

CHAPTER 23 (HB 250)

AN ACT relating to motor vehicle dealers and declaring an emergency.

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

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

As used in KRS 190.010 to 190.990:

- (1) "Manufacturer" means any person, partnership, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of new motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term "manufacturer" shall include the following terms:
 - (a) "Distributor" which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives, or who controls any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers.
 - (b) "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, new motor vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall further include any sales promotion organization, whether the same be a person, firm, or corporation, which is engaged in promoting the sale of new motor vehicles in this state of a particular brand or make to new motor vehicle dealers.
 - (c) "Factory representative" which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of his, its, or their new motor vehicles, or for supervising or contracting with his, its, or their dealers, or prospective dealers.
 - (d) "Distributor branch" which means a branch office similarly maintained by a distributor or wholesaler for the same purposes.
 - (e) "Distributor representative" which means a representative similarly employed by a distributor, distributor branch, or wholesaler.
- (2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this section, engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another, either as his primary business or incidental thereto.
- (3) The term "motor vehicle dealer" shall not include:
 - (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, and any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to its disposition of repossessed motor vehicles;
 - (b) Public officers while performing their official duties; or

- (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection, when engaged in the specific performance of their duties as employees.
- (4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the manufacturer's new motor vehicles.
- (5) "New motor vehicle dealership facility" means an established place of business which is being used or will be used primarily for the purpose of selling, buying, displaying, repairing, and servicing motor vehicles.
- (6) "Used motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not mean any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing his official duties.
- (7) "Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly term, and title to the motor vehicle is in a person other than the user, but shall not mean a manufacturer or its affiliate leasing to its employees or to dealers.
- (8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises specialized motor vehicles including, but not limited to, funeral coaches, emergency vehicles, and an automotive recycling dealer engaged in the business of dismantling, salvaging, or recycling salvage motor vehicles for the purpose of harvesting used parts, components, assemblies, and recyclable materials for resale, reuse, or reclamation.
- (9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises motorcycles. Motorcycles shall not include mopeds as defined in this section.
- (10) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer by a motor vehicle auction dealer to sell motor vehicles at auction.
- (11) "Motor vehicle auction dealer" means any person primarily engaged in the business of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a motor vehicle through auction.
- (12) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways, that is self propelled, but shall not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products.
- (13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer, distributor, or wholesaler, or has been sold to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the make of new vehicle, which is new, and on which the original title has not been issued from the franchised dealer.
- (14) "Moped" means a motorized bicycle with pedals whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle with pedals and with

a step through type frame rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

- (15) "Commission" means the Motor Vehicle Commission.
- (16) "Commissioner" means the commissioner of the department.
- (17) "Department" means the Department of Vehicle Regulation.
- (18) "Licensor" means the commission.
- (19) "Established place of business" means a permanent, enclosed commercial building located within this state, easily accessible and open to the public at all reasonable times, and at which the business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land use regulatory ordinances.
- (20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or other legal entity.
- (21) "Franchise" means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer that purports to fix the legal rights and liabilities of the parties to an agreement or contract, and pursuant to which the dealer purchases and resells the franchise product.
- (22) "Good faith" means honesty in fact, and the observance of reasonable commercial standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-103(1)(b).
- (23) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who, under the laws of intestate succession of this state is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.
- (24) "Fraud" means a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made in good faith; or an intentional failure to disclose material fact.
- (25) "Sale" means the issuance, transfer, agreement for transfer, exchange, *lease*, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest in it, or of any franchise related to it, as well as any option, subscription, other contract, or solicitation looking to a sale, offer to attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto, with or as a bonus on account of the sale of anything, shall be deemed a sale of the motor vehicle or franchise.

