

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) ***As used in this section:***

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

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

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

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

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

21 ***(d) "Warranty" means and includes a new motor vehicle warranty, a recall, or***  
22 ***a certified pre-owned warranty of a manufacturer, distributor, wholesaler,***  
23 ***factory branch, or distributor branch to repair or replace a vehicle or part,***  
24 ***including manufacturers of all-terrain vehicles as defined in KRS 189.010;***  
25 ***and***

26 ***(e) "Warranty work":***

27 ***1. Means work, including necessary diagnostic labor, performed by a***

1 dealer in order to fulfill the obligations of a manufacturer, distributor,  
2 wholesaler, factory branch, or distributor branch:

3 a. Warranty;

4 b. Recall; or

5 c. Service contract that the manufacturer required in writing the  
6 dealer to provide the customer at the time of sale at no additional  
7 cost; and

8 2. Includes work a dealer arranges to be performed if the work is  
9 authorized by a manufacturer, distributor, wholesaler, factory branch,  
10 or distributor branch in order to fulfill the warranty or recall  
11 obligations of the manufacturer, distributor, wholesaler, factory  
12 branch, or distributor branch warranty.

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

19 (a) Complaints, claims, warranty repairs, recall repairs or modifications, or  
20 factory authorized or directed repairs;

21 (b) ~~[, or ]~~Lawsuits resulting from warranty defects, which shall include structural  
22 or production defects; or

23 (c) Defects in the assembly~~[,]~~ or design of motor vehicles, parts, accessories, ~~[,]~~ or  
24 other functions beyond the control of the dealer, including without limitation,  
25 the selection of parts or components for the vehicle. Each manufacturer or  
26 distributor shall pay~~[reasonable]~~ compensation to any authorized dealer who  
27 performs work to repair defects, or to repair any damage to the manufacturer's

1 or distributor's product sustained while the product is in transit to the dealer,  
 2 when the carrier or the means of transportation is designated by the  
 3 manufacturer or distributor.

4 **(3) (a) 1.** Each manufacturer or distributor shall provide to its dealers with each  
 5 model year a schedule of time allowances for the performance of  
 6 warranty repair work and services, which shall include time allowances  
 7 for the diagnosis and performance of warranty work and service time~~;~~  
 8 ~~and shall be reasonable and adequate for the work to be performed].~~

9 **2. A manufacturer or distributor shall not deny a written request**  
 10 **submitted by a franchised dealer for modification of a manufacturer**  
 11 **or distributor's uniform time allowance for a specific warranty repair,**  
 12 **or a request submitted by a franchised dealer for an additional time**  
 13 **allowance for either diagnostic or repair work on a specific vehicle**  
 14 **covered under warranty, unless:**

15 **a. The request fails to include all information and documentation**  
 16 **reasonably required by the manufacturer or distributor to assess**  
 17 **the merits of the franchised dealer's request;**

18 **b. Information submitted with the request fails to substantiate the**  
 19 **merits of the request which, if the request is for a modification of**  
 20 **a time allowance, must include a substantiation that the**  
 21 **manufacturer or distributor's time allowance is insufficient for a**  
 22 **qualified technician to complete the repair under ordinary**  
 23 **circumstances;**

24 **c. The manufacturer or distributor rebuts the time allowance**  
 25 **claimed by the dealer for a modification of the manufacturer or**  
 26 **distributor's uniform time allowance or request for additional**  
 27 **time allowance for diagnostic or repair work on a specific**

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vehicle;

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

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

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

4. A manufacturer or distributor shall respond to a franchised dealer's accurate and complete request for additional time for diagnostic or repair work on a specific warranty repair within forty-five (45) days or the request shall be deemed approved. A manufacturer or distributor shall respond to a franchised dealer's accurate, complete request to modify a uniform time allowance within two hundred forty (240) days or the request shall be deemed approved. The time periods in this subparagraph shall be tolled if the manufacturer or distributor demonstrates its ability to respond is delayed due to strike, shortage, act of God, or other cause over which the manufacturer or distributor has no control.

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

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

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

17       **3. If a qualified technician is required to communicate with a technical**  
18       **assistance center, an engineering department, or some external**  
19       **manufacturer source in order to provide a warranty repair on an issue**  
20       **not covered by a manufacturer's service manual or bulletin, the**  
21       **manufacturer shall pay for the time from the start of the**  
22       **communication, including time on hold, until the communication is**  
23       **complete, provided the communication was made in good faith.**

24       **(d) A motor vehicle dealer or franchised dealer of all-terrain vehicles may**  
25       **submit a request to the manufacturer for a warranty labor rate increase or**  
26       **parts markup increase no more than once in any twelve (12) month period.**  
27       **The request shall be made by the dealer in writing and based on one**

1           hundred (100) consecutive qualifying repair orders or all qualifying repair  
2           orders over a ninety (90) day period, whichever is less.

