

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) Except as provided in paragraph (d) of this subsection, "reasonable
4 compensation" shall include:
- 5 1. Diagnosing the defect as needed;
6 2. Repair service;
7 3. Labor;
8 4. Parts; and
9 5. Administrative and clerical costs.
- 10 (c) Except as provided in paragraph (d) of this subsection, the compensation of a
11 dealer shall not be less than:
- 12 1. The amount charged by the dealer for like services and parts, which
13 minimum compensation for parts shall be dealer cost plus thirty percent
14 (30%) gross profit, to retail customers for nonwarranty service and
15 repairs; or
- 16 2. 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) The compensation of a dealer for vehicles with a classification of seven (7) or
21 higher as established in 49 C.F.R. sec. 565.15 by a manufacturer, component
22 manufacturer, or distributor shall ~~not~~ be subject to the following
23 conditions~~[less than the greater of]:~~
- 24 1. The dealer shall be entitled to receive, as to reimbursement for parts,
25 not less than its actual acquisition cost of the parts including freight,
26 handling, taxes, and any other related out-of-pocket expenses, plus a
27 gross profit margin of thirty percent (30%);

- 1 2. In addition to paragraph (b) of this subsection, "reasonable
2 compensation" shall also include:
- 3 a. All dealer costs incurred for training and certifying technicians
4 and warranty administration personnel;
- 5 b. Dealer costs to acquire, use, and maintain computer hardware
6 and software systems utilized for warranty and recall repairs,
7 including diagnostic computers, mobile devices, and software for
8 tracking and reporting warranty and recall time and expenses;
9 and
- 10 c. Dealer costs for specialized tools and hardware required for
11 warranty and recall repairs;
- 12 3. A dealer may submit reimbursement requests for its costs described in
13 subparagraph 2. of this paragraph, and the manufacturer, component
14 manufacturer, or distributor shall pay for those costs, at the dealer's
15 election either on a:
- 16 a. Per repair basis, as may be mutually agreeable between the
17 dealer and manufacturer, component manufacturer, or
18 distributor;
- 19 b. Per repair basis, based upon the amounts customarily charged
20 by the dealer to retail customers for similar nonwarranty work;
21 or
- 22 c. Periodic basis no less frequent than annually, with reasonable
23 documentation of the costs and a reasonable method of
24 allocating the costs between reimbursable warranty and recall
25 services and nonwarranty services;
- 26 4. If labor hours on a warranty or recall repair, diagnostics, or service
27 are incurred by a technician trained or certified in that service by a

1 manufacturer, component manufacturer, or distributor, or if such
2 training or certification is not furnished, the actual hours incurred
3 shall be the basis of reasonable compensation unless the
4 manufacturer, component manufacturer, or distributor proves by clear
5 and convincing evidence that the hours incurred were unreasonable
6 for the specific repair. Reference to standard repair times, labor
7 guides, or time allowance guidelines shall not constitute sufficient
8 evidence of that proof;

9 5. If a component manufacturer for any system, subassembly, or other
10 component part of a motor vehicle has assumed, undertaken, or
11 otherwise has legal responsibility for reimbursement and processing of
12 a dealer claim for warranty or recall services by virtue of any pass-
13 through or extended warranty arrangement, governmental recall
14 mandate, consent decree, judicial decree, litigation settlement, or other
15 means, the component manufacturer shall be subject to all the
16 requirements of this section as if primarily liable as a manufacturer or
17 distributor. This subparagraph shall not relieve the manufacturer or
18 distributor of the motor vehicle from any primary liability for the
19 indemnification obligations of subsection (1) of this section to its
20 dealers. If a component warranty is made contemporaneously with the
21 sale of a new motor vehicle and extends beyond the original
22 manufacturer or distributor warranty on the entire vehicle, the
23 manufacturer or distributor shall continue to have primary liability to
24 its dealers for the performance of warranty service on those
25 components during the extended period;

26 6. Compensation to be paid a dealer from a component manufacturer for
27 warranty or recall work on a component part shall be no less than the

