

CHAPTER 83**(HB 169)**

AN ACT relating to motor vehicle dealers.

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

➔Section 1. KRS 190.030 is amended to read as follows:

- (1) A motor vehicle dealer, new, used, or auction motor vehicle dealer, nonprofit motor vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer, motorcycle dealer, broker, wholesaler, automotive recycling dealer, or a salesperson 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, he shall secure a motor vehicle salesperson'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;
 - (i) For factory representatives, or distributor branch representatives, one hundred dollars (\$100);
 - (j) For automotive mobility dealers, one hundred dollars (\$100);
 - (k) For nonprofit motor vehicle dealers, one hundred dollars (\$100); and
 - (l) For nonprofit motor vehicle dealer salespersons, a license fee shall not be imposed.

- (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 **motor vehicle dealer who is not a new motor vehicle dealer**~~licensee~~ may conduct a temporary sale or display **in the county where the dealer is licensed to conduct business. A new motor vehicle dealer may conduct a temporary sale or display in the dealer's market area as defined in KRS 190.047(6). A temporary sale or display under this subsection shall be allowed** 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. The provisions of this subsection shall not apply to a nonprofit motor vehicle dealer.
- (8) Every salesperson, 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 shall immediately mail his license to the licensor who shall 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 **up to one hundred**~~not less than fifteen~~ thousand dollars **(\$100,000)**~~(\$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.

➔Section 2. KRS 190.033 is amended to read as follows:

- (1) **Except as provided in subsection (4) of this section**, a motor vehicle dealer's license, motor vehicle auction dealer's license, or wholesaler's license shall not be issued or renewed unless the applicant or holder of the license shall have on file with the commission an approved indemnifying bond or insurance policy issued by a surety company or insurance carrier authorized to transact business within the Commonwealth of Kentucky. The term of the bond or policy shall be continuous and shall remain in full force until canceled under proper notice. All bonds or policies shall be issued in the name of the holder or applicant for the dealer's license or wholesaler's license. The bond or policy for all dealers except automotive recycling dealers shall provide public liability and property damage coverage for the operation of any vehicle owned or being offered for sale by the dealer or wholesaler when being operated by the owner or seller, his agents, servants, employees, prospective customers, or other persons. In circumstances where a customer's or other person's vehicle is out of use because of breakdown, repair, or servicing and a motor vehicle is loaned, with or without consideration, the coverage mandated by this section shall be in excess of, and be deemed secondary to, the collision, bodily injury, and property damage liability coverage under a customer's or other person's own coverage for that person's own negligence; otherwise the coverage mandated by this section shall be primary.
- (2) The amount of insurance shall be **two hundred fifty**~~one hundred~~ thousand dollars **(\$250,000)**~~(\$100,000)~~ for bodily injury or death of any one (1) person; **five**~~three~~ hundred thousand dollars **(\$500,000)**~~(\$300,000)~~ for bodily injury or death in any one (1) accident; and **two hundred** fifty thousand dollars **(\$250,000)**~~(\$50,000)~~ property damage. The bond or policy for automotive recycling dealers shall provide commercial general liability coverage in the amount of **two hundred fifty**~~one hundred~~ thousand dollars **(\$250,000)**~~(\$100,000)~~ for bodily injury or death of any one (1) person; **five**~~three~~ hundred thousand dollars **(\$500,000)**~~(\$300,000)~~ for bodily injury or death in any one (1) accident; and **two hundred** fifty thousand dollars **(\$250,000)**~~(\$50,000)~~ property damage.

(3) A bond or insurance policy shall not be canceled unless fifteen (15) days' notice by the bondsman or insurance carrier has been given in writing to the commission. Upon the cancellation of any bond or insurance policy required, the right to engage in the business of a motor vehicle dealer or wholesaler shall immediately abate. If the bond or insurance policy is reinstated within thirty (30) days from the date of cancellation, the rights granted by the license shall again be in force and effect; otherwise, the license shall become void.

(4) ***A dealer that has a certificate of authority from the Department of Insurance demonstrating proof of self-insurance is exempt from this section.***

➔Section 3. KRS 190.058 is amended to read as follows:

(1) The Motor Vehicle Commission is hereby created as an agency of the Commonwealth to carry out the functions and duties conferred upon it by this section.

