

SENATE MEMBERS

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President, LRC Co-Chair

David Givens
President Pro Tempore

Damon Thayer
Majority Floor Leader

Morgan McGarvey
Minority Floor Leader

Julie Raque Adams
Majority Caucus Chair

Reginald Thomas
Minority Caucus Chair

Mike Wilson
Majority Whip

Dennis Parrett
Minority Whip



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Jay D. Hartz
Director
MEMORANDUM

HOUSE MEMBERS

David W. Osborne
Speaker, LRC Co-Chair

David Meade
Speaker Pro Tempore

Steven Rudy
Majority Floor Leader

Joni L. Jenkins
Minority Floor Leader

Suzanne Miles
Majority Caucus Chair

Derrick Graham
Minority Caucus Chair

Chad McCoy
Majority Whip

Angie Hatton
Minority Whip

TO: Senate and House Standing Committees on Transportation

FROM: Jay Hartz, Director *JH*

SUBJECT: Administrative Regulations

DATE: February 2, 2022

At its January 10, 2022, meeting, the Administrative Regulation Review Subcommittee completed its review of the following administrative regulations: 605 KAR 001:051; 605 KAR 001:071; 605 KAR 001:091; 605 KAR 001:131; 605 KAR 001:191 and 605 KAR 001:211.

Pursuant to the provisions of KRS Chapter 13A, these regulations have been assigned to the Senate and House Standing Committees on Transportation for review. Pursuant to KRS Chapter 13A, the committees have ninety (90) days from the date of this assignment to review these regulations.

The Subcommittee minutes will be delivered to your committee staff upon completion. The material considered by the Subcommittee in its review is attached to the appropriate administrative regulations.

Attachments

cc: Administrative Regulation Review Subcommittee
John Snyder

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MEMORANDUM

TO: Senator Robert Stivers, President of the Senate
Representative David Osborne, Speaker of the House
Members of the Legislative Research Commission

FROM: Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
Administrative Regulation Review Subcommittee

RE: Report of the Administrative Regulation Review Subcommittee

DATE: February 2, 2022

Members: Senators Julie Raque Adams, Ralph Alvarado, Stephen West, and David Yates and Representatives Randy Bridges, David Hale, Deanna Frazier, and Marylou Marzian.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Gordon A. Rowe, Rose Holbrook, Alan Hurst, Personnel Cabinet; Cassie Trueblood, Education Professional Standards Board; Johnna Ballinger, Michael Wilson, Secretary of State; Office of Business Services; Stafford Easterling, Personnel Board; Julie Campbell, Board of Cosmetology; Brian Clark, Steven Fields, Department of Fish and Wildlife Resources; Carlos Cassady, Motor Vehicle Commission; Todd Allen, Department of Education; Chad Collins, Julian Tackett, Kentucky High School Athletics Association; Terry Manuel, Beth Milburn, Department for Libraries and Archives; Joshua Newton, Department of Alcoholic Beverage Control; Abigail Gall, Chad Thompson, Department of Insurance; Sarah Jackson, Darryl Morgan, Rick Rand, Benjamin Siegel, Jason Siwula, Department for Housing, Buildings and Construction; Sarah Cooper, Kelli Rodman, Cabinet for Health and Family Services; Kim Minter, Donna Veno, Office of Telehealth Services; Kara Daniel, Adam Mather, Office of Inspector General; Jennifer Craig, Victoria Elridge, Phyllis Sosa, Department for Aging and Independent Living.

The Administrative Regulation Review Subcommittee met on Monday, January 10, 2022, and submits this report:

The following effective administrative regulation was reviewed pursuant to KRS 13A.030(3):

PERSONNEL CABINET: Classified

101 KAR 2:095. Classified service, general requirements. Rosemary Holbrook, assistant general counsel; Alan Hurst, acting executive director; and Gordon Rowe, general counsel, represented the cabinet.

In response to questions by Senator Raque Adams, Mr. Rowe stated that the cabinet had denied the Kentucky Child Victims' Trust Fund from inclusion as part of the Kentucky Employees Charitable Campaign (KECC) because currently the fund was not clearly an organization authorized for tax deductible donations. KECC believed that the Kentucky Child Victim's Trust Fund did important work and was a worthwhile organization. KECC intended to further investigate the fund for inclusion in KECC. The cabinet did not wish to broaden the requirements in this administrative regulation to allow for funds that did not include tax deductible donations, which might include partisan organizations. The cabinet would investigate and report back whether or not there were other statutorily established funds that had been denied based on the criteria established in this administrative regulation. Senator Raque Adams stated that Kentucky had the highest levels of child abuse and neglect in the nation; therefore, state employees should be able to contribute to a statutorily established fund to protect children.