Section 2. KRS 190.040 is amended to read as follows:

- (1) A license may be denied, suspended, or revoked on the following grounds:

- (a) Proof of financial or moral unfitness of applicant;
- (b) Material misstatement in application for license;
- (c) Filing a materially false or fraudulent tax return as certified by the Revenue Cabinet;
- (d) Willful failure to comply with any provision of this chapter or any administrative regulation promulgated under this chapter;
- (e) Willfully defrauding any retail buyer to the buyer's damage;
- (f) Willful failure to perform any written agreement with any buyer;
- (g) Failure or refusal to furnish and keep in force any bond required;
- (h) Having made a fraudulent sale, transaction, or repossession;
- (i) False or misleading advertising;
- (j) Fraudulent misrepresentation, circumvention, or concealment through subterfuge or device of any of the material particulars or the nature of them required to be stated or furnished to the retail buyer;
- (k) Employment of fraudulent devices, methods, or practices in connection with compliance with the requirements under the statutes of this state with respect to the retaking of goods under retail installment contracts and the redemption and resale of goods;
- (l) Having violated any law relating to the sale, distribution, or financing of motor vehicles;
- (m) Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent, or any representative of the motor vehicle manufacturer or factory branch, who has induced, coerced, or attempted to induce or coerce any automobile dealer to accept delivery of any motor vehicle, vehicles, parts, accessories, or any other commodities that shall not have been ordered by the dealer;
- (n) Being a manufacturer of motor vehicles, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has attempted to induce or coerce, or has induced or coerced, any automobile dealer to enter into any agreement with a manufacturer, factory branch, or representative, or to do any other act unfair to the dealer, by threatening to cancel any franchise existing between a manufacturer, factory branch, or representative and the dealer;
- (o) Being a manufacturer, factory branch, distributor, field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch, who has unfairly, without due regard to the equities of the dealer and without just provocation, canceled the franchise of any motor vehicle dealer. The nonrenewal of a franchise or selling agreement without just provocation or cause shall be deemed an evasion of this section and shall constitute an unfair cancellation;
- (p) Being a *manufacturer, factory branch*, distributor, *field representative, officer, agent, or any representative of a motor vehicle manufacturer or factory branch*, or wholesaler who makes, attempts to make, or aids or abets the making of a sale of a motor vehicle to a person other than a licensed motor vehicle dealer. This section shall not prevent any license holder from selling any motor vehicle to any of its employees;

- (q) Being a dealer who advertises for sale a new motor vehicle unless he is a dealer operating under a franchise with a licensed manufacturer, factory branch, or distributor authorizing the sale of the new motor vehicle being advertised.
- (2) The licensor may deny the application for a license within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for denial. Upon request by the applicant whose license has been denied, the licensor shall set the time and place of hearing a review of denial, to be conducted in accordance with KRS Chapter 13B.
- (3) A license shall not be suspended or revoked except after a hearing conducted in accordance with KRS Chapter 13B.
- (4) The commission may inspect the pertinent books, letters, records, and contracts of a licensee.
- (5) If a licensee is a firm or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license that any officer, director, or trustee of the firm or corporation, or any member in case of a partnership, has been guilty of any act or omission which would be cause for refusing, suspending, or revoking a license to the party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if the licensee approved of or had knowledge of the acts and after approval or knowledge retained the benefit, proceeds, profits, or advantages accruing from the acts.
- (6) Any licensee or other person in interest who is dissatisfied with a final order of the commission may appeal to the Franklin Circuit Court and to the Court of Appeals in the manner provided by KRS Chapter 13B.

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

- (1) Notwithstanding the terms, provisions, or conditions of any franchise or notwithstanding the terms or provisions of any waiver, ~~a~~ manufacturer shall **not** cancel, terminate, or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:
 - (a) Satisfied the notice requirement of subsection (4) of this section;
 - (b) Has good cause for cancellation, termination, or nonrenewal;
 - (c) Has acted in good faith as defined in KRS 190.010(22); and
 - (d) Has established the requirements of this subsection in proceedings before the licensor if the action is protested by the new motor vehicle dealer within fifteen (15) days after receiving notice of the cancellation, termination, or nonrenewal.

