

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:

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

24 (e) "Warranty" means and includes a new motor vehicle warranty, a recall, or
25 a certified pre-owned warranty of a manufacturer, distributor, wholesaler,
26 factory branch, or distributor branch to repair or replace a defect in a
27 vehicle or part, including manufacturers of all-terrain vehicles as defined in

1 **KRS 189.010; and**

2 **(f) "Warranty work";**

3 **1. Means work, including diagnostic labor, performed by a dealer in**
4 **order to fulfill the obligations of a manufacturer, distributor,**
5 **wholesaler, factory branch, or distributor branch warranty, service**
6 **contract, or recall; and**

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

12 **(2) Notwithstanding the terms of any franchise agreement, each motor vehicle**
13 **manufacturer or distributor** doing business within this Commonwealth~~;~~ shall
14 assume all responsibility for and shall defend, indemnify, and hold harmless its
15 motor vehicle dealers against any loss, damages, and expenses, including legal
16 costs, arising out of:

17 **(a) Complaints, claims, recall repairs or modifications, or factory authorized or**
18 **directed repairs;**

19 **(b) Any manufacturer warranty or maintenance plans, extended warranty,**
20 **certified pre-owned warranty, or service contract issued by the**
21 **manufacturer or its parent, subsidiary, affiliate, or agent;**

22 **(c) Lawsuits resulting from warranty defects, which shall include structural**
23 **or production defects;** **or**

24 **(d) Defects in the assembly** ; **or design of motor vehicles, parts, accessories** ; **or**
25 other functions beyond the control of the dealer, including without limitation,
26 the selection of parts or components for the vehicle. Each manufacturer or
27 distributor shall pay reasonable compensation to any authorized dealer who

1 performs work to repair defects, or to repair any damage to the manufacturer's
2 or distributor's product sustained while the product is in transit to the dealer,
3 when the carrier or the means of transportation is designated by the
4 manufacturer or distributor.

5 **(3) (a)** Each manufacturer or distributor shall provide to its dealers with each model
6 year a schedule of time allowances for the performance of warranty repair
7 work and services, which shall include time allowances for the diagnosis and
8 performance of warranty work and service time~~[, and shall be reasonable and~~
9 ~~adequate for the work to be performed]. Time allowances and rates for the~~
10 ~~diagnosis and performance of warranty work shall not be less than those~~
11 ~~charged to retail customers for the same work to be performed. In the event~~
12 ~~that a time allowance has not been agreed to for warranty work, or said time~~
13 ~~guide does not define time for an applicable warranty repair, the time~~
14 ~~allowance shall be one hundred fifty percent (150%) of the manufacturer's~~
15 ~~time guide.~~

16 **(b) A manufacturer shall not establish or implement a term, policy, or**
17 **procedure different from those described in this section for any motor**
18 **vehicle dealer to obtain compensation under this section, or pay a motor**
19 **vehicle dealer or franchised dealer of an all-terrain vehicle, as defined in**
20 **KRS 189.010, less than the amounts due pursuant to this section.**

21 **(c) Manufacturers shall pay motor vehicle dealers and franchised dealers of**
22 **all-terrain vehicles the same effective labor rate that the dealer receives for**
23 **customer-pay repairs. This requirement shall include diagnostic time for all**
24 **warranty repairs as well as service, labor, and parts. If a technician is**
25 **required to communicate with a technical assistance center, an engineering**
26 **department, or some external manufacturer source in order to provide a**
27 **warranty repair, the manufacturer shall pay for the time from start of the**

1 communication, including time on hold, until the communication is
2 complete.

3 (d) A motor vehicle dealer or franchised dealer of all-terrain vehicles may
4 submit a request to the manufacturer for a warranty labor rate increase no
5 more than once per calendar year. The request shall be made by the dealer
6 in writing and based on one hundred (100) consecutive qualifying repair
7 orders or all qualifying repair orders over a ninety (90) day period,
8 whichever occurs first.

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

13 1. Both the labor rate and parts markup; or
14 2. Only the labor rate or parts markup.

15 (f) 1. The submitted parts markup or labor rate shall be presumed accurate
16 and shall go into effect thirty (30) days after the manufacturer,
17 distributor, wholesaler, factory branch, or distributor branch receives
18 the submission unless the manufacturer or distributor rebuts the
19 declared rate within thirty (30) days of submission.

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

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

27 4. If a protest is filed, the commission shall inform the manufacturer or

distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this paragraph, the manufacturer or distributor shall have the burden of proving that the rate declared by the dealer was unfair and unreasonable and that the proposed adjustment of the average percentage markup or labor rate is fair and reasonable pursuant to subsection (4) of this section.

(g) Warranty or factory compensated repairs shall not be excluded from the requirements of this subsection, including recalls or other voluntary stop-sell repairs required by the manufacturer. If a manufacturer issues a recall, the dealer shall be compensated for labor time as set forth in this subsection.

13 (4)(2)(a) A motor vehicle dealer or franchised dealer of all-terrain vehicles who
14 is entitled to compensation for warranty work shall be compensated for all
15 aspects of the repair, including [In the determination of what constitutes
16 "reasonable compensation" under this section, the principal factor to be
17 considered shall be the amount of money that the dealer is charging its other
18 customers for the same type service or repair work. Other factors may be
19 considered, including:

24 (b) "Reasonable compensation" shall include]:

25 1. Diagnosing the defect as needed;

26 2. Repair service;

27 3. Labor;

- 1 4. Parts; and
- 2 5. Administrative and clerical costs.