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

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

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

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

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

19          3. If the dealer does not agree with the proposed average percentage  
20          markup, the dealer may file a protest with the commission not later  
21          than sixty (60) days after receipt of that proposal by the manufacturer  
22          or distributor.

23          4. If a protest is filed, the commission shall inform the manufacturer or  
24          distributor that a timely protest has been filed and that a hearing will  
25          be held on the protest. In any hearing held pursuant to this paragraph,  
26          the manufacturer or distributor shall have the burden of proving that  
27          the rate declared by the dealer was unfair and unreasonable and that

1                   the proposed adjustment of the average percentage markup or labor  
2                   rate is fair and reasonable pursuant to subsection (4) of this section.

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

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

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

22           2. The manufacturer or distributor may adjust the subsequent rates paid  
23           by the manufacturer or distributor to the dealer if the manufacturer or  
24           distributor determines that the dealer's rates charged to customers for  
25           nonwarranty work are less than the rates currently being paid by the  
26           manufacturer or distributor to the dealer for warranty work. The  
27           manufacturer or distributor shall have thirty (30) days from receiving

1 all requested additional repair orders to rebut the new vehicle dealer's  
 2 retail labor rate, retail parts rate, or both.

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

9 ~~(4)~~~~(2)~~ (a) A motor vehicle dealer or franchised dealer of all-terrain vehicles that  
 10 is entitled to compensation for warranty work shall be compensated for all  
 11 aggregated aspects of the repair.~~[In the determination of what constitutes~~

12 ~~"reasonable compensation" under this section, the principal factor to be~~  
 13 ~~considered shall be the amount of money that the dealer is charging its other~~  
 14 ~~customers for the same type service or repair work. Other factors may be~~  
 15 ~~considered, including:~~

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

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

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

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

22 ~~2. Repair service;~~

23 ~~3. Labor;~~

24 ~~4. Parts; and~~

25 ~~5. Administrative and clerical costs].~~

26 (b) In calculating the labor rate or parts markup, the following shall not be  
 27 included:

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

1           1. ~~The amount charged by the dealer for like services and parts, which~~  
 2           ~~minimum compensation for parts shall be dealer cost plus thirty percent~~  
 3           ~~(30%) gross profit, to retail customers for nonwarranty service and~~  
 4           ~~repairs; or~~

5           2. ~~The amounts indicated for work on the schedule of warranty~~  
 6           ~~compensation required to be filed by the manufacturer with the~~  
 7           ~~commission as a part of the manufacturer's license application by KRS~~  
 8           ~~190.030.~~

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

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

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

15          ~~(d)~~~~(e)~~ **Payments shall not be reduced due to preestablished market norms or**  
 16          **market averages. Manufacturers shall not establish restrictions or**  
 17          **limitations of customer repair frequency due to failure rate indices or**  
 18          **national failure averages.**

19          ~~(e)~~ **1. Except as provided in subparagraph 2. of this paragraph, if a**  
 20          **manufacturer furnishes parts or components to a motor vehicle dealer**  
 21          **at no cost to use in performing repairs subject to a recall or warranty**  
 22          **repair, the manufacturer shall compensate the motor vehicle dealer**  
 23          **for the parts or components in an amount equivalent to the motor**  
 24          **vehicle dealer's retail average percentage markup on the parts or**  
 25          **component as if the parts or components had been sold to the motor**  
 26          **vehicle dealer by the manufacturer.**

27          **2. For work involving a complete engine, transmission, or electric or**

1                    hybrid vehicle propulsion battery, the manufacturer or distributor  
 2                    shall provide the dealer with compensation totaling not less than  
 3                    twenty percent (20%) of the price of the component in the  
 4                    manufacturer or distributor's parts catalog, not to exceed one  
 5                    thousand dollars (\$1,000) per component, regardless of whether the  
 6                    part was provided by the manufacturer at no cost, at a discount, or  
 7                    purchased by the dealer from the manufacturer at full cost. ~~†A~~  
 8                    ~~manufacturer or distributor shall not require unreasonable proof to~~  
 9                    ~~establish "reasonable compensation."†~~