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

- (2) Notwithstanding the terms, provisions, or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation, or nonrenewal when:
 - (a) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the

franchise relationship, provided that the dealer has been notified in writing of the failure within one hundred eighty (180) days after the manufacturer first acquired knowledge of *the*~~[such]~~ failure.

- (b) If the failure by the new motor vehicle dealer, defined in paragraph (a) of this subsection, relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer, if the new motor vehicle dealer was apprised by the manufacturer in writing of *a*~~[such]~~ failure, and
1. ~~The~~~~Said~~ notification stated that notice was provided of failure of performance pursuant to this section;
 2. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than six (6) months, to comply with *the*~~[such]~~ criteria; and
 3. The new motor vehicle dealer did not demonstrate substantial progress toward compliance with the manufacturer's performance criteria during *the designated*~~[such]~~ period.
- (3) The manufacturer shall have the burden of proof under this section.
- (4) Notwithstanding the terms, provisions, or conditions of any franchise prior to the termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish notification of *a*~~[such]~~ termination, cancellation, or nonrenewal to the new motor vehicle dealer as follows:
- (a) In the manner described in subsection (2)(b) of this section; and
 - (b) In not less than ninety (90) days prior to the effective date of *the*~~[such]~~ termination, cancellation or nonrenewal; or
 - (c) In not less than fifteen (15) days prior to the effective date of *a*~~[such]~~ termination, cancellation, or nonrenewal with respect to any of the following:
 1. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 2. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 3. Fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor which is material to the franchise;
 4. Conviction of the new motor vehicle dealer, or any owner or operator thereof, of any felony which is punishable by imprisonment; or
 5. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - (d) In not less than one hundred eighty (180) days prior to the effective date of *a*~~[such]~~ termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

- (5) Notification under this section shall be in writing by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
- (a) A statement of intent to terminate, cancel, or not to renew the franchise; and (b) A statement of the reasons for the termination, cancellation, or nonrenewal; and
 - (c) The date on which ~~the~~^[such] termination, cancellation, or nonrenewal takes effect.
- (6) Upon the termination, nonrenewal, or cancellation of any franchise, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:
- (a) New current model year motor vehicle inventory which has been acquired from the manufacturer, and which has not been damaged or altered while in the dealer's possession;
 - (b) Supplies and parts which have been acquired from the manufacturer;
 - (c) Equipment and furnishings provided the new motor vehicle dealer purchased from the manufacturer or its approved sources; and (d) Special tools.

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

- (7) In the event of a termination, cancellation, or nonrenewal under this section, and the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, or owns the dealership facilities, the manufacturer shall pay a reasonable rent to the dealer in accordance with and subject to subsection (8) of this section.
- (8) (a) ~~[Such]~~ Reasonable rental value shall be paid only to the extent the dealership premises are recognized in the franchise and only if they are:
- 1. Used solely for performance in accordance with the franchise; and
 - 2. Not substantially in excess of those facilities recommended by the manufacturer.
- (b) If the facilities are owned by the dealer, the manufacturer will either:
- 1. Locate a purchaser who will offer to purchase the dealership facilities at a reasonable price; or
 - 2. Locate a lessee who will offer to lease the premises for a reasonable term at a reasonable rent; or
 - 3. Failing the foregoing, lease the dealership facilities at a reasonable rental value for one (1) year.
- (c) If the facilities are leased by the dealer, the manufacturer will either:
- 1. Locate a tenant or tenants satisfactory to the lessor, who will sublet or assume the balance of the lease; or
 - 2. Arrange with the lessor for the cancellation of the lease without penalty to the dealer; or
 - 3. Failing the foregoing, lease the dealership facilities at a reasonable rent for one

(1) year.

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

1. Fails to accept a bona fide offer from a prospective purchaser, sublessee or assignee; or
2. Refuses to execute a settlement agreement with the lessor if ~~the~~^{such} agreement would be without cost to the dealer; or
3. Fails to make *a* written request for assistance under this section within one (1) month of the termination, cancellation, or nonrenewal.

