealership at all times meets any reasonable capital standards agreed to by the
16 dealer, excluding any entity engaged primarily in providing financing or
17 insurance on motor vehicles;[]
- 18 (g) To refrain from participation in the management or investment in, or the
19 acquisition of any other line of new motor vehicle or related products;
20 provided, however, that this section does not apply unless the new motor
21 vehicle dealer maintains a reasonable line of credit for each make or line of
22 new motor vehicles, and that the new motor vehicle dealer remains in
23 substantial compliance with the terms and conditions of the franchise and with
24 any reasonable facility requirements of the manufacturer, and no change is
25 made in the principal management of the new motor vehicle dealership;[]
- 26 (h) To change *the* location of the dealership[] or[] to[], during the course of the
27 agreement, make any substantial alterations to *the same components of* the

1 dealership premises;

2 **1. Within ten (10) years of a previously required improvement, alteration,**
 3 **or construction to those same components; or**~~[-]~~

4 **2.** When to do so, would be unreasonable in light of the current economic,
 5 political, and social considerations;~~[-]~~

6 (i) To prospectively assent to a release, assignment, novation, waiver, or estoppel
 7 which would relieve any person from liability to be imposed by this law, or to
 8 require any controversy between a dealer and a manufacturer, distributor, or
 9 representative, to be referred to any person other than the duly constituted
 10 courts of the Commonwealth or the United States of America, or to the
 11 commissioner, if the referral would be binding upon the dealer;~~[-]~~

12 (j) To establish or maintain exclusive facilities, personnel, display space, or
 13 signage for a new motor vehicle make or line;**or**~~[-]~~

14 (k) To expand facilities without making available a sufficient supply of new
 15 motor vehicles to support the expansion in light of the market and economic
 16 conditions.

17 (2) It shall be a violation of this section for any manufacturer, distributor, factory
 18 branch, or factory representative, **either directly or indirectly**:

19 (a) To delay, refuse, or fail to deliver motor vehicles, or vehicle parts or
 20 accessories in reasonable quantities relative to the new motor vehicle dealer's
 21 facilities and sales potential in the new motor vehicle dealer's relevant market
 22 area, and within a reasonable time, but in any case no more than sixty (60)
 23 days, after receipt of an order from a dealer having a franchise for the retail
 24 sale of any new vehicle sold or distributed by the manufacturer or distributor,
 25 any new vehicle, parts, or accessories to new vehicles as are covered by the
 26 franchise, if the vehicle, parts, or accessories are publicly advertised as being
 27 available for delivery or actually being delivered. The delivery to another

1 dealer of a motor vehicle of the same model and identically~~[similarly]~~
 2 equipped as the vehicle ordered by a motor vehicle dealer who has not
 3 received delivery thereof, but who had placed his or her written order for the
 4 vehicle prior to the order of the dealer receiving the vehicle, shall be prima
 5 facie evidence of a delayed delivery of, or refusal to deliver, a new motor
 6 vehicle to a motor vehicle dealer within sixty (60) days, without cause. This
 7 section is not violated, however, if the failure is caused by acts or causes
 8 beyond the control of the manufacturer, distributor, factory branch, or factory
 9 representative;~~[-]~~

10 (b) To refuse to disclose to any new motor vehicle dealer, handling the same line
 11 make, the manner and mode of distribution of that line make within the
 12 relevant market areas;~~[-]~~

13 (c) To prevent or attempt to prevent a dealer from receiving fair and reasonable
 14 compensation for the value of the franchised business. There shall not be a
 15 transfer or assignment of the dealer's franchise without the consent of the
 16 manufacturer or distributor, which consent shall not be unreasonably
 17 withheld;~~[-]~~

18 (d) To receive money, goods, services, or any other benefit from any vendor on
 19 account of a transaction between the dealer and the vendor with whom the
 20 dealer does business on the recommendation or requirement of the
 21 manufacturer or distributor, other than for compensation for services
 22 rendered, unless the benefit is promptly accounted for, and transmitted to
 23 the dealer, excluding any entity engaged primarily in providing financing or
 24 insurance on motor vehicles;~~To obtain money, goods, service, or any other~~
 25 ~~benefit from any other person with whom the dealer does business, on account~~
 26 ~~of, or in relation to, the transaction between the dealer and the other person,~~
 27 ~~other than for compensation for services rendered, unless the benefit is~~

1 ~~promptly accounted for, and transmitted to, the dealer, excluding any entity~~
 2 ~~engaged primarily in providing financing or insurance on motor vehicles.]~~

- 3 (e) To increase prices of motor vehicles which the dealer had ordered for private
 4 retail customers prior to the dealer's receipt of the written official price
 5 increase notification, a sales contract signed by a private retail consumer shall
 6 constitute evidence of each order, provided that the vehicle is in fact delivered
 7 to the customer. In the event of manufacturer price reductions, the amount of
 8 a reduction received by a dealer shall be passed on to the private retail
 9 consumer by the dealer, if the retail price was negotiated on the basis of the
 10 previous higher price to the dealer. Price reductions shall apply to all vehicles
 11 in the dealer's inventory which were subject to the price reduction. Price
 12 differences applicable to new model or series motor vehicles at the time of the
 13 introduction of new models or series shall not be considered a price increase
 14 or price decrease. Price changes caused by the following shall not be subject
 15 to the provisions of this section:

- 16 1. The addition to a motor vehicle of required or optional equipment
 17 pursuant to state or federal law;
 18 2. Revaluation of the United States dollar, in the case of foreign-make
 19 vehicles or components; or
 20 3. Increased transportation charges due to an increase in the rate charged
 21 by common carrier or transporter; ~~[-]~~

- 22 (f) To offer any refunds or other types of inducements to any person for the
 23 purchase of new motor vehicles of a certain line make to be sold to the state or
 24 any political subdivision thereof, without making the same offer, upon written
 25 request, to all other dealers in the same line make within the relevant market
 26 area; ~~[-]~~

- 27 (g) To release to any outside party, except under subpoena, any administrative,

- 1 judicial or arbitration proceedings, or any business, financial, or personal
 2 information which may be, from time to time, provided by the dealer to the
 3 manufacturer, without the express written consent of the dealer;~~[-]~~
- 4 (h) To deny any dealer the right of free association with any other dealer for any
 5 lawful purpose;~~[-]~~
- 6 (i) To establish or maintain a relationship, on the part of a manufacturer,
 7 distributor, factory branch, or factory representative, where the voting rights
 8 exceed a simple majority;~~[-]~~
- 9 (j) To own, operate, or control any motor vehicle dealership in the
 10 Commonwealth; however, this subsection shall not prohibit:
- 11 1. The operation by any manufacturer of a dealership for a temporary
 12 period, not to exceed one (1) year, during the transition from one (1)
 13 owner to another;
- 14 2. The ownership or control of a dealership by a manufacturer while the
 15 dealership is being sold under a bona fide contract or purchase option to
 16 the operator of the dealership; or
- 17 3. The ownership, operation, or control of a dealership by a manufacturer
 18 if the licensor determines after a hearing at the request of any party, that
 19 there is not a dealer who is independent of the manufacturer available in
 20 the community or trade area to own and operate the franchise in a
 21 manner consistent with the public interest;~~[-]~~
- 22 (k) To compete without good faith with a new motor vehicle dealer in the same
 23 line make, operating under an agreement or franchise from the
 24 aforementioned manufacturer, distributor, factory branch, or factory
 25 representative in the relevant market area. A manufacturer, distributor, factory
 26 branch, or factory representative shall not, however, be deemed to be
 27 competing when operating a dealership, either temporarily for a reasonable

1 period, not to exceed one (1) year, or in a bona fide retail operation which is
 2 for sale to any qualified independent person at a fair and reasonable price, or
 3 in a bona fide relationship in which an independent person has made a
 4 significant investment, subject to loss in the dealership, and can reasonably
 5 expect to acquire full ownership of such dealership on reasonable terms and
 6 conditions;[-]

7 **(l) To offer to sell or to sell, directly or indirectly, at retail, any new motor**
 8 **vehicle to a consumer in the Commonwealth, except through a new motor**
 9 **vehicle dealer holding a franchise for the line make covering the new motor**
 10 **vehicle. The prohibition in this paragraph shall not apply to manufacturer**
 11 **or franchisor sales of new motor vehicles to the federal government,**
 12 **charitable organizations, fleet customers, or employees of the manufacturer**
 13 **or franchisor;**

14 **(m) To fail to assign any retail vehicle reservation, request to purchase, or lease**
 15 **received by the manufacturer from a resident of the Commonwealth to the**
 16 **franchised dealer designated by the customer or, if no designation is made,**
 17 **to the franchised dealer in the closest proximity to the consumer, and for**
 18 **which the franchised dealer is otherwise in compliance with the franchise**
 19 **agreement and authorized to sell the make and model based on applicable**
 20 **standards and requirements that include but are not limited to any facility,**
 21 **technology, or training requirements necessary to sell or service the vehicle,**
 22 **so long as the standards and requirements are compliant with the applicable**
 23 **laws and regulations. Nothing in this paragraph shall require a**
 24 **manufacturer or distributor to allocate or supply additional or supplemental**
 25 **inventory to a franchised dealer located in the Commonwealth in order to**
 26 **satisfy a retail consumer's reservation or request;**

27 **(n) [(4)]** To unfairly discriminate among its new motor vehicle dealers with

1 respect to warranty reimbursement or authority granted its new motor vehicle
2 dealers to make warranty adjustment with retail customers;~~[-]~~

3 ~~(o)~~~~(m)~~ To fail to give consent to the sale, transfer, or exchange of the franchise
4 to a qualified buyer capable of being licensed as a new motor vehicle dealer in
5 this state; provided that consent may be withheld when in light of other
6 circumstances, granting the consent would be unreasonable;~~or~~~~[-]~~

7 ~~(p)~~~~(n)~~ To fail to be licensed as provided in this chapter, and to maintain a bond
8 in an amount as determined by this chapter.