3 **(b) In calculating the labor rate or parts markup, the following shall not be**
4 **included:**

- 5 **1. Repairs subject to manufacturer, distributor, wholesaler, factory**
6 **branch, or distributor branch discounts, such as special events, special**
7 **promotions, coupons, or service campaigns;**
- 8 **2. Parts sold at wholesale;**
- 9 **3. Repairs of vehicles owned by the dealer or an employee of the dealer;**
- 10 **4. Routine maintenance, including but not limited to the replacement of**
11 **fluids, filters, batteries, bulbs, belts, nuts, bolts, or fasteners;**
- 12 **5. Installations of accessories;**
- 13 **6. Replacement of or work on tires or wheels, including alignments**
14 **unless required during the course of a qualifying repair, wheel or tire**
15 **rotations or replacement of brake drums, rotors, shoes, or pads;**
- 16 **7. Vehicle reconditioning;**
- 17 **8. Safety or emission inspections required by law;**
- 18 **9. Repairs for which volume discounts have been negotiated with**
19 **government agencies, insurers, or service contract providers;**
- 20 **10. Parts that do not have individual part numbers;**
- 21 **11. Manufacturer, distributor, wholesaler, factory branch, or distributor**
22 **branch approved and reimbursed goodwill repairs or reimbursements;**
- 23 **12. Windshield replacements, window etchings, window tints, protective**
24 **films, or other masking products;**
- 25 **13. Body shop repairs of conditions caused by collision, road hazard, the**
26 **force of the elements, vandalism, theft, or owner, operator, or third-**
27 **party negligence or deliberate act;**

1 14. Engine and transmission assemblies;

2 15. Electric vehicle and hybrid electric vehicle propulsion battery
3 assemblies;

4 16. Repairs of nonline make vehicles or repairs with aftermarket parts
5 when calculating the retail parts rate but not the retail labor rate;

6 17. Repairs on aftermarket parts; or

7 18. Parts sold or repairs performed or paid for by insurance carriers.

8 (c) Except as provided in paragraph (d) of this subsection, the compensation of a
9 dealer shall not be less than:

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

14 2. The amounts indicated for work on the schedule of warranty
15 compensation required to be filed by the manufacturer with the
16 commission as a part of the manufacturer's license application by KRS
17 190.030, provided the rates fully compensate the dealer for all costs,
18 including labor, parts, and administrative costs, associated with
19 performing the warranty repair.

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 less than the greater of:

23 1. The amount charged by the dealer to the retail customers of the dealer
24 for nonwarranty work of like kind; or
25 2. The dealer acquisition costs of parts or service.

26 (e) Payments shall not be reduced due to preestablished market norms or
27 market averages. Manufacturers shall not establish restrictions or

1 limitations of customer repair frequency due to failure rate indices or
2 national failure averages.

3 (f) Manufacturers shall not impose any form of cost recovery fees or
4 surcharges, including but not limited to an increase in the dealer's new
5 vehicle invoice acquisition costs, against a franchised motor vehicle dealer
6 for payments made in accordance with this section.

7 (g) If a manufacturer furnishes parts or components to a motor vehicle dealer
8 at no cost to use in performing repairs subject to a recall or warranty repair,
9 the manufacturer shall compensate the motor vehicle dealer for the parts or
10 components in an amount equivalent to the motor vehicle dealer's retail
11 average percentage markup on the parts or component as if the parts or
12 components had been sold to the motor vehicle dealer by the
13 manufacturer. [A manufacturer or distributor shall not require unreasonable
14 proof to establish "reasonable compensation."]

15 (5)(3)(a) A manufacturer or distributor shall not require a dealer to submit a
16 claim authorized under this section sooner than thirty (30) days after the
17 dealer completes the preparation, delivery, or warranty service authorizing the
18 claim for preparation, delivery, or warranty service.

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

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

24 (d) Any claims not specifically disapproved in writing within thirty (30) days
25 after the receipt of the form shall be considered to be approved and payment
26 shall be made within thirty (30) days thereafter.

27 (e) A dealer shall not be required to maintain defective parts for more than thirty

1 (30) days after payment of a claim.

2 (f) Any dispute between the dealer and the manufacturer or distributor shall be
3 subject to the provisions of KRS 190.057.

8 **(6)(4)** A manufacturer or distributor shall compensate the dealer for manufacturer-
9 sponsored or distributor-sponsored sales or service promotion events, including but
10 not limited to rebates, programs, or activities in accordance with established written
11 guidelines for such events, programs, or activities, which the manufacturer or
12 distributor shall provide to each dealer.

13 (7)(5) (a) A manufacturer or distributor shall not require a dealer to submit a claim
14 authorized under subsection (6)(4) of this section sooner than thirty (30)
15 days after the dealer becomes eligible to submit the claim.

16 (b) All claims made by a dealer pursuant to subsection (6)(4) of this section for
17 promotion events, including but not limited to rebates, programs, or activities,
18 shall be paid within thirty (30) days after their approval.

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

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

25 (e) Any claim disapproved in writing within thirty (30) days of submission shall
26 state the reason for the disapproval and permit the motor vehicle dealer to
27 correct and resubmit the disapproved claim within thirty (30) days of receipt

1 *of the disapproval.*

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

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

16 ~~(9)~~~~(7)~~ (a) A manufacturer or distributor may only audit warranty, recall, sales, or
17 incentive claims for a period of twelve (12) months following payment, or the
18 end of a program which does not exceed one (1) year in length, whichever is
19 later, subject to all of the provisions of this section.

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

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

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