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

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

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

- (1) Notwithstanding the terms of any franchise agreement, each motor vehicle manufacturer or distributor, doing business within this Commonwealth, shall assume all responsibility for and shall defend, indemnify, and hold harmless its motor vehicle dealers against any loss, damages, and expenses, including legal costs, arising out of complaints, claims, ***recall repairs or modifications or factory authorized or directed repairs***, or lawsuits resulting from warranty defects, which shall include structural or production defects; defects in the assembly; or design of motor vehicles, parts, accessories; or other functions beyond the control of the dealer, including without limitation, the selection of parts or components for the vehicle. Each manufacturer or distributor shall pay reasonable compensation to any authorized dealer who performs work to repair defects, or to repair any damage to the manufacturer's or distributor's product sustained while the product is in transit to the dealer, when the carrier or the means of transportation is designated by the manufacturer or distributor. Each manufacturer or distributor shall provide to its dealers with each model year a schedule of time allowances for the performance of warranty repair work and services, which shall include time allowances for the diagnosis and performance of warranty work and service time, and shall be reasonable and adequate for the work to be performed.
- (2) In the determination of what constitutes "reasonable compensation" under this section, the principal factor to be considered shall be the amount of money that the dealer is charging its other customers for the same type service or repair work. Other factors may be considered, including the compensation being paid by other manufacturers or distributors to their dealers for work; and the prevailing amount of money being paid or charged by the dealers in the city or community in which the authorized dealer is doing business. "Reasonable compensation" shall include diagnosing the defect; repair service; labor; parts and administrative and clerical costs. The compensation of a dealer shall not be less than the amount charged by the dealer

for like services and parts, which minimum compensation for parts shall be dealer cost plus thirty percent (30%) gross profit, to retail customers for nonwarranty service and repairs, or less than the amounts indicated for work on the schedule of warranty compensation required to be filed by the manufacturer with the commission as a part of the manufacturer's license application by KRS 190.030.

- (3) A manufacturer or distributor shall not require unreasonable proof to establish "reasonable compensation" or delay reimbursement of payment to the dealer beyond thirty-five (35) days from the submission by mail of a valid warranty claim. If a valid warranty claim is not paid within forty-five (45) days, the dealer may give the manufacturer one (1) copy of the dealer's related repair order bearing the customer's signature, the dealer's signature, the date the work was completed, the vehicle serial number or identification number, the odometer reading, the date of delivery of the vehicle, a list of the parts and supplies used if applicable, a brief general description of the defect, and the amount of money charged the manufacturer or distributor for the work. If, after fifteen (15) days, the valid warranty claim is still not paid, the dealer may deduct a like amount from any moneys due or owing to the manufacturer or distributor. The dealer shall hold the defective part for inspection by the manufacturer or distributor for a period of time not to exceed ninety (90) days from the time the warranty claim is submitted. The manufacturer or distributor shall not unfairly discriminate against any dealer in the application of warranty, policy, and procedure or deny any valid warranty order claim submitted by a franchised dealer within thirty (30) days from completion of the work or longer if existing manufacturer-dealer relationships apply. Upon the written request of the dealer for valid reasons, the manufacturer shall extend the submission time. Any dispute between the dealer and the manufacturer or distributor shall be subject to the provisions of KRS 190.057.
- (4) ***All audits by a manufacturer shall be limited to a period of one (1) year prior to the date of the audit.***

Section 5. KRS 190.0491 is amended to read as follows:

- (1) "Delivery" of a motor vehicle to a dealer by a manufacturer or distributor for the purposes of this section shall be accomplished by the:
- (a) Tender of the motor vehicle and any documents necessary to enable the dealer to obtain title and possession of the motor vehicle at the dealer's place of business or designated place of delivery, and
 - (b) The giving of notice of ~~the~~^{such} tender of the motor vehicle and documents to the dealer.
- (2) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:
- (a) Notify the manufacturer or distributor of ~~the~~^{such} damage within three (3) working days of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and
 - (b) ~~Must~~ Request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

~~[Such]~~ Notification of damage by the dealer must be by certified mail, with a notice of delivery requested to be returned to the dealer, and shall be presumed to have occurred upon deposit of the notice with the United States Postal Service.