9 (3) It shall be unlawful for a manufacturer, either directly or indirectly, or in
10 combination with or through any subsidiary or affiliated entity, to discriminate in
11 favor of one (1) dealer against another dealer holding a franchise for the same line
12 make of motor vehicle by furnishing to only one (1) dealer any of the following:

13 (a) Any vehicle, part, or other product that is not available to each dealer at the
14 same price, including discounts, rebates, incentives, or other payments or
15 allowances affecting the net price of the product;

16 (b) Any vehicle, part, or other product that is not made available to each dealer in
17 quantities proportionate to the demand for the vehicle, part, or other product;

18 (c) Any vehicle, part, or other product that is not made available to each dealer on
19 comparable delivery terms, including time of delivery after placement of an
20 order;

21 (d) Any promotional or advertising payment or allowance that is not made
22 available to each dealer on proportionally equal terms;

23 (e) Any opportunity to purchase or lease from the manufacturer the dealer's
24 facility that is not made available to each dealer on terms proportionate to the
25 respective values of its facilities;

26 (f) Any personnel training that is not made available to each dealer on
27 proportionally equal terms;

- 1 (g) Any inventory or other financing that is not made available to each dealer on
2 proportionally equal terms, except that a manufacturer, subsidiary, or
3 affiliated entity shall not be obligated to make available financing to a dealer
4 who does not meet reasonable credit standards uniformly applied by the
5 manufacturer, subsidiary, or affiliated entity;
- 6 (h) Any opportunity to perform work for which the dealer is entitled to be
7 compensated under this chapter that is not made available to each dealer under
8 uniformly applied standards;
- 9 (i) Any opportunity to sell products or services distributed by the manufacturer
10 for resale in connection with the line make of the motor vehicle covered by
11 the franchise that is not made available to each dealer on proportionally equal
12 terms;
- 13 (j) Any opportunity to establish an additional sales, service, or parts outlet that is
14 not made available to each dealer in whose relevant market area the sales,
15 service, or parts outlet will be located;
- 16 (k) Any information concerning the manufacturer's products, prices or other
17 terms of sale, or promotional programs that is not contemporaneously
18 furnished to the dealer;
- 19 (l) Any improvement to, or payment to the dealer for an improvement to, the
20 dealer's facilities that is not made available to each dealer on proportionally
21 equal terms;
- 22 (m) Any opportunity to sell or assign retail installment contracts or consumer
23 leases to the manufacturer or the manufacturer's sales finance company
24 subsidiary that is not made available to each dealer on proportionally equal
25 terms, except that a manufacturer or sales finance company shall not be
26 obligated to purchase any retail installment contract or consumer lease that
27 does not meet reasonable credit terms uniformly applied by the manufacturer

- 1 or sales finance company subsidiary;
- 2 (n) Any product assistance, service, or facility in connection with the franchise
- 3 that is not made available to each dealer on proportionally equal terms; or
- 4 (o) Any payment for any service or facility in connection with the franchise that
- 5 is not made available to each dealer on proportionally equal terms.
- 6 (4) It shall not be a defense to an alleged violation of subsection (3) of this section, that
- 7 an item or opportunity was offered to a dealer if the offer was conditioned upon the
- 8 dealer meeting one (1) or more requirements that are not reasonable and necessary
- 9 to fulfill the dealer's obligations under the franchise. The manufacturer shall have
- 10 the burden of proving that any requirement upon which an offer was conditioned
- 11 was reasonable and necessary to fulfill the dealer's obligations under the franchise
- 12 when the offer was made. A requirement shall not be found to be reasonable and
- 13 necessary to fulfill the dealer's obligations under the franchise if the manufacturer
- 14 cannot prove that it was within the control of each dealer to meet the requirement
- 15 imposed on the dealer as a condition of the offer.
- 16 (5) A dealer who alleges a good faith belief that the dealer has been, or is being,
- 17 discriminated against in violation of subsection (3) of this section, may demand in
- 18 writing that the manufacturer furnish the dealer with pertinent information
- 19 reasonably necessary for the dealer to determine if discrimination exists. If the
- 20 manufacturer fails to furnish the dealer with the information demanded within thirty
- 21 (30) days of the manufacturer's receipt of the dealer's written demand, the
- 22 manufacturer shall have, in any subsequent legal proceeding, the burden of proving
- 23 that the alleged violation has not occurred.
- 24 (6) Any dealer who is discriminated against by a manufacturer in violation of
- 25 subsection (3) of this section shall recover three (3) times an amount equal to the
- 26 value of what the dealer would have received if the manufacturer had complied
- 27 with subsection (3) of this section upon furnishing any item or opportunity to

1 another dealer.

2 (7) A change in ownership of a manufacturer or distributor that contemplates a
3 continuation of that line make in the state shall not directly or indirectly, through
4 actions of any parent of the manufacturer or distributor, subsidiary of the
5 manufacturer or distributor, or common entity cause a termination, cancellation, or
6 nonrenewal of a dealer agreement by a present or previous manufacturer or
7 distributor of an existing agreement unless the manufacturer or distributor offers the
8 new vehicle dealer an agreement substantially similar to that offered to other
9 dealers of the same line make.