(2) The commission shall consist of twelve (12) members, eleven (11) of whom shall be appointed by the Governor, and the twelfth shall be the commissioner of the Department of Vehicle Regulation. The appointed members shall be:

(a) One (1) representative of an automobile manufacturer;

(b) One (1) representative of automobile wholesalers;

(c) One (1) representative of consumers who shall have no direct financial interest in the industry;

(d) Four (4) new motor vehicle dealers, but no more than two (2) shall represent the same automobile manufacturer as a franchise dealer; and

(e) Four (4) used motor vehicle dealers.

(3) In addition to the requirements of membership on the commission in subsection (2), the following requirements shall apply to the composition of the commission:

(a) No more than seven (7) members shall be from the same political party; and

(b) From the eight (8) members specified in subsection (2)(d) and (e), seven (7) shall be from separate Supreme Court districts.

(4) Each member shall serve for a term of three (3) years. The staggered terms of membership dating from the gubernatorial appointments of July 15, 1982, shall remain in effect.

(5) (a) Members of the commission shall qualify by taking the constitutional oath of office which shall, with the certificate of appointment, be evidence of the authority of the member to act.

(b) Each member of the commission shall be entitled to two hundred dollars (\$200) per day for each day actually engaged in the duties of the office, including time spent in necessary travel to and from meetings and otherwise, together with all travel and other necessary expenses incurred while performing official duties.

(6) The commission shall hold a regular annual meeting in September of each year and elect a chairman and vice chairman to serve for the ensuing year. The commission shall have regular meetings as the majority of the members specifies and special meetings at the request of any five (5) members. Reasonable notice of all meetings shall be given as commission administrative regulations prescribe.

(7) A member of the commission shall not participate in the deliberations of the commission and shall not vote on any matter before the commission in which the member has a financial interest or is an interested party. A member shall voluntarily disqualify himself or herself from deliberating or voting upon matters that affect the member but shall not be required to disqualify from matters of general interest affecting the member, the member's employer, or a business unit in which the member has a financial interest as a member of a class of persons to be affected by an administrative regulation or order of the commission.

(8) A majority of the commissioners, excluding any disqualified commissioner, shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. A vacancy in the commission, whether due to disqualification or otherwise, shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

(9) The commission shall employ an executive director who shall be the chief administrative officer of the commission. He shall maintain all minutes of the commission proceedings and shall be custodian of the files

and records of the commission. The executive director shall employ the staff authorized by the commission. The commission may, by interagency contract, utilize assistance of any state agency.

- (10) The commission shall deposit all moneys received by it from license fees paid under this law with the State Treasurer, who shall keep them in a separate fund to be known as the "Motor Vehicle Commission Fund." The commission may use this fund for salaries, wages, per diem, professional and consulting fees, grants, loans, contracts, travel expenses, equipment, office rent and expenses, and other necessary expenses incurred in carrying out its duties under this section as provided by legislative appropriation. **Notwithstanding KRS 45.229**, at the close of each biennium, the unexpended balance remaining in the motor vehicle commission fund shall **not lapse but shall be carried forward to the next biennium**~~be transferred to the general fund~~.
- (11) The commission shall administer the provisions of this section, establish the qualifications of manufacturers and dealers, and insure that the distribution and sale of new motor vehicles is conducted as provided in this chapter and under the commission's administrative regulations.
- (12) The commission may issue orders and make determinations necessary to carry out the provisions of KRS 190.010 to 190.080. The orders shall set forth the findings on which the order is based, and the reason for the particular action taken. All orders shall be signed by the chairman or vice chairman and attested by the executive director.
- (13) The commission may hold hearings that shall be conducted in accordance with KRS Chapter 13B. A member of the commission shall not participate in the deliberations of the commission and shall not vote on any matter if the member has been disqualified on any of the grounds under KRS 13B.040.
- (14) The commission may cause legal proceedings to be instituted to enforce the provisions of this section and its administrative regulations, orders, and decisions. If it appears from any investigation of a possible violation of any other law or administrative regulation that a violation of the provisions of KRS 190.010 to 190.080 may have occurred, the matter shall be referred to the commission to determine whether proceedings under KRS 190.010 to 190.080 are appropriate. The commission may make contracts and execute instruments necessary or convenient to the exercise of its power or performance of its duties.
- (15) The availability of administrative procedures under this section shall not preclude the utilization of other remedies for violation of the provisions of this chapter which are available to the affected parties, including actions for injunctive relief.