- (3) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of ~~the~~~~[any such]~~ damage within three (3) working days of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligations, financial or otherwise, for ~~the~~~~[such]~~ damage to the motor vehicle. In determining when ~~the~~~~[such]~~ notification of the damage by the dealer to the manufacturer or distributor occurs, the date the notice is received by the manufacturer or distributor by the United States Postal Service indicated on the notice of delivery returned to the dealer shall be controlling.
- (4) In computing the lapse of three (3) working days under this section, the day of the occurrence of delivery of the motor vehicle to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, or the day of notification of the damage to the manufacturer or distributor by the dealer, as described in subsection (3) of this section, ~~shall~~~~[is]~~ not~~[to]~~ be included, but the last working day of the period so computed ~~shall~~~~[is to]~~ be included.
- (5) Prior to the sale of any motor vehicle damaged prior to delivery to the dealer as described in subsection (2) of this section, excluding damage to glass, tires, and bumpers when replaced by identical manufacturer's original equipment and any damage not exceeding six percent (6%) of the sticker price of the vehicle, the occurrence and extent of ~~the~~~~[such]~~ damage must be disclosed by the dealer to the consumer, and upon repair of the damage sustained, or replacement of the parts or accessories damaged, the manufacturer and/or dealer, must certify to the consumer that the motor vehicle has been repaired or remanufactured to the manufacturer's standards; if the dealer makes the certification he shall be indemnified by the manufacturer. Upon ~~this~~~~[such]~~ certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the manufacturer.
- (6) Whenever a motor vehicle is damaged resulting in repairs or repair estimates that exceed **one thousand dollars (\$1,000)**~~[three hundred dollars (\$300)]~~ after delivery to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, but before sale by the dealer to the consumer, the occurrence and extent of ~~the~~~~[such]~~ damage must be disclosed by the dealer to the consumer prior to ~~a~~~~[such]~~ sale, and upon repair of the damage sustained, or replacement of parts or accessories damaged, the dealer must certify to the consumer that this motor vehicle has been repaired or remanufactured according to the manufacturer's standards. Upon ~~this~~~~[such]~~ certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the dealer.
- (7) Notwithstanding the terms of any franchise agreement, it shall be a violation of this section for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorneys' fees of the new motor vehicle dealer, arising out of complaints, claims, or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale as is defined in KRS 355.2-608, to the extent that the judgment or settlement agreed to in writing by the manufacturer relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories or other functions by the manufacturer, beyond the control of the dealer.

Section 6. KRS 190.070 is amended to read as follows:

- (1) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative licensed under this chapter to require any new motor vehicle dealer in the Commonwealth:
 - (a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliances, equipment, or any other product not required by law, which shall not have been voluntarily ordered by the new motor vehicle dealer; except that this section is not intended to modify or supersede any terms or provisions of the franchise requiring new motor vehicle dealers to market a representative line of those motor vehicles which the manufacturer or distributor is publicly advertising.
 - (b) To order or accept delivery of any new motor vehicle with special features, appliances, accessories, or equipment not included in the list price of ~~the~~^{such} motor ~~vehicle~~^{vehicles}, as publicly advertised by the manufacturer or distributor.
 - (c) To order for any person any parts, accessories, equipment, machinery tools, appliance, or any commodity whatsoever not required in connection with a recall campaign.
 - (d) To participate monetarily in an advertising campaign or contest, any promotional materials, training materials, showroom or other display decorations, or materials, at the expense of the dealer, without the consent of the dealer.
 - (e) To enter into any agreement with the manufacturer, distributor, factory branch, or factory representative, or to do any other act prejudicial to the new motor vehicle dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and the manufacturer, distributor, factory branch, or factory representative. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of ~~the dealer's~~^{such} franchise, or contractual agreement shall not constitute a violation of this law.
 - (f) To change the capital structure of the dealership, or the means by or through which the dealer finances the operation of the dealership, provided that the dealership at all times meets any reasonable capital standards agreed to by the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.
 - (g) To refrain from participation in the management or investment in, or the acquisition of any other line of new motor vehicle or related products; provided, however, that this section does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the franchise and with any reasonable facility requirements of the manufacturer, and no change is made in the principal management of the new motor vehicle dealership.
 - (h) To change location of the dealership, or to, during the course of the agreement, make any substantial alterations to the dealership premises, when to do so, would be unreasonable in light of the current economic, political, and social considerations.
 - (i) To prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this law, or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the Commonwealth or