- 10 ~~(5)†(3)†~~ (a) A manufacturer or distributor shall not require a dealer to submit a claim  
 11 authorized under this section sooner than thirty (30) days after the dealer  
 12 completes the preparation, delivery, or warranty service authorizing the claim  
 13 for preparation, delivery, or warranty service.
- 14 (b) All claims made by a dealer under this section shall be paid within thirty (30)  
 15 days after their approval.
- 16 (c) All claims shall be either approved or disapproved by the manufacturer or  
 17 distributor within thirty (30) days after their receipt on a completed form  
 18 supplied or approved by the manufacturer or distributor.
- 19 (d) Any claims not specifically disapproved in writing within thirty (30) days  
 20 after the receipt of the form shall be considered to be approved and payment  
 21 shall be made within thirty (30) days thereafter.
- 22 (e) A dealer shall not be required to maintain defective parts for more than thirty  
 23 (30) days after payment of a claim.
- 24 (f) Any dispute between the dealer and the manufacturer or distributor shall be  
 25 subject to the provisions of KRS 190.057.

26 (6) If a manufacturer imposes a recall or a stop-sale order on any new vehicle in a  
 27 dealer's inventory that prevents the sale of the vehicle, the manufacturer shall

1 compensate the dealer in accordance with 49 U.S.C. sec. 30116.

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

11 1. Recall or remedy parts are made available; or

12 2. Dealer sells, trades, or otherwise disposes of the affected used motor  
13 vehicle.

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

17 (c) This subsection shall only apply to:

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

22 2. New motor vehicle dealers holding an affected used vehicle for sale:

23 a. In inventory at the time the stop-sale or do-not-drive order was  
24 issued; or

25 b. Which was taken in the used vehicle inventory of the dealer as a  
26 consumer trade-in incident to the purchase of a new vehicle  
27 from the dealer after the stop-sale or do-not-drive order was

1 issued; and

2 c. That is a line make that the dealer is franchised to sell or on  
3 which the dealer is authorized to perform recall repairs.

4 (d) A manufacturer or distributor may compensate its dealers under a national  
5 recall compensation program, provided the compensation under the  
6 program is:

7 1. Equal to or greater than that provided under paragraph (b) of this  
8 subsection; or

9 2. Of an amount on which the manufacturer or distributor and the  
10 dealer agree.

11 (e) A manufacturer or distributor may direct the manner and method in which  
12 a dealer must demonstrate the inventory status of an affected used motor  
13 vehicle to determine eligibility under paragraph (c) of this subsection,  
14 provided that the manner and method may not be unduly burdensome and  
15 may not require information that is unduly burdensome to provide.

16 (f) This subsection shall not require a manufacturer or distributor to provide  
17 total compensation to a dealer which would exceed the total average trade-  
18 in value of the affected used motor vehicle as originally determined under  
19 paragraph (b) of this subsection.

20 (g) Any remedy provided to a dealer under this subsection shall be exclusive  
21 and shall not be combined with any other state or federal recall  
22 compensation remedy.

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

25 1. The submission of a repair order; or

26 2. Proving payment for submitted repair orders.

27 (b) Requiring customer signatures or receipts shall not be considered unduly

1 **burdensome under this subsection.**

2 ~~(9)~~~~(4)~~ A manufacturer or distributor shall compensate the dealer for manufacturer-  
3 sponsored or distributor-sponsored sales or service promotion events, including but  
4 not limited to rebates, programs, or activities in accordance with established written  
5 guidelines for such events, programs, or activities, which the manufacturer or  
6 distributor shall provide to each dealer.

7 ~~(10)~~~~(5)~~ (a) A manufacturer or distributor shall not require a dealer to submit a claim  
8 authorized under subsection ~~(9)~~~~(4)~~ of this section sooner than thirty (30)  
9 days after the dealer becomes eligible to submit the claim.

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

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

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

19 **(e) Any claim disapproved in writing within thirty (30) days of submission shall**  
20 **state the reason for the disapproval and permit the motor vehicle dealer to**  
21 **correct and resubmit the disapproved claim within thirty (30) days of receipt**  
22 **of the disapproval.**

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

25 ~~(11)~~~~(6)~~ If a dealer submits any claim under this section to a manufacturer or  
26 distributor that is incomplete, inaccurate, or lacking any information usually  
27 required by the manufacturer or distributor, or if incomplete, inaccurate, or missing

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

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

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

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

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