In response to questions by Senator Alvarado, Mr. Rowe stated that the cabinet reviewed the Kentucky Child Victims' Trust Fund's annual reports and application in determining compliance with the requirements established in this administrative regulation. There was nothing in state or federal law that prohibited the fund's inclusion in the KECC. KECC was structured to benefit state employees by allowing tax deductible donations. Senator Alvarado stated that the Kentucky Child Victims' Trust Fund's Web site stated that donations were tax deductible.

In response to questions by Senator Yates, Mr. Rowe stated that the cabinet would investigate the possibility of a pass-through partnership with Prevent Child Abuse Kentucky, which was already a fund with the KECC. Senator Alvarado stated that there was already a partnership in place between the Kentucky Child Victims' Trust fund and Prevent Child Abuse Kentucky.

In response to questions by Co-Chair West, Mr. Rowe stated that the cabinet had broad statutory authority for this administrative regulation pursuant to KRS 18A.030. This administrative regulation could be amended in a way that would allow inclusion of the Kentucky Child Victims' Trust Fund. Co-Chair West requested that this administrative regulation be amended to provide for inclusion of the Kentucky Child Victims' Trust Fund, which Mr. Rowe agreed to consider.

Co-Chair Hale thanked the cabinet for considering to amend this administrative regulation and encouraged them to find a way to include the Kentucky Child Victims' Fund.

Representative Bridges stated that the cabinet could ask the Attorney General for information regarding the Kentucky Child Victims' Fund's taxation status or for information regarding KECC party structuring issues.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:082. Transportation and holding of live exotic wildlife. Brian Clark, deputy commissioner, and Steven Fields, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 10 to specify that the commissioner's decision to revoke an exemption or deny future exemptions shall be based upon the necessity to protect public health, public safety, native ecosystems, or native wildlife; and (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3, 5 through 7, and 9 through 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Hunting and Fishing

301 KAR 3:010. Public use of Wildlife Management Areas.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, 5 through 6, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 3:026. Access to Wildlife Management Areas for mobility-impaired individuals.

In response to questions by Co-Chair Hale, Mr. Clark stated that specific Wildlife Management Areas had specially designed tracks to accommodate vehicles for hunting by disabled persons. The department would investigate and report back whether or not Clay WMA had any tracks for disabled persons.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Motor Vehicle Commission

605 KAR 1:051. Dealer and salesman. Carlos Cassady, executive director, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:071. Change of ownership.

A motion was made and seconded to approve the following amendment: to amend Section 5 to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

605 KAR 1:091. Motor vehicle dealership names.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of

KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:131. Procedures.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:191. Motor vehicle advertising.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 6, 8, and 12 through 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

605 KAR 1:211. Nonprofit motor vehicle dealer requirements and licensing.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: General Administration

702 KAR 1:191. District Employee Quarantine Leave. Todd Allen, general counsel, Department of Education; Chad Collins, general counsel, Kentucky High School Athletic Association; and Julian Tackett, commissioner, Kentucky High School Athletic Association, represented the cabinet.

In response to questions by Co-Chair West, Mr. Allen stated that this administrative regulation was not dependent upon Centers for Disease Control quarantine recommendations, and guidelines were not limited to coronavirus (COVID-19). Employees could be paid for quarantine leave up to ten (10) days for a reportable disease, if quarantine was ordered by a physician, and if the employee had already exhausted sick leave or been ineligible for sick leave.

In response to questions by Representative Frazier Gordon, Mr. Allen stated that provisions in this administrative regulation did not differentiate between vaccinated and unvaccinated employees. The cabinet did have an administrative regulation that was specific to coronavirus (COVID-19), and those provisions did differentiate between vaccinated and unvaccinated employees. This administrative regulation would replace that one.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

School Terms, Attendance, and Operation

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

In response to a question by Co-Chair Hale, Mr. Tackett stated that Kentucky schools had done well in navigating public and mental health concerns within the context of athletics.

TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, January 10, 2022)

605 KAR 1:051. Dealer and salesman.

RELATES TO: KRS 190.010, 190.030

STATUTORY AUTHORITY: KRS 190.010, 190.030, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 requires ~~[that]~~ a salesman's license ~~to~~~~[shall]~~ indicate for whom the salesman works and to be displayed upon request. This administrative regulation establishes the relationship between the dealership and salesman and implements statutory requirements to facilitate accurate recordkeeping by the Motor Vehicle Commission.

Section 1. (1) All activity of a licensed motor vehicle salesman shall be pursuant to the salesman's employment by the licensee whose name appears on the salesman's license.

(2) A salesman shall not establish a place of business separate from the location for which his employer holds a license.

(3) A salesman shall not hold himself out to be a licensed dealer or conduct himself in any manner which would lead a prospective purchaser to believe he is a licensed dealer.

(4) A salesman shall not advertise the sale or purchase of a motor vehicle. This subsection shall not prohibit licensed motor vehicle dealers from identifying or including salesmen in advertisements of the dealership.

Section 2. ~~If~~~~[in the event]~~ a salesman changes his place of employment to another dealership, he shall return his license to the commission.

Section 3. Every dealer licensee shall display in a conspicuous place in the dealership office a copy of the license of each salesman employed by the dealership. Upon the termination of employment of a salesman, the licensee shall, within ten (10) days, notify the commission of the termination and return to the commission the dealer's copy of the salesman's license.

Section 4. (1) A dealer shall apply for a motor vehicle salesman license for each person acting or intending to act as a salesman. The application shall be submitted by completing a salesman application through the dealer's on-line account at Ky.gov Login. The dealer shall provide the name, home address, social security number, date of birth of the salesman, and the employment history of the salesman in the motor vehicle industry identifying the name and address of any previous motor vehicle dealerships at which the salesman was employed. If the salesman does not have prior experience in the motor vehicle industry, the dealer shall so state.

(2) The employing dealer shall furnish a current photograph of the salesman for identification purposes.

(3) The employing dealer shall require the salesman to authorize the commission to make inquiries or investigations concerning the salesman's employment and criminal records. The employing dealership shall remit the required fee for a criminal background check if requested by the commission.

Section 5.

(1) The following individuals shall be required to obtain a salesman's license:

(a) Each natural person holding a motor vehicle dealer license;~~[-]~~

(b) Each general partner actively involved in the day-to-day operation of a general or limited partnership holding a motor vehicle dealer license;

(c) The president, chief executive officer, chief operating officer, or equivalent of a corporation holding a motor vehicle dealer license; and

(d) Each manager, or, if member-managed, each member actively involved in the day-to-day operation of a limited liability company holding a motor vehicle dealer license.

(2) All motor vehicle dealers shall have at least one (1) salesperson per licensed location.

Section 6. If any of the individuals in Section 5 ~~(1)~~~~(1-4)~~ are physically located and conduct business at more than one (1) location, the individual shall procure a salesman's license for each location. Otherwise, the individual shall procure a license for the location in Kentucky where he is located or a primary location in Kentucky if he is located outside the state.

~~**[Section 7. Incorporation by Reference. Dealer on-line account, salesman license application available at Ky.gov Login.]**~~

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email Suzanne.Baskett@ky.gov.

TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, January 10, 2022)

605 KAR 1:071. Change of ownership.

RELATES TO: KRS 190.030

STATUTORY AUTHORITY: KRS 190.030, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 requires each separate entity acting as a dealer to have a license and to make needed reports to the Motor Vehicle Commission. This administrative regulation establishes requirements for change of ownership of dealer licenses, particularly if a sale or transfer occurs, so that the commission can be on notice of who actually holds a license.

Section 1. (1) All licenses issued by the commission are non-transferable.

(2) A complete change of ownership of a licensee shall require a new Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030 and the appropriate fee.

Section 2. Upon the sale or transfer of a licensee's business or the operating assets of a business to a new individual or entity, the new owner shall secure a new license for each location acquired, unless the acquirer has a valid motor vehicle dealer license for the locations.

Section 3. (1) If the licensee is a corporation or limited liability company, the transfer of the controlling stock or controlling membership interest shall be reported to the commission within fifteen (15) days of the transfer.

(2) The commission may require a new license application based on the reported transfer.