➔Section 4. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

- (1) Motor vehicles titled or registered to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions;
- (2) Motor vehicles titled or registered to institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation;
- (3) Motor vehicles which have been previously titled in Kentucky on or after July 1, 2005, or previously registered and titled in any state or by the federal government when being sold or transferred to licensed motor vehicle dealers for resale. The motor vehicles shall not be leased, rented, or loaned to any person and shall be held for resale only;
- (4) Motor vehicles sold by or transferred from dealers registered and licensed in compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to nonresident members of the Armed Forces on duty in this Commonwealth under orders from the United States government;
- (5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity for nine (9) persons or less, owned by nonresident owners and used primarily in interstate commerce and based in a state other than Kentucky which are required to be registered in Kentucky by reason of operational requirements or fleet proration agreements and are registered pursuant to KRS 186.145;
- (6) Motor vehicles titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky, transferred between husband and wife, parent and child, stepparent and stepchild, or grandparent and grandchild;
- (7) Motor vehicles transferred when a business changes its name and no other transaction has taken place or an individual changes his or her name;
- (8) Motor vehicles transferred to a corporation from a proprietorship or limited liability company, to a limited liability company from a corporation or proprietorship, or from a corporation or limited liability company to a

proprietorship, within six (6) months from the time that the business is incorporated, organized, or dissolved, if the transferor and the transferee are the same business entity except for a change in legal form;

- (9) Motor vehicles transferred by will, court order, or under the statutes covering descent and distribution of property, if the vehicles were titled in Kentucky on or after July 1, 2005, or previously registered in Kentucky;
- (10) Motor vehicles transferred between a subsidiary corporation and its parent corporation if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;
- (11) Motor vehicles transferred between a limited liability company and any of its members, if there is no consideration, or nominal consideration, or in sole consideration of the cancellation or surrender of stock;
- (12) The interest of a partner in a motor vehicle when other interests are transferred to him;
- (13) Motor vehicles repossessed by a secured party who has a security interest in effect at the time of repossession and a repossession affidavit as required by KRS 186.045(6). The reposessor shall hold the vehicle for resale only and not for personal use, unless he has previously paid the motor vehicle usage tax on the vehicle;
- (14) Motor vehicles transferred to an insurance company to settle a claim. These vehicles shall be junked or held for resale only;
- (15) Motor carriers operating under a charter bus certificate issued by the Transportation Cabinet under KRS Chapter 281;
- (16)
 - (a)
 1. Motor vehicles registered under KRS 186.050 that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater; and
 2. Farm trucks registered under KRS 186.050(4) that have a declared gross vehicle weight with any towed unit of forty-four thousand and one (44,001) pounds or greater;
 - (b) To be eligible for the exemption established in paragraph (a) of this subsection, motor vehicles shall be registered at the appropriate range for the declared gross weight of the vehicle established in KRS 186.050(3)(b) and shall be prohibited from registering at a higher weight range. If a motor vehicle is initially registered in one (1) declared gross weight range and subsequently is registered at a declared gross weight range lower than forty-four thousand and one (44,001) pounds, the person registering the vehicle shall be required to pay the county clerk the usage tax due on the vehicle unless the person can provide written proof to the clerk that the tax has been previously paid;
- (17) Motor vehicles transferred to a trustee to be held in trust, or from a trustee to a beneficiary of the trust, if a direct transfer from the grantor of the trust to all individual beneficiaries of the trust would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section;
- (18) Motor vehicles transferred to a trustee to be held in trust, if the grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679; and
- (19) Motor vehicles transferred from a trustee of a trust to another person if:
 - (a) The grantor of the trust is a natural person and is treated as the owner of any portion of the trust for federal income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679; ~~and~~
 - (b) A direct transfer from the grantor of the trust to the person would have qualified for an exemption from the tax pursuant to subsection (6) or (9) of this section; *and*
- (20) *Motor vehicles under a manufacturer's statement of origin in possession of a licensed new motor vehicle dealer that are titled and transferred to a licensed used motor vehicle dealer and held for sale.*

Signed by Governor April 10, 2014.