

CHAPTER 125**(HB 389)**

AN ACT relating to motor vehicle sales.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 190.010 is amended to read as follows:

As used in KRS 190.010 to 190.990:

- (1) "Manufacturer" means any person, partnership, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of new motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term "manufacturer" shall include the following terms:
 - (a) "Distributor" which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives, or who controls any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers.
 - (b) "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, new motor vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall further include any sales promotion organization, whether the same be a person, firm, or corporation, which is engaged in promoting the sale of new motor vehicles in this state of a particular brand or make to new motor vehicle dealers.
 - (c) "Factory representative" which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of his, its, or their new motor vehicles, or for supervising or contracting with his, its, or their dealers, or prospective dealers.
 - (d) "Distributor branch" which means a branch office similarly maintained by a distributor or wholesaler for the same purposes.
 - (e) "Distributor representative" which means a representative similarly employed by a distributor, distributor branch, or wholesaler.
- (2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this section, engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another, either as his primary business or incidental thereto.
- (3) The term "motor vehicle dealer" shall not include:
 - (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, and any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to its disposition of repossessed motor vehicles;
 - (b) Public officers while performing their official duties; or
 - (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection, when engaged in the specific performance of their duties as employees.
- (4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the manufacturer's new motor vehicles.
- (5) "New motor vehicle dealership facility" means an established place of business which is being used or will be used primarily for the purpose of selling, buying, displaying, repairing, and servicing motor vehicles.
- (6) "Used motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not mean any person engaged in the business of

dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing his official duties.

- (7) "Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly term, and title to the motor vehicle is in a person other than the user, but shall not mean a manufacturer or its affiliate leasing to its employees or to dealers.
- (8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises specialized motor vehicles including, but not limited to, funeral coaches, emergency vehicles, and an automotive recycling dealer engaged in the business of dismantling, salvaging, or recycling salvage motor vehicles for the purpose of harvesting used parts, components, assemblies, and recyclable materials for resale, reuse, or reclamation.
- (9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises motorcycles. Motorcycles shall not include mopeds as defined in this section.
- (10) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer by a motor vehicle auction dealer to sell motor vehicles at auction.
- (11) "Motor vehicle auction dealer" means any person primarily engaged in the business of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a motor vehicle through auction.
- (12) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways, that is self propelled, but shall not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products.
- (13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer, distributor, or wholesaler, or has been sold to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the make of new vehicle, which is new, and on which the original title has not been issued from the franchised dealer.
- (14) "Moped" means a motorized bicycle with pedals whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle with pedals and with a step through type frame rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.
- (15) "Commission" means the Motor Vehicle Commission.
- (16) "Commissioner" means the commissioner of the department.
- (17) "Department" means the Department of Vehicle Regulation.
- (18) "Licensor" means the commission.
- (19) "Established place of business" means a permanent, enclosed commercial building located within this state, easily accessible and open to the public at all reasonable times, and at which the business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land use regulatory ordinances.
- (20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or other legal entity.
- (21) "Franchise" means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer that purports to fix the legal rights and liabilities of the parties to an agreement or contract, and pursuant to which the dealer purchases and resells the franchise product.
- (22) "Good faith" means honesty in fact, and the observance of reasonable commercial standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-103(1)(b).
- (23) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who, under the laws of intestate succession of this state is entitled to inherit

the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.

- (24) "Fraud" means a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made in good faith; or an intentional failure to disclose material fact.
- (25) "Sale" means the issuance, transfer, agreement for transfer, exchange, lease, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest in it, or of any franchise related to it, as well as any option, subscription, other contract, or solicitation looking to a sale, offer to attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto, with or as a bonus on account of the sale of anything, shall be deemed a sale of the motor vehicle or franchise.
- (26) *"Automotive mobility dealer" means any motor vehicle dealer who:*
- (a) *Exclusively engages in the business of selling, offering to sell, or soliciting or advertising the sale of adapted vehicles;*
 - (b) *Possesses adapted vehicles exclusively for the purpose of resale, either on his or her own account or on behalf of another, as his or her primary business or incidental thereto; or*
 - (c) *Engages in the business of selling, installing, or servicing; offering to sell, install, or service; or soliciting or advertising the sale, installation, or servicing of equipment or modifications specifically designed to facilitate use or operation of a motor vehicle by a disabled or aging person.*
- (27) *"Adapted vehicle" means a new or used motor vehicle especially designed or modified for use by aging or disabled persons.*
- (28) *"Mobility equipment" means equipment specifically designed to facilitate the use of a motor vehicle by an aging or disabled person.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 190 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person, prior to engaging or continuing in the business of an automotive mobility dealer after the effective date of this Act, shall obtain an automotive mobility dealer license from the commission.*
- (2) (a) *An automotive mobility dealer shall be licensed and regulated by the commission under the provisions of this chapter.*
- (b) *The commission shall, by administrative regulations promulgated under KRS Chapter 13A, establish requirements for initial application for and renewal of a license to be an automotive mobility dealer. The commission's regulations establishing requirements for automotive mobility dealers shall include provisions for automotive mobility dealers to meet reasonable and appropriate quality assurance requirements. These requirements may include:*
- 1. *Appropriate training by automotive mobility dealers regarding adapted vehicle usage;*
 - 2. *Driver evaluation by automotive mobility dealers; and*
 - 3. *A requirement that automotive mobility dealers obtain and maintain insurance in an amount to be established by the commission.*
- The commission shall have the power to promulgate any other regulations that are necessary to implement this section.*
- (c) *The commission shall immediately suspend the license of an automotive mobility dealer if it determines that the dealer has sold or modified a vehicle that does not comply with this section or any administrative regulations promulgated thereunder. A dealer whose license is suspended under this paragraph shall be permitted to appeal the suspension in accordance with KRS Chapter 13B.*
- (3) *A licensed automotive mobility dealer shall have the right to display, inventory, advertise, and offer for sale any adapted vehicle.*

