

**190.0491 "Delivery" defined -- Dealer's duties concerning vehicle damaged in transit -- Reversion of ownership -- Certification to consumer -- Failure of manufacturer to indemnify dealer.**

- (1) "Delivery" of a motor vehicle to a dealer by a manufacturer or distributor for the purposes of this section shall be accomplished by the:
  - (a) Tender of the motor vehicle and any documents necessary to enable the dealer to obtain title and possession of the motor vehicle at the dealer's place of business or designated place of delivery, and
  - (b) The giving of notice of the tender of the motor vehicle and documents to the dealer.
- (2) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:
  - (a) Notify the manufacturer or distributor of the damage within three (3) working days of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and
  - (b) Request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

Notification of damage by the dealer must be by certified mail, with a notice of delivery requested to be returned to the dealer, and shall be presumed to have occurred upon deposit of the notice with the United States Postal Service.

- (3) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of the damage within three (3) working days of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligations, financial or otherwise, for the damage to the motor vehicle. In determining when the notification of the damage by the dealer to the manufacturer or distributor occurs, the date the notice is received by the manufacturer or distributor by the United States Postal Service indicated on the notice of delivery returned to the dealer shall be controlling.
- (4) In computing the lapse of three (3) working days under this section, the day of the occurrence of delivery of the motor vehicle to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, or the day of notification of the damage to the manufacturer or distributor by the dealer, as described in subsection (3) of this section, shall not be included, but the last working day of the period so computed shall be included.
- (5) Prior to the sale of any motor vehicle damaged prior to delivery to the dealer as described in subsection (2) of this section, excluding damage to glass, tires, and bumpers when replaced by identical manufacturer's original equipment and any damage not exceeding six percent (6%) of the sticker price of the vehicle, the occurrence and extent of the damage must be disclosed by the dealer to the consumer, and upon repair of the damage sustained, or replacement of the parts or accessories damaged, the manufacturer and/or dealer, must certify to the consumer that the motor vehicle has been repaired or remanufactured to the manufacturer's

standards; if the dealer makes the certification he shall be indemnified by the manufacturer. Upon this certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the manufacturer.

- (6) Whenever a motor vehicle is damaged resulting in repairs or repair estimates that exceed one thousand dollars (\$1,000) after delivery to the dealer by the manufacturer or distributor, as defined in subsection (1) of this section, but before sale by the dealer to the consumer, the occurrence and extent of the damage must be disclosed by the dealer to the consumer prior to a sale, and upon repair of the damage sustained, or replacement of parts or accessories damaged, the dealer must certify to the consumer that this motor vehicle has been repaired or remanufactured according to the manufacturer's standards. Upon this certification, liability for any concealed damages then remaining with the motor vehicle shall lie with the dealer.
- (7) Notwithstanding the terms of any franchise agreement, it shall be a violation of this section for any new motor vehicle manufacturer to fail to indemnify and hold harmless its franchised dealers against any judgment or settlement agreed to in writing by the manufacturer for damages, including, but not limited to, court costs and reasonable attorneys' fees of the new motor vehicle dealer, arising out of complaints, claims, or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, warranty (express or implied), or rescission of the sale as is defined in KRS 355.2-608, to the extent that the judgment or settlement agreed to in writing by the manufacturer relates to the alleged defective or negligent manufacture, assembly, or design of new motor vehicles, parts, or accessories or other functions by the manufacturer, beyond the control of the dealer.

**Effective:** February 22, 2000

**History:** Amended 2000 Ky. Acts ch. 23, sec. 5, effective February 22, 2000. -- Amended 1996 Ky. Acts ch. 111, sec. 8, effective July 15, 1996. -- Amended 1982 Ky. Acts ch. 373, sec. 12, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 114, sec. 35, effective July 15, 1980. -- Created 1978 Ky. Acts ch. 182, sec. 1, effective June 17, 1978.