1 amount that would otherwise be reimbursable if the manufacturer or
 2 distributor of the vehicle had made the component warranty or was
 3 otherwise responsible for the component part. This subparagraph
 4 shall apply regardless of whether or not the part bears a different part
 5 number than the originally manufactured part, or is a remanufactured
 6 or rebuilt part that is required or permitted to be utilized in a warranty
 7 or recall repair;

8 7. A manufacturer, component manufacturer, or distributor shall not
 9 refuse payment for a replacement part installed by a dealer in
 10 connection with a warranty or recall repair that the manufacturer,
 11 component manufacturer, or distributor claims is not defective based
 12 upon laboratory or other testing, or where no fault with the part is
 13 found, unless the part is returned to the dealer with a written
 14 certification from the manufacturer, component manufacturer, or
 15 distributor setting forth the test conditions and results and warranting
 16 that the part is not defective, is fully functional, and qualified for
 17 reuse in future repairs; and

18 8. As used in this paragraph, "component manufacturer" means any
 19 person who manufactures, assembles, imports, or distributes new,
 20 remanufactured, or rebuilt parts, assemblies, subassemblies, or other
 21 components for motor vehicles[The amount charged by the dealer to the

22 ~~retail customers of the dealer for nonwarranty work of like kind; or~~

23 ~~2. The dealer acquisition costs of parts or service].~~

24 (e) A manufacturer or distributor shall not require unreasonable proof or unduly
 25 burdensome processes to establish "reasonable compensation."

26 (3) (a) A manufacturer or distributor shall not require a dealer to submit a claim
 27 authorized under this section sooner than ninety (90)[~~thirty (30)~~] days after

- 1 the dealer completes the preparation, delivery, or warranty service authorizing
2 the claim for preparation, delivery, or warranty service.
- 3 (b) All claims made by a dealer under this section shall be paid within thirty (30)
4 days after their approval.
- 5 (c) All claims shall be either approved or disapproved by the manufacturer or
6 distributor within thirty (30) days after their receipt on a completed form
7 supplied or approved by the manufacturer or distributor.
- 8 (d) Any claims not specifically disapproved in writing within thirty (30) days
9 after the receipt of the form shall be considered to be approved and payment
10 shall be made within thirty (30) days thereafter.
- 11 (e) A dealer shall not be required to maintain defective parts for more than thirty
12 (30) days after payment of a claim.
- 13 (f) Any dispute between the dealer and the manufacturer or distributor shall be
14 subject to the provisions of KRS 190.057.
- 15 (4) A manufacturer or distributor shall compensate the dealer for manufacturer-
16 sponsored or distributor-sponsored sales or service promotion events, including but
17 not limited to rebates, programs, or activities in accordance with established written
18 guidelines for such events, programs, or activities, which the manufacturer or
19 distributor shall provide to each dealer.
- 20 (5) (a) A manufacturer or distributor shall not require a dealer to submit a claim
21 authorized under subsection (4) of this section sooner than ninety (90)~~thirty~~
22 ~~(30)~~ days after the dealer becomes eligible to submit the claim.
- 23 (b) All claims made by a dealer pursuant to subsection (4) of this section for
24 promotion events, including but not limited to rebates, programs, or activities,
25 shall be paid within thirty (30) days after their approval.
- 26 (c) All claims shall be either approved or disapproved by the manufacturer or
27 distributor within thirty (30) days after their receipt on a completed form

1 supplied or approved by the manufacturer or distributor.

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

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

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

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

25 (c) Prior to requiring any charge-back, reimbursement, or credit against a future
26 transaction arising out of an audit, the manufacturer or distributor shall submit
27 written notice to the dealer along with a copy of its audit and the detailed

1 reason for each intended charge-back, reimbursement, or credit.
2 (d) Notwithstanding the limitations of this subsection, a manufacturer that
3 possesses evidence which would cause a person of ordinary caution,
4 prudence, and judgment to believe that a dealer submitted a claim that was
5 fraudulent, false, or misleading may audit the dealer for the claims during any
6 period in which an action for fraud or for the submission of false or
7 misleading claims may be commenced under applicable state law.