the United States of America, or to the commissioner, if ~~the~~_[such] referral would be binding upon the dealer.

- (j) *To establish or maintain exclusive facilities, personnel, display space, or signage for a new motor vehicle make or line.*
 - (k) *To expand facilities without making available a sufficient supply of new motor vehicles to support the expansion in light of the market and economic conditions.*
- (2) It shall be a violation of this section for any manufacturer, distributor, factory branch, or factory representative:
- (a) To delay, refuse, or fail to deliver motor vehicles, or vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, but in any case no more than sixty (60) days, after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts, or accessories to new vehicles as are covered by ~~the~~_[such] franchise, if ~~the~~_[such] vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who had placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within sixty (60) days, without cause. This section is not violated, however, if ~~the~~_[such] failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.
 - (b) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the relevant market areas.
 - (c) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall **not** be a ~~no~~_[no] transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld.
 - (d) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and ~~the~~_[such] other person, other than for compensation for services rendered, unless ~~the~~_[such] benefit is promptly accounted for, and transmitted to, the dealer, excluding any entity engaged primarily in providing financing or insurance on motor vehicles.
 - (e) To increase prices of motor vehicles which the dealer had ordered for private retail customers prior to the dealer's receipt of the written official price increase notification, a sales contract signed by a private retail consumer shall constitute evidence of each ~~such~~_[such] order, provided that the vehicle is in fact delivered to the customer. In the event of manufacturer price reductions, the amount of a ~~any~~_[any such] reduction received by a dealer shall be passed on to the private retail consumer by the dealer, if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions

shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by the following shall not be subject to the provisions of this section:

1. The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;
 2. Revaluation of the United States dollar, in the case of foreign-make vehicles or components;
 3. Increased transportation charges due to an increase in the rate charged by common carrier or transporter.
- (f) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the state or any political subdivision thereof, without making the same offer, upon written request, to all other dealers in the same line make within the relevant market area.
- (g) To release to any outside party, except under subpoena, any administrative, judicial or arbitration proceedings, or any business, financial, or personal information which may be, from time to time, provided by the dealer to the manufacturer, without the express written consent of the dealer.
- (h) To deny any dealer the right of free association with any other dealer for any lawful purpose.
- (i) *To establish or maintain a relationship, on the part of a manufacturer, distributor, factory branch, or factory representative, where the voting rights exceed a simple majority.*
- (j) *To own, operate, or control any motor vehicle dealership in the Commonwealth; however, this subsection shall not prohibit:*
1. *The operation by any manufacturer of a dealership for a temporary period, not to exceed one (1) year, during the transition from one (1) owner to another;*
 2. *The ownership or control of a dealership by a manufacturer while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or*
 3. *The ownership, operation, or control of a dealership by a manufacturer if the licensor determines after a hearing at the request of any party, that there is not a dealer who is independent of the manufacturer available in the community or trade area to own and operate the franchise in a manner consistent with the public interest.*
- (k) To compete without good faith with a new motor vehicle dealer in the same line make, operating under an agreement or franchise from the aforementioned manufacturer, distributor, factory branch, or factory representative in the relevant market area. A manufacturer, distributor, factory branch, or factory representative shall not, however, be deemed to be competing when operating a dealership, either temporarily for a reasonable period, *not to exceed one (1) year*, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona

fide relationship in which an independent person has made a significant investment, subject to loss in the dealership, and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions.