Section 3. KRS 190.030 is amended to read as follows:

- (1) A motor vehicle dealer, new, used, or auction motor vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer, motorcycle dealer, broker, wholesaler, automotive recycling dealer, or a ~~salesperson~~~~salesman~~ of motor vehicles shall not engage in business in this state at any location without a license issued for that location as provided in KRS 190.010 to 190.080. If a person acts as a motor vehicle ~~salesperson~~~~salesman~~, he shall secure a motor vehicle ~~salesperson's~~~~salesman's~~ license in addition to a license for a motor vehicle dealer. The motor vehicle commission may provide by administrative regulation for other licensee activities and an appropriate fee.
- (2) A manufacturer of motor vehicles, factory branch, distributor, distributor branch, or wholesaler shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (3) A factory representative or distributor representative shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (4) Application for license shall be made to the licensor, at a time, in a form, and containing information the licensor shall require and shall be accompanied by the required fee. The licensor may require in the application, or otherwise, information relating to the applicant's solvency, his financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business. The information may be considered by the licensor in determining the fitness of the applicant to engage in business as set forth in this section.
- (5) All licenses shall be granted or refused within thirty (30) days after submission of a complete application and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted. If a complaint of unfair cancellation of dealer franchise is in the process of being heard, a replacement application for the franchise shall not be considered until a decision is rendered by the commission.
- (6) The license fee for a calendar year, or part thereof, shall be as follows:
 - (a) For new motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof, plus one hundred dollars (\$100) for a supplemental license for each used car lot not immediately adjacent to the office or to a branch.
 - (b) For used motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof.
 - (c) For motor vehicle leasing dealers, one hundred dollars (\$100) for each office or branch or agent thereof.
 - (d) For restricted motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof.
 - (e) For motorcycle dealers, one hundred dollars (\$100) for each office, branch, or agent thereof.
 - (f) For motor vehicle manufacturers, one hundred dollars (\$100); and for each factory branch in this state, one hundred dollars (\$100).
 - (g) For distributors, motor vehicle auction dealers or wholesalers, the same as for dealers.
 - (h) For motor vehicle ~~salespersons, twenty dollars (\$20), to be paid by the licensed dealer for every salesperson the dealer employs~~~~salesmen, ten dollars (\$10)~~.
 - (i) For factory representatives, or distributor branch representatives, one hundred dollars (\$100).
 - (j) ***For automotive mobility dealers, one hundred dollars (\$100).***
- (7) The licenses of dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of the office or branch and shall be conspicuously displayed there. If the location is changed, the licensor shall endorse the change of location on the license. A licensee shall not be charged a fee for changing locations. A change of location shall require a new application. A licensee may conduct a temporary sale or display if the temporary sale or display is permitted under an enabling ordinance enacted by the city, county, urban-county, or consolidated local government within whose boundaries the temporary sale or display is to be conducted. A temporary sale or display shall be advertised as temporary in nature and shall consist of a representative sampling of the inventory of each participating licensee.
- (8) Every ~~salesperson~~~~salesman~~, factory representative, or distributor representative shall carry his license when engaged in business, and display it upon request. The license shall name his employer; and in case of a change of employer, the ~~salesperson~~~~salesman~~ shall immediately mail his license to the licensor who shall ~~endorse~~~~endorse~~ the change on the license without charge.

- (9) If the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute, the licensor may require the applicant or licensee to furnish and maintain a bond in a form, amount and with sureties not less than fifteen thousand dollars (\$15,000), conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee. The bonds shall be executed in the name of the State of Kentucky for the benefit of any aggrieved parties, but the penalty of the bond shall not be invoked except after a court adjudication. The commission may promulgate administrative regulations to permit the applicant to submit evidence, in lieu of posting bond, that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a bond complying with this subsection, for payment on conditions and indemnity set forth in this subsection. The bonding requirements of this subsection shall not apply to manufacturers, factory branches, and their agents.
- (10) Application for dealer's license shall be submitted to the commission and contain information the commission may require. A motor vehicle dealer, unless licensed under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use any motor vehicle registration plates.
- (11) Every motor vehicle dealer licensed in accordance with the provisions of this section shall make reports to the licensor at intervals and show information the licensor may require.

Approved April 5, 2007.