

CHAPTER 3

(SB 73)

AN ACT relating to motor vehicle dealers.

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

➔Section 1. 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."

- (3) (a) *A manufacturer or distributor shall not require a dealer to submit a claim authorized under this section sooner than thirty (30) days after the dealer completes the preparation, delivery, or warranty service authorizing the claim for preparation, delivery, or warranty service.*
- (b) *All claims made by a dealer under this section shall be paid within thirty (30) days after their approval.*
- (c) *All claims shall be either approved or disapproved by the manufacturer or distributor within thirty (30) days after their receipt on a completed form supplied or approved by the manufacturer or distributor.*
- (d) *Any claims not specifically disapproved in writing within thirty (30) days after the receipt of the form shall be considered to be approved and payment shall be made within thirty (30) days thereafter.*
- (e) *A dealer shall not be required to maintain defective parts for more than thirty (30) days after payment of a claim.*
- (f) ~~{for 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) *A manufacturer or distributor shall compensate the dealer for manufacturer-sponsored or distributor-sponsored sales or service promotion events, including but not limited to rebates, programs, or activities in accordance with established written guidelines for such events, programs, or activities, which the manufacturer or distributor shall provide to each dealer.*
- (5) (a) *A manufacturer or distributor shall not require a dealer to submit a claim authorized under subsection (4) of this section sooner than thirty (30) days after the dealer becomes eligible to submit the claim.*
- (b) *All claims made by a dealer pursuant to subsection (4) of this section for promotion events, including but not limited to rebates, programs, or activities, shall be paid within thirty (30) days after their approval.*
- (c) *All claims shall be either approved or disapproved by the manufacturer or distributor within thirty (30) days after their receipt on a completed form supplied or approved by the manufacturer or distributor.*
- (d) *Any claim not specifically disapproved in writing within thirty (30) days after the receipt of this form shall be considered to be approved and payment shall be made within thirty (30) days.*
- (6) *If a dealer submits any claim under this section to a manufacturer or distributor that is incomplete, inaccurate, or lacking any information usually required by the manufacturer or distributor, or if incomplete, inaccurate, or missing information is discovered during an audit, then the manufacturer or distributor shall promptly notify the dealer, and the time limit to submit the claim shall be extended for a reasonable length of time, not less than five (5) business days following notice by the manufacturer or distributor to the dealer, for the dealer to provide the complete, accurate, or lacking information to the manufacturer or distributor. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for processing a claim may not constitute grounds for denial of the claim or reduction of the amount of compensation paid to the dealer if the dealer presents reasonable documentation or other evidence to substantiate the claim.*
- (7) (a) *A manufacturer or distributor may only audit warranty, sales, or incentive claims for a period of twelve (12) months following payment, or the end of a program which does not exceed one (1) year in length, whichever is later, subject to all of the provisions of this section.*
- (b) *A manufacturer or distributor shall not require documentation for warranty, sales, or incentive claims more than twelve (12) months after the claim was paid or the end of a program which does not exceed one (1) year in length, whichever is later.*
- (c) *Prior to requiring any charge-back, reimbursement, or credit against a future transaction arising out of an audit, the manufacturer or distributor shall submit written notice to the dealer along with a copy of its audit and the detailed reason for each intended charge-back, reimbursement, or credit.*
- (d) *The limitations of this subsection do not apply if the manufacturer or distributor can prove fraud on a claim.*

~~[(4) All audits by a manufacturer shall be limited to a period of one (1) year prior to the date of the audit.]~~

Signed by Governor March 7, 2011.