~~(l)(j)~~ To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursement or authority granted its new motor vehicle dealers to make warranty adjustment with retail customers.

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

~~(n)(4)~~ To fail to be licensed as provided in this chapter, and to maintain a bond in an amount as determined by this chapter.

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

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

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

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

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

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

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

(g) Any inventory or other financing that is not made available to each dealer on proportionally equal terms, except that a manufacturer, subsidiary, or affiliated entity shall not be obligated to make available financing to a dealer who does not meet reasonable credit standards uniformly applied by the manufacturer, subsidiary, or affiliated entity;

(h) Any opportunity to perform work for which the dealer is entitled to be compensated under this chapter that is not made available to each dealer under uniformly applied standards;

(i) Any opportunity to sell products or services distributed by the manufacturer for resale in connection with the line make of the motor vehicle covered by the franchise that is not made available to each dealer on proportionally equal terms;

- (j) *Any opportunity to establish an additional sales, service, or parts outlet that is not made available to each dealer in whose relevant market area the sales, service, or parts outlet will be located;*
 - (k) *Any information concerning the manufacturer's products, prices or other terms of sale, or promotional programs that is not contemporaneously furnished to the dealer;*
 - (l) *Any improvement to, or payment to the dealer for an improvement to, the dealer's facilities that is not made available to each dealer on proportionally equal terms;*
 - (m) *Any opportunity to sell or assign retail installment contracts or consumer leases to the manufacturer or the manufacturer's sales finance company subsidiary that is not made available to each dealer on proportionally equal terms, except that a manufacturer or sales finance company shall not be obligated to purchase any retail installment contract or consumer lease that does not meet reasonable credit terms uniformly applied by the manufacturer or sales finance company subsidiary;*
 - (n) *Any product assistance, service, or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms; or*
 - (o) *Any payment for any service or facility in connection with the franchise that is not made available to each dealer on proportionally equal terms.*
- (4) *It shall not be a defense to an alleged violation of subsection (3) of this section, that an item or opportunity was offered to a dealer if the offer was conditioned upon the dealer meeting one (1) or more requirements that are not reasonable and necessary to fulfill the dealer's obligations under the franchise. The manufacturer shall have the burden of proving that any requirement upon which an offer was conditioned was reasonable and necessary to fulfill the dealer's obligations under the franchise when the offer was made. A requirement shall not be found to be reasonable and necessary to fulfill the dealer's obligations under the franchise if the manufacturer cannot prove that it was within the control of each dealer to meet the requirement imposed on the dealer as a condition of the offer.*
- (5) *A dealer who alleges a good faith belief that the dealer has been, or is being, discriminated against in violation of subsection (3) of this section, may demand in writing that the manufacturer furnish the dealer with pertinent information reasonably necessary for the dealer to determine if discrimination exists. If the manufacturer fails to furnish the dealer with the information demanded within thirty (30) days of the manufacturer's receipt of the dealer's written demand, the manufacturer shall have, in any subsequent legal proceeding, the burden of proving that the alleged violation has not occurred.*
- (6) *Any dealer who is discriminated against by a manufacturer in violation of subsection (3) of this section shall recover three (3) times an amount equal to the value of what the dealer would have received if the manufacturer had complied with subsection (3) of this section upon furnishing any item or opportunity to another dealer.*

Section 7. KRS 186A.540 is amended to read as follows:

An individual or a dealer required to be licensed pursuant to KRS Chapter 190 shall disclose all damages to a motor vehicle which result in repairs or repair estimates that exceed *one thousand dollars (\$1,000)*~~{three hundred dollars (\$300)}~~ and that occur while the motor vehicle is in his possession and prior to delivery to a purchaser. Disclosure shall be in writing and shall require the purchaser's signature acknowledging the disclosure of damages.

Section 8. Whereas motor vehicle dealers across the Commonwealth have legitimate concerns that manufacturers will move swiftly to retaliate against motor vehicle dealers before the provisions of this Act could become effective, an emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved February 22, 2000