Section 4. The commission shall be notified on a timely basis of the following:

(1) the death of a licensee who is a sole proprietor;

(2) the death or dissolution of a general partner of a partnership or limited partnership licensee; or

(3) the death or dissolution of an owner of the controlling interest of a corporate or limited liability company licensee.

Section 5. In the case of the death of a sole proprietor, the commission may, if the executor or administrator alone, or in conjunction with dealership employees, is capable of operating the business in compliance with KRS Chapter 190, allow a duly qualified executor or administrator to operate the business for the remainder of the calendar year. In the case of the death or dissolution of a partner, or the controlling owner of a corporation or limited liability company, the commission shall require a new Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030 and the appropriate fee if the death or dissolution results in a material change to the financial, moral, or operational fitness of the licensee.

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TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, January 10, 2022)

605 KAR 1:091. Motor vehicle dealership names.

RELATES TO: KRS 190.040

STATUTORY AUTHORITY: KRS 190.030, 190.040, 190.073~~[040, 073]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.040(1)(i) authorizes a license to be denied, suspended, or revoked for false or misleading advertising. This administrative regulation establishes provisions against false or misleading advertising that prohibit the use of the name of a make of motor vehicle in the business name of a used motor vehicle dealer and the use of a dealership name that is so similar to the name of an existing dealership that it would confuse or mislead the public.

Section 1. The trade name of a licensee shall incorporate the words used cars, auto sales, auto mart, or other similar wording clearly identifiable as a motor vehicle dealer.

(1) A licensee, other than a franchised new motor vehicle dealer, shall not use the name of any make of motor vehicle as a part of the dealership business name.

(2) The adoption of the name of a make of motor vehicle in a trade name or advertising in this manner shall constitute false or misleading advertising within the meaning of KRS 190.040 and shall be **[considered]** grounds for the denial, suspension, or revocation of a license.

Section 2. The commission shall deny an Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030, if the name or proposed trade name of the licensee is the same or so similar to the name or trade name of an existing, unrelated licensee that the proposed name would confuse or otherwise mislead the public into believing that the two (2) licensees are the same or related.

(1) If no other grounds are cited for the denial of the Application for Motor Vehicle Dealer License, TC 98-1, incorporated by reference in 605 KAR 1:030, the applicant may reapply.

(2) Reapplication with a new trade name shall be submitted within ten (10) days of denial without remitting an additional application fee.

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TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, January 10, 2022)

605 KAR 1:131. Procedures.

RELATES TO: KRS 190.058, 190.062

STATUTORY AUTHORITY: KRS 190.020, 190.058, 190.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.058 authorizes the Motor Vehicle Commission to adopt procedures to carry out the functions and duties conferred upon it by KRS Chapter 190. This administrative regulation establishes the proper form of procedure and practice before the Motor Vehicle Commission.

Section 1. Hearings. Hearings shall be conducted as established in this administrative regulation and KRS Chapter 13B. All testimony shall be transcribed.

Section 2. Appearances. A licensee who is a natural person may appear and be heard in person, or with or by a duly appointed attorney. A licensee that is an artificial entity shall be represented only by an attorney licensed or authorized to practice in Kentucky.

Section 3. Additional Hearings. The commission may, on its own motion, prior to its determination, require an additional hearing. Notice to all interested parties establishing the date of the hearing shall be given in writing by the executive director.

Section 4. Briefs. Briefs may be filed as a matter of right. All briefs shall be concise and shall be typewritten or printed. The time allowed for filing briefs shall be designated by the hearing officer.

Section 5. Continuances. Continuances shall be granted if a continuance is in the interest of justice and if requested at least forty-eight (48) hours in advance of the hearing date.

Section 6. Depositions. Depositions may be taken only when authorized by the hearing officer. The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 7. (1) Except as otherwise provided by KRS Chapter 13B, the rules of evidence governing civil proceedings in the courts of the Commonwealth of Kentucky shall govern hearings before the commission, unless the hearing officer relaxes the rules if the ends of justice will be better served by so doing.

(2) Judicial notice.

(a) If called to the attention of the hearing officer, judicial notice may be taken of any matter situated in the files of the commission, the Department of Revenue or the Transportation Cabinet, any action pending that involves the commission, or other matters of which a court of Kentucky may take judicial notice.

(b) A brief statement recognizing the matter shall be made in the transcript by the hearing officer.

