

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 190.046 is amended to read as follows:

4 (1) Notwithstanding the terms of any franchise agreement, each motor vehicle
5 manufacturer or distributor, doing business within this Commonwealth, shall
6 assume all responsibility for and shall defend, indemnify, and hold harmless its
7 motor vehicle dealers against any loss, damages, and expenses, including legal
8 costs, arising out of complaints, claims, recall repairs or modifications or factory
9 authorized or directed repairs, or lawsuits resulting from warranty defects, which
10 shall include structural or production defects; defects in the assembly; or design of
11 motor vehicles, parts, accessories; or other functions beyond the control of the
12 dealer, including without limitation, the selection of parts or components for the
13 vehicle. Each manufacturer or distributor shall pay reasonable compensation to any
14 authorized dealer who performs work to repair defects, or to repair any damage to
15 the manufacturer's or distributor's product sustained while the product is in transit to
16 the dealer, when the carrier or the means of transportation is designated by the
17 manufacturer or distributor. Each manufacturer or distributor shall provide to its
18 dealers with each model year a schedule of time allowances for the performance of
19 warranty repair work and services, which shall include time allowances for the
20 diagnosis and performance of warranty work and service time, and shall be
21 reasonable and adequate for the work to be performed.

22 (2) **(a)** In the determination of what constitutes "reasonable compensation" under this
23 section, the principal factor to be considered shall be the amount of money
24 that the dealer is charging its other customers for the same type service or
25 repair work. Other factors may be considered, including:

26 **1.** The compensation being paid by other manufacturers or distributors to
27 their dealers for work; and

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

3 **(b)** "Reasonable compensation" shall include:

4 1. Diagnosing the defect as needed;

5 2. Repair service;

6 3. Labor;

7 4. Parts; and

8 5. Administrative and clerical costs.

9 **(c)** The compensation of a dealer **by a manufacturer, component manufacturer,**
10 **or distributor** shall not be less than:

11 1. The amount charged by the dealer for like services and parts, which
12 minimum compensation for parts shall be dealer cost plus thirty percent
13 (30%) gross profit, to retail customers for nonwarranty service and
14 repairs; ~~and~~

15 2. **The dealer acquisition cost of parts or services;** ~~or less than~~

16 3. The amounts indicated for work on the schedule of warranty
17 compensation required to be filed by the manufacturer with the
18 commission as a part of the manufacturer's license application by KRS
19 190.030.

20 **(d)** A manufacturer or distributor shall not require unreasonable proof to establish
21 "reasonable compensation."

22 (3) (a) A manufacturer or distributor shall not require a dealer to submit a claim
23 authorized under this section sooner than thirty (30) days after the dealer
24 completes the preparation, delivery, or warranty service authorizing the claim
25 for preparation, delivery, or warranty service.

26 (b) All claims made by a dealer under this section shall be paid within thirty (30)
27 days after their approval.

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

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

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

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

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

25 (d) Notwithstanding the limitations of this subsection, a manufacturer that
26 possesses evidence which would cause a person of ordinary caution,
27 prudence, and judgment to believe that a dealer submitted a claim that was

1 fraudulent, false, or misleading may audit the dealer for the claims during any
2 period in which an action for fraud or for the submission of false or
3 misleading claims may be commenced under applicable state law.