Section 8. Ex Parte Contacts. A person shall not have ex parte contact with any member of the commission regarding any matter pending before the commission for review prior to final decision. A person in violation of this Section shall be identified on the record to the commission

and any information provided through the ex parte contact shall be stricken from the commission's records and disregarded.

Section 9. Service of Motions, Pleadings. Copies of all motions and pleadings shall be served upon all interested parties, in addition to filing the required copies before the commission.

Section 10. Notices. A notice of a hearing sent by certified mail to the business address of the licensee shown on the latest application for a license shall be sufficient notice.

Section 11. Subpoenas and Subpoena Duces Tecum. (1) The party desiring a subpoena shall make application at least five (5) days before the hearing date with the executive director of the commission.

(2) The application shall be in writing, and shall state the name and address of each witness required.

(3) If evidence other than oral testimony is required, such as documents or written data, the application shall establish the specific matter to be produced and sufficient facts to indicate that the matter is reasonably necessary to establish the cause of action or defense of the applicant.

Section 12. Costs of Hearing. (1) If the commission, by issuance of a final order, finds that a violation has been committed by a licensee, or upholds the recommendation of the hearing officer in a matter involving an applicant for a motor vehicle dealer license, the commission may assess to the licensee or the applicant the fee charged to the commission for the transcription of the record and the fee charged by the hearing officer.

(2) If the hearing officer or the commission finds that the hearing has been held as a result of an allegation or charge lacking substantial merit, or if the hearing officer or commission finds that a party to the hearing has materially delayed or increased the cost of the hearing through its actions, the commission shall assess to the party bringing the allegation or causing the delay, the fee charged to the commission for transcription of the record and the fee charged by the hearing officer.

(3) The fee assessed for the transcription of the record and for the hearing officer shall be the actual costs charged to the commission for that particular hearing, and may be assessed in addition to any fine levied by the commission.

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TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, January 10, 2022)

605 KAR 1:191. Motor vehicle advertising.

RELATES TO: KRS 190.010-190.990

STATUTORY AUTHORITY: KRS 190.015, 190.020, 190.030, 190.040, 190.058, 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.040(1)(i) requires that a motor vehicle dealer shall not engage in ~~["]false or misleading advertising.["]~~ KRS 190.073 ~~requires~~~~authorizes~~ the Motor Vehicle Commission to ~~["]promulgate~~ administrative regulations for the purpose of carrying out the provisions of KRS Chapter 190. This administrative regulation establishes examples of what constitutes ~~["]false or misleading advertising.["]~~

Section 1. Definitions. (1) "Advertising" means any oral, written, or graphic statement, whether physical or electronic, which offers vehicles for sale or lease or that indicates the availability of vehicles, including any statements or representation made in a newspaper, pamphlet, circular, other publication, in radio or television, social media, on the internet, or contained in any notice, handbill, sign, billboard poster, bill catalog, letter, or business card.

(2) "Bait advertising" means:

(a) An alluring but insincere offer to sell or lease a product, to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from the advertised product to another product for a higher price or on a basis more advantageous to the dealer; or

(b) Advertising a new motor vehicle at a price that does not include all equipment listed as standard equipment by the manufacturer without disclosing that fact, or failing to disclose any of that equipment for the purpose of advertising a low price and ~~["]baiting["]~~ the customer into charges above the advertised price.

(3) "Clear and conspicuous" means a statement, representation, or term differing from other statements, representations, or terms being made so as to be readily noticeable to the person to whom it is being disclosed either by its size, sound, length of time, color, placement in the ad, or other features.

(4) "Demonstrator" ~~or "program"~~ means a vehicle of the current or preceding model year that has never been the subject of a retail sale, and that has been used by dealership personnel for demonstrating performance ability.

(5) "Executive vehicle" ~~or~~~~and~~ "official vehicle" mean, if so advertised, a vehicle that has been used exclusively by an executive or executives of the dealer franchisee.

Section 2. A licensee shall not use misleading or bait advertising. A practice shall not be pursued by an advertiser if the practice will discourage the sale of the advertised product with the intent and purpose of selling other merchandise instead.

Section 3. (1) An advertisement for the sale or lease of new and used vehicles placed by or on behalf of a licensee shall clearly and conspicuously identify the dealership by including in the text of the advertisement the business name as it appears on the dealer's license. In a classified newspaper or similar on-line advertisements, the licensee may, as an alternative, use the word ~~["]dealer["]~~ in the text of the advertisement.

(2) The advertisement of any dealership inventory on a non-company social media account

shall be considered an advertisement placed on behalf of the dealership subject to these regulations and the provisions of KRS Chapter 190.

(3) A new or used motor vehicle dealer advertising the sale or lease of new or used motor vehicles at more than one (1) licensed location shall use in the text of the advertisement the business name for each advertised location as the name appears on the dealer's license for the locations where the advertised vehicles are located.

(4) A new motor vehicle dealer advertising the sale or lease of new motor vehicles at more than one (1) licensed location shall specifically identify the makes of vehicles available at each advertised location.

Section 4. (1) Except as established in subsection (2) of this section, if a specific new motor vehicle is advertised by a dealer as being for sale, that vehicle shall be:

(a) In the possession of the dealer;
(b) Shown; and
(c) Sold as advertised, illustrated, or described at the advertised price and terms, at the advertised address.

(2) The advertisement for the sale or lease of a specific new motor vehicle that is not in stock on the date of the advertisement shall:

(a) State:
1. ~~["]Not in stock["]~~;
2. ~~["]Order yours now["]~~; or
3. Other phrases of similar import that clearly indicate the vehicle is not available for immediate delivery; and

(b) Disclose a reasonable estimate of the period of time in which delivery will be made.

(3) If an advertisement pertains to one (1) specific vehicle only, this fact shall be disclosed in the advertisement. Listing a stock number shall be adequate disclosure.

Section 5. The following statements shall not be used in advertising by a dealer, unless the statements are absolutely true with no qualifications:

(1) Statements such as:

(a) ~~["]Write your own deal["]~~;
(b) ~~["]Name your own price["]~~;
(c) ~~["]Name your own monthly payments["]~~;
(d) ~~["]Appraise your own car["]~~; or
(e) Statements with similar meaning;

(2) Statements such as:

(a) ~~["]Everybody financed["]~~;
(b) ~~["]No credit rejected["]~~;
(c) ~~["]We finance anyone["]~~; or

(d) Other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit;

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated; and

(4) Statements implying that because of its large sales volume, a new vehicle dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles.

(5)(a) Claims such as ~~["]first["]~~, ~~["]largest["]~~, ~~["]biggest["]~~, **or words of similar import** shall not be used unless they are valid at the time **the[such]** claims are made.

(b) If **the[such]** claims are qualified with regard to area, location, time, or other limitations, upon the direction of the commission, the dealer shall incorporate within the advertisement the

terms of the [such] qualification.

Section 6. Retail advertising shall not state or imply that the dealer:

(1) Is selling vehicles in a manner other than through normal retail channels, including use of terms **[including]** such as **[“]wholesale[”]**, **[“]factory sale[”]**, **[“]factory discount[”]**; or

(2) Has a special relationship or connection to the manufacturer that other dealers do not have, including use of terms such as **[“]factory outlet[”]**, **[“]factory branch[”]**, **or[and]** similar terms used in connection with the manufacturer’s name.

Section 7. It shall be false or misleading advertising to advertise the sale of a vehicle having only a Kentucky salvage title unless the advertisement conspicuously discloses that the vehicle has a salvage title and that the vehicle cannot be registered and operated on the roadways in Kentucky unless the vehicle is repaired and issued a rebuilt title.

Section 8. **Because[Since]** the amount of trade-in allowance will vary depending on the condition, model, and age of a buyer’s vehicle, no specific trade-in amount or range of amounts shall be used in advertising.

Section 9. (1) An asterisk (*) may be used to give additional information about a word or term.

(2) Use of one (1) or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify, or unreasonably limit a principal message of the advertisement shall not be used.

Section 10. (1) Any disclosure appearing in advertisements shall clearly and conspicuously feature all necessary information in a manner that can be read and understood or that can be heard and understood.

(2) The minimum duration of printed language in a television advertisement shall be five (5) seconds for every three (3) lines.

Section 11. If an advertisement contains an offer of a discount on a new vehicle, the amount of the discount shall be stated by reference to the actual dollar figure of the manufacturer’s suggested retail price of the vehicle plus the retail price of dealer-added options.

Section 12. The words **[“]free[”]**, **[“]gift[”]**, or words of similar import may be used in advertising only if the advertiser is offering an unconditional gift.

Section 13. The manufacturer’s suggested retail price (MSRP) dollar figure of a new motor vehicle if advertised in local media by a manufacturer, distributor, or regional advertisement council or association shall include all costs and charges for the vehicle advertised including destination charges if those charges are uniform regardless of destination throughout the state.**[;]** Destination charges subject to variance within the state and dealer preparation charges may be excluded from the price, if the advertisement conspicuously states that the costs and charges are excluded.

(1) If the price of a vehicle is advertised in local media by a licensee, the vehicle shall be fully identified as to year, make, model, and if new or used.

(2) The stated price shall include all charges that the customer is required to pay for the vehicle, including **[“]freight[”]** or **[“]destination charges[”]**, **[“]dealer preparation[”]**, **[“]dealer handling[”]**, **[“]additional dealer profit[”]**, **[“]additional dealer margin[”]**, and **[“]undercoating or rustproofing[”]** if the vehicle is already so equipped.

(3) The advertised price at which the dealer is advertising a particular motor vehicle shall be the price before consideration for a down-payment, a trade-in allowance, or other similar allowances.

Section 14. If the words **["list"]** or **["sticker"]** or words of similar import are used in a new motor vehicle advertisement, the words shall only refer to the actual dollar figure of the manufacturer's suggested retail price (MSRP) plus the retail price of dealer-added options.

Section 15. If any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle.

Section 16. A dealer offering to sell a demonstrator, program, official, or executive vehicle shall clearly and conspicuously identify former use.

(1) A demonstrator shall be offered for sale as such only by a dealer who holds a valid sales agreement or franchise for the sale of the same line make of motor vehicle.

(2) A vehicle advertised as official or executive vehicles shall not have been sold or leased to a retail customer prior to the appearance of the advertisement.

Section 17. Motor vehicle financing shall not be advertised at a reduced interest rate if the cost thereof would be directly or indirectly borne by the buyer unless the advertisement discloses that rate shall affect the negotiated price of the vehicle to the buyer.

Section 18. In any action pursuant to this administrative regulation, truth shall be an absolute defense.

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TRANSPORTATION CABINET
Motor Vehicle Commission
(As Amended at ARRS, January 10, 2022)

605 KAR 1:211. Nonprofit motor vehicle dealer requirements and licensing.

RELATES TO: KRS 190.010 (29), (30), [;] 190.032

STATUTORY AUTHORITY: KRS 190.032, [;] 190.073

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.032 requires the Motor Vehicle Commission to establish requirements for initial application for and renewal of a license to be a nonprofit motor vehicle dealer and directs the commission to establish relevant requirements that shall include standards for disability or disadvantaging conditions concerning the clients served by nonprofit motor vehicle dealers. This administrative regulation establishes requirements and standards for nonprofit motor vehicle dealer requirements and licensing.

Section 1. In addition to KRS 190.010(29) and the application requirements established in 605 KAR 1:030, Sections 1 and 3, a nonprofit motor vehicle dealer applicant shall certify that it is an organization exempt from taxation pursuant to 26 U.S.C. Section 501(c)(3) of the Internal Revenue Code and that it has made all required filings with the Internal Revenue Service.

Section 2. In addition to KRS 190.010(30), an applicant shall demonstrate to the commission that the applicant's sales program serves only clients meeting two (2) or more of the following disability or disadvantaging conditions:

- (1) The client's household income is at or below the current federal Poverty Guidelines as established by the United States Department of Health and Human Services;
- (2) The client has been designated as physically disabled by any state or federal agency;
- (3) The client has an actual need for a motor vehicle in order to meet work, educational, or medical needs and the client cannot obtain a reliable vehicle without the dealer's assistance;
- (4) The client has received state or federal funding specifically designed to allow the purchase of a vehicle for personal or household use; or
- (5) The client has experienced the loss of a functioning vehicle as a result of an event certified as a natural disaster by any applicable state or federal agency.

Section 3. Upon the submission of its initial application and each renewal application thereafter, the applicant or licensee shall submit the current IRS Form 990 filed by the organization. If the applicant or licensee files a short form version of IRS Form 990, the commission may require the applicant or licensee to submit additional information which would be contained on IRS Form 990 if the commission has reasonable cause to doubt the financial responsibility of the applicant to comply with the provisions of KRS Chapter 190.

Section 4. A nonprofit motor vehicle dealer that is not also licensed as either a new motor vehicle dealer or a used motor vehicle dealer shall not sell any vehicles except as allowed by KRS 190.032(3).

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